



**Report of the  
Comptroller and Auditor General of India  
on  
Revenue Sector  
for the year ended 31 March 2016**



**Government of Maharashtra**  
Report No. 3 of the year 2017

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## **PREFACE**

This Report of the Comptroller and Auditor General of India for the year ended 31 March 2016 has been prepared for submission to the Governor of Maharashtra under Article 151 of the Constitution of India.

This Report contains significant findings of audit of Receipt and Expenditure of major Revenue earning Departments under Revenue Sector conducted under the Comptroller and Auditor General (Duties, Powers and Conditions of Service) Act, 1971 and Regulations on Audit and Accounts, 2007 issued thereunder by the Comptroller and Auditor General of India.

The instances mentioned in this Report are those, which came to notice in the course of test audit during the period 2015-16 as well as those which came to notice in earlier years, but could not be reported in the previous Audit Reports; instances relating to the period subsequent to 2015-16 have also been included, wherever necessary.

The audit has been conducted in conformity with the Auditing Standards issued by the Comptroller and Auditor General of India.





## OVERVIEW

This Report contains 25 paragraphs including one Performance Audit relating to non/short levy of taxes, duties, interest and penalty, etc., involving ₹ 105.44 crore and non-realisation of Value Added Tax arrears amounting to ₹ 529.48 crore. Some of the major findings are mentioned below:

### I Tax Administration

The total revenue receipts of the State during the year 2015-16 were ₹ 1,84,920.19 crore, of which the revenue raised by the State Government was ₹ 1,39,915.63 crore and receipts from Government of India was ₹ 45,004.56 crore. The revenue raised by the State Government constituted 76 *per cent* of the total net receipts of the State. The receipts from Government of India included ₹ 28,105.95 crore on account of the State's share of divisible Union taxes which registered an increase of 59 *per cent* over the previous year and ₹ 16,898.61 crore received as grants-in-aid.

(Paragraph 1.1.1)

### II Taxes on Sales, Trade, etc.

Audit of “**Mechanism in the State for Collection of Arrears of VAT (Sales Tax Department)**” revealed the following:

- The Department did not effectively monitor the recovery of arrears of taxes since the Recovery Module was not developed in the Maharashtra Vikrikar Automation System (MAHAVIKAS).

(Paragraph 2.4.2)

- During the years 2013-14 and 2014-15, the recovery of dues from short filers was very meagre being less than eight *per cent* of the dues.

(Paragraph 2.4.3)

- Scrutiny of recovery cases under Maharashtra Value Added Tax Act, 2002 (MVAT Act) in the Recovery Branch of Mumbai, Nashik, Pune and Thane Division revealed that the arrears aggregating ₹ 342.35 crore were pending for recovery in 581 cases due to inaction at different stages.

(Paragraph 2.4.6)

- In eight cases involving VAT arrears of ₹ 326.44 crore, the dealers either did not file their VAT returns or did not pay the tax in accordance with the turnover mentioned in their returns. There was delay in finalization of these cases resulting in delay/non-recovery of the demands raised by the Department.

(Paragraph 2.4.7)

- In three cases involving arrears of ₹ 23.23 crore, the Department did not attach the properties of the defaulting dealers in time, the properties were attached by the banks and VAT arrears remained unpaid.

(Paragraph 2.4.8)

- In two cases involving arrears of ₹ 21.48 crore, the properties of the dealers were sold by the banks for recovery of their dues; however, VAT dues were not recovered by the Department.

**(Paragraph 2.4.9)**

Audit of “**Departmental Mechanism for information sharing and co-ordination with other Government Departments/Bodies**” revealed the following:

- Various Municipal Corporations/Government bodies paid ₹ 470.99 crore to 455 contractors whose taxable turnover exceeded the threshold limit for the year but these dealers were not registered with the Sales Tax Department.

**(Paragraph 2.5.1)**

- Fifty three contractors who had executed contracts valued at ₹ 156.14 crore in three Municipal Corporations, had either not disclosed the works contracts turnover in their periodical returns to the Department or had not filed their returns or were dealers whose Registration Certificates had been cancelled.

**(Paragraph 2.5.2)**

Set-off of ₹ 18.75 lakh was allowed without proper verification of taxable local purchases transferred to branches outside the State.

**(Paragraph 2.6.1)**

Incorrect adjustment of amount paid as interest against tax dues resulted in underassessment of dues by ₹ 24.13 lakh.

**(Paragraph 2.6.3)**

### **III Stamp Duty and Registration Fee**

Audit of “**Remission in Stamp Duty**” revealed the following:

- Audit observed that scheme wise data base of remission of stamp duty was neither maintained in the Information Technology (IT) system nor was it maintained manually. As a result monitoring of terms and conditions mentioned in the remission order of the schemes relating to grant of remission of stamp duty could not be watched.

**(Paragraph 3.4.1)**

- Audit observed that in 44 cases in three districts Industry, Energy and Labour Department (IELD) issued stamp duty and exemption certificates (SDEC) under remission order for Package Scheme of Incentives (PSI) 2013. All these units were Information Technology Enabled Services (ITES) units and were not covered in PSI 2013. This resulted in incorrect grant of remission of stamp duty of ₹ 6.51 crore.

**(Paragraph 3.4.2.3)**

- The IELD issued SDEC for grant of remission in favour of a relocated unit despite the fact that exemption was admissible to only new Information Technology/Information Technology Enabled Services

units. This resulted in incorrect remission of stamp duty of ₹ 4.91 crore.

**(Paragraph 3.4.3)**

- The remission of stamp duty and penalty amounting to ₹ 26.73 crore on total land area of 1,605.62 hectares not put to use for Special Economic Zone (SEZ) was required to be recovered but Joint District Registrar (JDR) recovered ₹ 22.04 crore only. This resulted in short recovery of ₹ 4.69 crore.

**(Paragraph 3.4.4.1)**

- Audit cross verified 33 of 59 SDECs made available by the RSD with records of MTDC and found one of these SDECs was fake. The remission of stamp duty allowed on this fake SDEC was ₹ 57.88 lakh.

**(Paragraph 3.4.5.1)**

- Eight tourism units availed remission of stamp duty of ₹ 2.42 crore but did not start the activities within the stipulated period. Hence remission of stamp duty was required to be recovered along with penalty.

**(Paragraph 3.4.5.2)**

Non-consideration of License fees, Security Deposits, etc. in Lease Agreement resulted in short levy of stamp duty of ₹ 19.61 crore.

**(Paragraph 3.5.1)**

Department did not consider the charge on the property in the form of 'Unearned Income' in consideration of property. This resulted in short levy of stamp duty of ₹ 11.60 crore.

**(Paragraph 3.5.2.1)**

Non-consideration of revenue sharing aspect between Owners and Purchasers mentioned in the recitals of the document, resulted in short levy of stamp duty of ₹ 10.87 crore.

**(Paragraph 3.5.3)**

## **IV Land Revenue**

Audit of "Utilisation of Government land allotted for Educational Purpose" revealed the following

- Incorrect determination of lease rent resulted in short levy of lease rent of ₹ 59.34 lakh.

**(Paragraph 4.3.1)**

- In 15 cases, the land admeasuring 2,13,023 sqm was allotted to the education societies. Though the utilisation period stipulated in the allotment orders had expired in all these cases, no action was taken by concerned Collectors to cancel the allotments and resumption of land to the Government.

**(Paragraph 4.3.4.1)**

- In 42 cases, the lease period of land allotted for playground to educational institutes had expired between June 1966 and August 2016. The lessees neither applied for renewals nor did the Department take any action for resumption of the land.

**(Paragraph 4.3.4.3)**

Application of incorrect valuation of land and incorrect slab rates for calculation of occupancy price resulted in short levy of ₹ 33.58 lakh.

**(Paragraph 4.4.1)**

Non-working of market value as per Annual Statement of Rates resulted in short recovery of un-earned income amounting to ₹ 57.69 lakh.

**(Paragraph 4.4.3)**

## **V Taxes on Vehicles**

Performance Audit on “**Assessment and Collection of Tax on Motor Vehicles and Financial Controls in the Department**” revealed the following:

- Computerised application system for registration of vehicles, i.e. VAHAN in respect of transport vehicles was not implemented in 40 out of 50 offices, whereas in case of non-transport vehicles, it was implemented in 49 offices. Fitness Module and Enforcement Module had not been implemented in any office.

**(Paragraph 5.3.1.1)**

- Local databases of the different Regional Transport Offices (RTOs) were not interlinked, the data between different wings of the same RTO were also not interlinked.

**(Paragraph 5.3.1.2)**

- There was no co-ordination between the Enforcement wing and the Driving license wing within the same RTO offices, resulting in issue of duplicate licenses, against seized driving licenses.

**(Paragraph 5.3.2)**

- In five offices, entries relating to issue of fitness certificates in respect of 35,535 transport vehicles registered during the years 2010-11 and 2011-12 were not found.

**(Paragraph 5.3.3)**

- It was noticed that 92,682 omnibuses were not registered under “transport category”. This was in contravention of the notification of the Government of India. It also resulted in non-realization of minimum revenue on account of fitness fees of ₹ 4.63 crore during the last five years.

**(Paragraph 5.3.4)**

- Registrations of 95,283 non-transport vehicles, registered prior to March 2002, were not renewed. Neither the vehicle owners had

applied for renewal nor had the Department taken any action for the same.

**(Paragraph 5.3.5)**

- The Government of Maharashtra had not implemented the High Security Registration Plate Order 2001, notified by the Government of India, despite clarifications/instructions of the Supreme Court/Ministry of Road Transport and Highways in this regard, even after a lapse of 15 years.

**(Paragraph 5.3.6)**

- The Motor Vehicle Department recovered ₹ 199.89 crore on account of Environment Tax during the period 2010-16 but it had neither asked for budgetary provision out of the fund nor had the Government of Maharashtra allocated any amount for the purpose for which the fund was created.

**(Paragraph 5.3.7)**

- The Department had not forwarded 1,52,709 offence cases relating to overloading, violation of traffic norms, incomplete documents, etc., to the court for prosecution of offenders, within the specified period of six months from the date on which the offences were committed resulting in the offenders being let free, besides non-realisation of minimum revenue in the shape of fines aggregating ₹ 1.53 crore.

**(Paragraph 5.3.10)**

- The Department had not recovered Passenger Tax and Child Nutrition Surcharge of ₹ 388.04 crore and ₹ 22.98 crore respectively up to March 2015 from the stage carriage operators (fleet owners).

**(Paragraph 5.3.11.2)**

Tax exemption meant for school buses was granted to the vehicles of an advance study institution, resulting in short levy of Motor Vehicle Tax of ₹ 16.65 lakh.

**(Paragraph 5.4)**

## **VI Other Tax and Non-Tax Receipts**

Audit of “**Receipts from Co-operative Societies**” revealed the following

- The Societies had not created a Share Capital Refund Fund for depositing 1/15<sup>th</sup> of the amount of share capital every year and the Department had not taken any action for enforcing the conditions for creation of the fund.

**(Paragraph 6.3.2)**

- Due to absence of provision in the Maharashtra Co-operative Societies Act for sharing of dividend on profits, the Government was deprived of revenue of ₹ 28.56 lakh from profit making societies.

**(Paragraph 6.3.3)**

- There was no mechanism for verification of proper remittance of surcharge into Government account, resulting in short credit of ₹ 1.64 crore into the Government treasury.

**(Paragraph 6.3.4)**

Non-recovery of Entertainments Duty amounting to ₹ 98.33 lakh was noticed from 161 cases of cable operators and discotheques.

**(Paragraphs 6.4 and 6.5)**

There was short remittance of ₹ 11.70 crore to the Government account of Education Cess and Employment Guarantee Cess collected by two Municipal Corporations.

**(Paragraph 6.7)**

## CHAPTER I

### GENERAL

#### 1.1 Trend of revenue receipts

**1.1.1** The tax and non-tax revenue raised by Government of Maharashtra during the year 2015-16, the State's share of divisible Union taxes and duties assigned to the State and Grants-in-aid received from Government of India (GoI) during the year and the corresponding figures for the preceding four years are mentioned in **Table 1.1.1**.

**Table 1.1.1**

(₹ in crore)						
Sr. No.	Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
1	Revenue raised by the State Government					
	Tax revenue <sup>1</sup>	87,608.46	1,03,448.58	1,08,597.96	1,15,063.32	1,26,608.10
	Non-tax revenue <sup>2</sup>	8,150.10 (8,167.70)	9,977.74 (9,984.40)	11,279.81 (11,351.97)	12,447.26 (12,580.89)	13,307.53 (13,423.01)
	<b>Total</b>	<b>95,758.56</b> <b>(95,776.16)</b>	<b>1,13,426.32</b> <b>(1,13,432.98)</b>	<b>1,19,877.77</b> <b>(1,19,949.93)</b>	<b>1,27,510.58</b> <b>(1,27,644.21)</b>	<b>1,39,915.63</b> <b>(1,40,031.11)</b>
2	Receipts from the Government of India					
	Share of net proceeds of divisible Union Taxes and duties	13,343.34	15,191.92	16,630.43	17,630.03	28,105.95
	Grants-in-aid	12,166.64	14,322.33	13,241.44	20,140.64	16,898.61
	<b>Total</b>	<b>25,509.98</b>	<b>29,514.25</b>	<b>29,871.87</b>	<b>37,770.67</b>	<b>45,004.56</b>
3	<b>Total revenue receipts of the State Government (1 and 2)</b>	<b>1,21,268.54</b> <b>(1,21,286.14)</b>	<b>1,42,940.57</b> <b>(1,42,947.23)</b>	<b>1,49,749.64</b> <b>(1,49,821.80)</b>	<b>1,65,281.25</b> <b>(1,65,414.88)</b>	<b>1,84,920.19</b> <b>(1,85,035.67)</b>
4	<b>Percentage of 1 to 3</b>	<b>79</b>	<b>79</b>	<b>80</b>	<b>77</b>	<b>76</b>

Source: Finance Accounts

The above table indicates that during the year 2015-16, the revenue raised by the State Government (₹ 1,39,915.63 crore) was 76 per cent of the total revenue receipts against 77 per cent in the preceding year. The balance 24 per cent of the receipts during 2015-16 was from the Government of India.

<sup>1</sup> For details – refer statement no. 14 – Detailed accounts of revenue by minor heads in the Finance Accounts of the Government of Maharashtra for the year 2015-16. Figures under the head 0020- Corporation Tax, 0021- Taxes on income other than corporation tax, 0022- Taxes on agricultural income, 0032-Taxes on wealth, 0037-Customs, 0038-Union Excise Duties, 0044 Service Tax – share of net proceeds assigned to State booked in the Finance Accounts under A- Tax revenue have been excluded from the revenue raised by the State and included in the State's Share of divisible Union Taxes in this statement.

<sup>2</sup> Figures in brackets indicate gross receipts, the details of which are available in Statement No. 14 - Detailed accounts of revenue by minor heads in the Finance Accounts of the Government of Maharashtra for the year 2015-16. The figures above those in brackets are lower because of netting of expenditure on prize winning tickets from Lottery receipts.



**1.1.2** The details of the tax revenue raised during the period 2011-12 to 2015-16 are given in **Table 1.1.2**.

**Table 1.1.2**

(₹ in crore)								
Sr. No.	Head of revenue		2011-12	2012-13	2013-14	2014-15	2015-16	Percentage of increase (+)/ decrease (-) in 2015-16 over 2014-15
1	Taxes on Sales, Trade etc.	BE <sup>3</sup>	42,074.24	48,773.70	57,973.50	64,442.69	74,616.77	
		Actual	46,796.91	55,855.27	57,760.74	61,797.71	63,848.50	(+) 3.32
	Central Sales Tax	BE	3,925.76	4,587.98	4,449.00	4,646.91	4,729.81	
		Actual	3,799.45	4,224.45	4,769.30	5,668.58	5,812.32	(+) 2.54
2	State Excise	BE	8,500.00	9,450.00	10,535.00	11,500.00	13,500.00	
		Actual	8,605.47	9,297.11	10,101.12	11,397.08	12,469.56	(+) 9.41
3	Stamp Duty and Registration Fee	BE	15,677.14	15,730.00	17,403.08	19,426.00	21,000.00	
		Actual	14,407.49	17,548.25	18,675.98	19,959.29	21,766.99	(+) 9.06
4	Taxes and Duties on Electricity	BE	4,400.00	4,809.93	5,830.00	6,501.00	7,150.00	
		Actual	4,831.09	5,895.68	6,083.90	4,350.45	8,506.37	(+) 95.53
5	Taxes on Vehicles	BE	4,000.00	4,200.00	4,750.00	5,250.00	5,693.67	
		Actual	4,137.42	5,027.42	5,095.92	5,404.97	6,017.19	(+) 11.33
6	Taxes on Goods and Passengers	BE	812.43	893.67	998.00	1,097.80	1,150.00	
		Actual	574.25	690.74	1,240.68	586.56	1,582.13	(+) 169.73
7	Other taxes on Income and Expenditure- Taxes on Professions, Trades, Callings and Employments	BE	1,700.00	1,870.00	1,944.00	2,138.40	2,309.47	
		Actual	1,829.94	1,961.10	2,165.48	2,174.12	2,192.56	(+) 0.85
8	Other Taxes and Duties on Commodities and Services	BE	1,099.36	1,378.67	1,642.38	1,770.34	2,014.66	
		Actual	1,662.63	1,874.34	1,614.82	2,452.01	2,664.17	(+) 8.65
9	Land Revenue	BE	1,497.13	1,600.86	1,760.39	1,867.29	3,200.15	
		Actual	963.81	1,074.02	1,088.85	1,272.38	1,748.31	(+) 37.40
10	Others <sup>4</sup>	BE	0.00	0.00	0.00	0.00	0.00	
		Actual	0.00	0.20	1.17	0.17	0.00	(-) 100.00
<b>Total</b>		<b>BE</b>	<b>83,686.06</b>	<b>93,294.81</b>	<b>1,07,285.35</b>	<b>1,18,640.43</b>	<b>1,35,364.53</b>	
		<b>Actual</b>	<b>87,608.46</b>	<b>1,03,448.58</b>	<b>1,08,597.96</b>	<b>1,15,063.32</b>	<b>1,26,608.10</b>	<b>(+) 10.03</b>

Source: Finance Accounts

It would be seen from the above that -

- there has been a continuous increase in the revenue during the last five years.

<sup>3</sup> BE – Budget Estimates.

<sup>4</sup> Includes receipts misclassified under Union Excise Duties and Service Tax.

- The sharp increase of 95.53 *per cent* in receipts under the head “Taxes and Duties on electricity” during 2015-16 over 2014-15 was attributable to the increase in rates of both Electricity Duty and Tax on Sale of Electricity as stated by the Energy Department.
- The reasons for sharp increase of 169.73 *per cent* in receipts under the head “Taxes on Goods and Passengers” though called for (October 2016), were not furnished by the concerned Department. As per Finance Accounts, the increase was mainly due to increase (171 *per cent*) in the collection of tax under the head “Tax on entry of goods into Local Area”.

**1.1.3** The details of the non-tax revenue raised during the period 2011-12 to 2015-16 are indicated in **Table 1.1.3**.

**Table 1.1.3**

								(₹ in crore)
Sr. No.	Head of revenue		2011-12	2012-13	2013-14	2014-15	2015-16	Percentage of increase (+)/ decrease(-) in 2015-16 over 2014-15
1	Interest Receipts	BE	1,156.31	1,325.79	1,338.80	2,973.70	2,973.70	
		Actual	1,358.94	2,464.41	3,933.81	3,351.46	3,079.45	(-) 8.12
2	Non-ferrous mining and Metallurgical Industries	BE	2,280.50	2,405.71	2,632.82	2,767.00	3,000.00	
		Actual	2,045.47	2,037.76	2,141.17	2,335.85	3,064.05	(+) 31.17
3	Miscellaneous General Services <sup>5</sup>	BE	317.43	396.14	393.19	413.97	2,434.42	
		Actual	556.29	311.52	155.69	316.25	361.90	(+) 14.43
4	Power	BE	763.26	780.10	780.00	850.00	828.00	
		Actual	725.01	451.41	617.50	523.77	676.85	(+) 29.23
5	Major and Medium Irrigation	BE	1,041.15	909.21	1,117.97	798.53	938.90	
		Actual	583.05	531.89	496.91	657.93	624.68	(-) 5.05
6	Other Administrative Services	BE	146.41	547.45	608.92	322.26	338.37	
		Actual	171.19	242.52	250.48	440.33	626.94	(+) 42.38
7	Others <sup>6</sup>	BE	4,023.72	4,494.79	5,121.96	5,383.56	10,151.48	
		Actual	2,710.15	3,938.23	3,684.25	4,821.67	4,873.66	(+) 1.08
<b>Total</b>		<b>BE</b>	<b>9,730.83</b>	<b>10,886.17</b>	<b>11,993.66</b>	<b>13,509.02</b>	<b>20,664.87</b>	
		<b>Actual</b>	<b>8,150.10</b>	<b>9,977.74</b>	<b>11,279.81</b>	<b>12,447.26</b>	<b>13,307.53</b>	<b>(+) 6.91</b>

Source: Finance Accounts

It would be seen from the above table that

- there has been a continuous increase in the revenue during the last five years.

<sup>5</sup> Includes net lottery receipts after adjustment of prize money paid.

<sup>6</sup> Dairy Development, Forestry and Wild life, Medical and Public Health, Co-operation, Public Works, Police and other non-tax receipts.

- The actual receipts from 2011-12 to 2015-16 have always been less than the budget estimates of the respective years.

## 1.2 Analysis of arrears of revenue

The arrears of revenue as on 31 March 2016 under major heads of revenue amounted to ₹ 1,09,306.77 crore of which ₹ 27,821.76 crore was outstanding for more than five years, as detailed in **Table 1.2**.

**Table 1.2**

(₹ in crore)			
Head of revenue	Total amount outstanding as on 31 March 2016	Amount outstanding for more than five years as on 31 March 2016	Action by the Department
Taxes on Sales, Trade etc.	1,07,503.25	26,172.02	Out of ₹ 1,07,503.25 crore, an amount of ₹ 43,207.94 crore were locked up in Departmental appeals, ₹ 28,117.12 crore was in arrears on account of cases pending with Court, Official Liquidator, Debt Recovery Tribunal, non-traceable dealers, etc. and the remaining ₹ 36,178.19 crore was in different stages of recovery.
Stamp Duty and Registration Fee	126.28	126.28	Revenue Recovery Certificates (RRC) were issued by the Department in all cases.
Taxes on vehicles	1,156.63	1,006.77	The Department stated (January 2017) that the demand notices in these cases were under issue.
Taxes and Duties on Electricity	510.80	507.41	The Department stated that the pendency was on account of RRC and Court cases.
State Excise Duty	9.81	9.28	The Department stated that action under Maharashtra Land Revenue Code has been initiated except in those cases which were <i>sub-judice</i> .
<b>Total</b>	<b>1,09,306.77</b>	<b>27,821.76</b>	

Compiled on the basis of information furnished by respective State Departments

The Departments may take appropriate steps to reduce the pendency of arrears, especially those more than five years before the possibility of recovery thereof becomes remote.

## 1.3 Arrears in assessments

The Value Added Tax (VAT) system relies on self-assessment and envisages Departmental audit of returns filed by the dealer, with the necessity of assessment arising only in case of the audit findings being disputed by the dealers. As per Section 20 of Maharashtra Value Added Tax Act, 2002, (MVAT Act) every registered dealer having a turnover of ₹ ten lakh per annum (₹ five lakh per annum till 26<sup>th</sup> June 2014) has to file correct, complete and self-consistent returns. Dealers having annual tax liability exceeding

₹ 10 lakh or claiming refunds exceeding ₹ one crore are required to file monthly returns, dealers having tax liability between ₹ one lakh and ₹ 10 lakh or claiming refunds between ₹ 10 lakh and ₹ one crore are required to file quarterly returns and all other dealers are required to file six-monthly returns. These returns are scrutinized by Maharashtra Vikrikar Automation System (MAHAVIKAS), which is the IT system of the Department and follow up action is taken by the return branch. The registered dealer who fails to file the return within the prescribed period has to pay a late fee before filing the return. The non-filers are either unilaterally assessed or prosecuted. The dealers who pay tax less than the tax payable declared in their return are treated as short-filers. The cases of short filers are closed after recovery of tax dues.

The system of audit or assessment under MVAT Act is of cases selected on the basis of risk analysis. When the findings of the Departmental audit under Section 22 of the Act are accepted by the dealer and he files revised returns and pays up the dues, if any, arising out of such audit, the case is treated as closed. The necessity of assessment under Section 23 of the Act arises in case of the audit findings being disputed by the dealers. The dealers' returns will be deemed assessed if no assessment is conducted within time limit prescribed in the Act, which is four years from the end of the year for which the returns were filed.

The cases are audited /assessed by the Large Taxpayers unit Branch, Business Audit Branch, Refund and Refund Audit Branch. Further, with effect from March 2012, a new concept called Issue Based Audit (IBA) was introduced, with a view to recover the taxes which were obvious and did not require much verification. From 2013-14, refund cases up to ₹ five lakh were also brought under the scope of IBA.

The number of returns<sup>7</sup> filed by the dealers during the period from 2013-14 to 2015-16, and the Departments action on thereon is shown in **Table 1.3 (A)**.

**Table 1.3 (A)**

Year	No. of returns filed by dealers	No. of returns short filed	No. of dealers selected for Issue based Audit	No. of dealers selected for Computerized Desk Audit
1	2	3	4	5
2013-14	10,26,495	45,814	47,389	1,16,447
2014-15	11,00,794	49,603	35,831	<i>Not furnished</i>
2015-16	11,47,437	71,611	<i>Not furnished</i>	<i>Not furnished</i>

Source: Information furnished by the Department

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

<sup>7</sup> Includes returns filed under Central Sales Tax Act, 1956 as follows : 2013-14 – 2,96,143; 2014-15 – 3,45,361; 2015-16 – 3,72,460.

**Table 1.3(B) - Large Taxpayers Unit**

Period	Cases selected	Cases closed	Cases pending	Percentage of column 4 to 2
1	2	3	4	5
2013-14	18,721	8,483	10,238	55
2014-15	18,589	7,537	11,052	59
2015-16	19,341	6,053	13,288	69

Source: Information furnished by the Department

As seen from the above table the percentage of pending cases increased from 55 per cent in 2013-14 to 69 per cent in 2015-16.

**Table 1.3(C) - Business Audit**

Period	Cases selected	Cases closed	Cases pending	Percentage of column 4 to 2
1	2	3	4	5
2013-14	50,785	28,503	22,282	44
2014-15	50,104	39,885	10,219	20
2015-16	77,537	19,839	57,698	74

Source: Information furnished by the Department

As seen from the above table the percentage of pendency of cases allotted for business audit increased from 44 per cent in 2013-14 to 74 per cent in 2015-16.

**Table 1.3(D) - 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
2013-14	92,827	47,028	45,799	5,370.38	49
2014-15	80,441	47,356	33,085	4,201.61	41
2015-16	72,599	49,192	23,407	2,969.25	32

Source: Information furnished by the Department

As seen from the above table the percentage of pendency of cases allotted for refund and refund audit decreased from 49 per cent in 2013-14 to 32 per cent in 2015-16.

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.

The details of cases pending at the beginning of the year, cases becoming due for assessment, cases disposed of during the year and number of cases pending for finalisation at the end of the year as furnished by the Sales Tax Department in respect of sales tax, motor spirit tax, luxury tax and tax on works contracts are shown in the following **Table 1.3(E)**.

**Table 1.3(E) – Cases under the erstwhile BST Act and allied Acts**

Head of revenue	Opening balance	New cases due for assessment during 2015-16	Cases due for assessment	Cases disposed of during 2015-16	Balance at the end of the year	Percentage of disposal (col. 5 to 4)
1	2	3	4	5	6	7
Sales Tax	26,354	87,990	1,14,344	41,924	72,420	36.66
Motor Spirit Tax	321	36	357	184	173	51.54
Purchase Tax on sugarcane	174	31	205	31	174	15.12
Entry Tax	23	81	104	77	27	74.04
Lease Tax	359	136	495	252	243	50.91
Luxury tax	773	1,649	2,422	1,001	1,421	41.33
Tax on works contracts	5,879	365	6,244	1,757	4,487	28.14
<b>Total</b>	<b>33,883</b>	<b>90,288</b>	<b>1,24,171</b>	<b>45,226</b>	<b>78,945</b>	<b>36.42</b>

Source: Information furnished by the Department.

Thus, it would be seen from the above that

- 78,945 cases remained unassessed as on 31 March 2016. Of these, 72,420 cases pertained to Bombay Sales Tax Act (BST Act). Thus, 63 *per cent* of the BST cases continued to be un-assessed despite the fact that the BST Act has been repealed since ten years.
- The percentage of disposal under other heads of revenue ranged from 15 to 74 *per cent*.

The Government may instruct the Department for early finalisation of all these cases in a time bound manner as with the passage of time the chances of recovery of dues involved in the cases would become bleak.

#### **1.4 Evasion of tax detected by the Department**

The details of cases of evasion of tax detected under major heads of revenue, cases finalised and demands for additional tax raised as reported by the concerned Departments are given in **Table 1.4**.

**Table 1.4**

Head of revenue	Number of cases					
	pending as on 31 March 2015	detected during 2015-16	Total	investigation completed	additional demand with penalty etc. raised (₹ in crore)	pending for finalisation as on 31 March 2016
Taxes on Sales, Trade etc.	4,638	3,995	8,633	5,191	8,739.22	3,442
Taxes on vehicles	31	79	110	36	0.03	74
State Excise	4	1	5	0	133.13	5
Stamp Duty and Registration Fee	5,636	9,023	14,659	8,463	53.77	6,196
<b>Total</b>	<b>10,309</b>	<b>13,098</b>	<b>23,407</b>	<b>13,690</b>	<b>8,926.15</b>	<b>9,717</b>

Source: Information furnished by the Department.

As seen from the above table that investigation in 13,690 cases (58 per cent of total cases) was completed and additional demand with penalty etc. of ₹ 8,926.15 crore was raised.

### **1.5 Response of the Government/Departments towards audit**

The Principal Accountant General (Audit)-I, Mumbai (PAG) and the Accountant General (Audit)-II, Nagpur (AG) conduct periodical inspections of the Government Departments to test check transaction of the tax and non-tax receipts and verify the maintenance of important accounting and other records as prescribed in the rules and procedures. These inspections are followed up with the inspection reports (IRs) incorporating irregularities detected during the inspection and not settled on the spot, which are issued to the heads of the offices inspected with copies to the next higher authorities for taking prompt corrective action. The heads of the offices/Government are required to promptly comply with the observations contained in the IRs, rectify the defects and omissions and report compliance through initial reply to the PAG/AG within one month from the date of issue of the IRs. The offices of the PAG/AG report serious financial irregularities to the heads of the Department and the Government. Half yearly reports are sent to the Secretaries of the concerned Departments in respect of the pending IRs to facilitate the monitoring of audit observations.

Scrutiny of IRs issued up to December 2015 disclosed that 12,650 audit observations involving ₹ 3,967.76 crore relating to 5,385 IRs remained outstanding at the end of June 2016 along with the corresponding figures for the preceding two years are mentioned in **Table 1.5**.

**Table 1.5**

Particulars	June 2014	June 2015	June 2016
Number of IRs pending for settlement	4,977	5,430	5,385
Number of outstanding audit observations	11,241	12,611	12,650
Amount of revenue involved (₹ in crore)	4,274.03	4,767.06	3,967.76

**1.5.1** The department-wise details of the IRs issued up to 31 December 2015 and audit observations outstanding as on 30 June 2016 and the amounts involved are mentioned in **Table 1.5.1**.

**Table 1.5.1**

(₹ in crore)					
Sr. No.	Name of the Department	Nature of receipts	Number of out-standing IRs	Number of out-standing audit obser-vations	Money value involved
1	2	3	4	5	6
1	Home	State Excise	165	264	97.25
2		Taxes on vehicles	342	1,120	125.23
3		Police Receipts (Non-Tax)	10	11	2.37
4	Revenue and Forest	Land Revenue	1,050	2,094	1,701.36
5		Entertainments Duty	509	1,064	51.05
6		Stamps and registration fees	1,368	3,330	810.63
7		Forest Receipts (Non-Tax)	105	150	30.21
8	Finance	Taxes on Sales, Trade etc.	1,306	3,818	193.68
9		Taxes on profession etc.	107	141	2.53
10	Industry, Energy and Labour	Taxes and duties on Electricity	111	213	641.86
11	Urban Development	Education Cess and Employment Guarantee Cess	177	279	105.90
12		Maharashtra Tax on Buildings (with larger Residential Premises)	62	73	6.06
13	Housing	Repair Cess	31	45	199.63
14	Water Resources	User Charges (Non-Tax)	33	37	0.00
15	Public Works	Non-Tax Receipts	9	11	0.00
<b>Total</b>			<b>5,385</b>	<b>12,650</b>	<b>3,967.76</b>

The first replies in respect of each IR though required to be received from the concerned head(s) of office(s) within one month from the date of issue of the IRs, was not received for 302 IRs issued up to 31 December 2015. The pendency of the IRs due to non-receipt of the replies is indicative of the fact that the Head(s) of Office(s) and the departments did not initiate action to



rectify the defects, omissions and irregularities pointed out by the PAG/AG in the IRs.

The Government may consider issuing instructions to the concerned Head(s) of the office(s) for furnishing first replies to the IRs issued by the PAG/AG within the stipulated period of one month and take appropriate steps for settlement of the audit observations raised in these IRs.

### **1.5.2 Departmental Audit Committee Meetings**

The Government had set up Audit Committees during various periods to monitor and expedite the progress of the settlement of IRs and paragraphs in the IRs. The details of the Audit Committee Meetings (ACMs) held during the year 2015-16 and the paragraphs settled are mentioned in **Table 1.5.2**.

**Table 1.5.2**

(₹ in crore)						
Sr. No.	Department	Nature of receipts	Number of meetings held	Number of paras discussed	Number of paras settled	Amount
1	Home	State Excise	1	89	36	8.19
		Taxes on vehicles	1	211	113	0.05
2	Revenue and Forest	Entertainments duty	2	423	155	2.30
		Land Revenue	3	901	716	1,177.02
3	Finance	Taxes on Sales, Trade etc.	3	256	147	7.96
		Taxes on Professions etc.	1	106	89	1.19
<b>Total</b>			<b>11</b>	<b>1,986</b>	<b>1,256</b>	<b>1,196.71</b>

The progress of settlement of paragraphs pertaining to the revenue heads “Entertainments Duty”, “Taxes on vehicles” and “Taxes on Sales, Trade etc.” was on lower side in comparison to the pendency of paragraphs.

### **1.5.3 Response of the Departments to draft audit paragraphs**

The draft audit paragraphs proposed for inclusion in the Report of the Comptroller and Auditor General of India are forwarded by the PAG/AG to the Principal Secretaries/Secretaries of the concerned Departments, drawing their attention to the audit findings and requesting them to send their response within six weeks. The fact of non-receipt of replies from the concerned Departments/Government is indicated at the end of each paragraph included in the Audit Report.

Thirty seven draft paragraphs (clubbed into 25 paragraphs) including one Performance Audit were sent to the Principal Secretaries/Secretaries of the respective Departments between May 2016 and December 2016. The Principal Secretaries/ Secretaries of the Departments did not send replies to all these draft paragraphs and the same have been included in this Report without the response of the Departments.

### 1.5.4 Follow-up on Audit Reports - summarised position

**Position of explanatory notes :-** According to the instructions issued by the Finance Department, all the Departments are required to furnish explanatory memoranda, duly vetted by Audit, to the Maharashtra Legislative Secretariat, in respect of paragraphs included in the Audit Reports, within three months of their being laid on the table of the House. However, explanatory memoranda in respect of 100 audit paragraphs included in Audit Reports from 2004-05 onwards have not been received till date as shown below in **Table 1.5.4(A)**.

**Table 1.5.4(A)**

Department	Audit Report					Total
	Up to 2010-11	2011-12	2012-13	2013-14	2014-15	
Revenue and Forest	8	21	20	14	16	<b>79</b>
Home	2	1	2	1	2	<b>8</b>
Urban Development	2	1		2	1	<b>6</b>
Finance					5	<b>5</b>
Industry, Energy and Labour			1			<b>1</b>
Co-operation	1					<b>1</b>
<b>Total</b>	<b>13</b>	<b>23</b>	<b>23</b>	<b>17</b>	<b>24</b>	<b>100</b>

**Position of Action Taken Notes (ATNs):-** With a view to ensure accountability of the executive in respect of all the issues dealt with in the Audit Reports, the PAC lays down in each case, the period within which ATNs on its recommendations should be sent. However, ATNs for 174 recommendations included in six Reports of the Public Accounts Committee on Audit Reports from 2004-05 onwards have not been received from the concerned Departments as given in **Table 1.5.4(B)**.

**Table 1.5.4(B)**

Sr. No.	PAC Report No	Audit Reports discussed	No. of recommendations for which ATNs are awaited
1	6th Report of 2010-11	2004-05	34
2	7th Report of 2010-11	2005-06	53
3	15th Report of 2012-13	2006-07	27
4	16th Report of 2012-13	2007-08	37
5	2nd Report of 2015-16	2008-09	14
6	3rd Report of 2015-16	2009-10	9
<b>Total</b>			<b>174</b>

The Department-wise and Audit Report-wise breakup of the 174 awaited ATNs are given in **Table 1.5.4(C)**.

**Table 1.5.4(C)**

Name of the Department	Year of Audit Report					Total
	Up to 2005-06	2006-07	2007-08	2008-09	2009-10	
Revenue and Forests	26	16	12	4		<b>58</b>
Finance	14	8	2	5	6	<b>35</b>
Home	16		11	5	3	<b>35</b>
Water Resources	3		4			<b>7</b>
Industries, Energy and Labour	12					<b>12</b>
Public Works	3		8			<b>11</b>
Co-operation and Textiles		3				<b>3</b>
Urban Development	1					<b>1</b>
Water Supply and Sanitation	6					<b>6</b>
Housing	5					<b>5</b>
Rural Development	1					<b>1</b>
<b>Total</b>	<b>87</b>	<b>27</b>	<b>37</b>	<b>14</b>	<b>9</b>	<b>174</b>

## **1.6 Analysis of the mechanism for dealing with the issues raised by Audit in the Energy Department**

To analyse the system of addressing the issues highlighted in the Inspection Reports/Audit Reports by the Departments/Government, the action taken on the paragraphs and Performance Audits included in the Audit Reports of the last 10 years in respect of one Department are evaluated and included every year in the Audit Report.

The succeeding paragraphs 1.6.1 to 1.6.2 discuss the performance of the Energy Department under revenue head - "Taxes and Duties on Electricity" in respect of cases detected in the course of local audit during the years from 2006-07 to 2015-16 as well as those included in the Audit Reports during the last 10 years, i.e. 2005-06 to 2014-15.

### **1.6.1 Position of Inspection Reports**

The summarised position of Inspection Reports issued during the last 10 years, paragraphs included in these reports and their status as on 31 March 2016 are shown in **Table 1.6.1**.

Table 1.6.1

(₹ in crore)												
Year	Opening balance			Additions during the year			Clearance during the year			Closing balance during the year		
	IRs	Para-graphs	Money value	IRs	Para-graphs	Money value	IRs	Para-graphs	Money value	IRs	Para-graphs	Money value
2006-07	46	71	76.19	21	31	1.29	11	19	60.23	56	83	17.25
2007-08	56	83	17.25	20	34	21.33	34	53	28.04	42	64	10.54
2008-09	42	64	10.54	28	45	253.59	31	57	136.98	39	52	127.15
2009-10	39	52	127.15	46	96	298.96	11	42	3.05	74	106	423.06
2010-11	74	106	423.06	46	105	252.44	22	37	125.41	98	174	550.09
2011-12	98	174	550.09	42	83	11.71	42	100	346.20	98	157	215.60
2012-13	98	157	215.60	44	106	865.62	48	88	31.98	94	175	1,049.24
2013-14	94	175	1,049.24	35	86	332.25	21	52	2.30	108	209	1,379.19
2014-15	108	209	1,379.19	23	46	1.10	2	22	0.15	129	233	1,380.14
2015-16	129	233	1,380.14	17	36	4.67	24	42	737.71	122	227	647.10

The Government had set up Audit Committees (during various periods) to monitor and expedite the settlement of IRs and paragraphs in the IRs. The outstanding paras are also pursued through periodic references to the concerned offices and also through field parties which visit these offices for audit in the subsequent years. Regular meetings apart from Audit Committee Meetings are also held with heads of the offices for discussion of those issues wherein the departmental views do not concur with the audit views.

The number of IRs, paragraphs and the amount pending settlement during the last 10 years has shown an increasing trend, with an amount of ₹ 647.10 crore pending settlement in 227 paragraphs contained in 122 IRs.

The Department may continue its efforts in making use of its machinery created for settlement of the outstanding audit observations so that the outstanding IRs, paragraphs and the amounts are considerably reduced.

### 1.6.2 Position of recovery of accepted cases in Audit Reports

The position of paragraphs included in the Audit Reports of the last 10 years, those accepted by the Department and the amount recovered are mentioned in Table 1.6.2.

**Table 1.6.2**

(₹ in crore)					
Year of Audit Report	Number of paragraphs included	Money value of the paragraphs	Number of paragraphs accepted	Money value of accepted paragraphs	Amount recovered up to 31.03.2016
2005-06	1	101.59	1	101.59	0.00
2006-07	1	100.91	1	92.58	0.69
2007-08	2	55.15	1	0.20	0.16
2008-09	3	210.63	2	87.19	0.22
2009-10	4	4.83	4	4.83	1.70
2010-11	4	0.30	4	0.30	0.02
2011-12	2	0.42	1	0.23	0.00
2012-13	1	188.31	1	59.89	0.00
2013-14	There was no audit observation relating to “Taxes and Duties on Electricity” for these Reports				
2014-15					
<b>Total</b>	<b>18</b>	<b>662.14</b>	<b>15</b>	<b>346.81</b>	<b>2.79</b>

The above table indicates that the recovery was less than one *per cent* of the total accepted cases during the last ten years. The Government may instruct the concerned Department to make more efforts for recovery of the amounts at least in those cases which have been accepted by the Department.

## **1.7 Audit Planning**

The unit offices under various departments are categorised into high, medium and low risk units according to their revenue position, past trends of audit observations and other parameters. The annual audit plan is prepared on the basis of risk analysis which *inter-alia* includes critical issues in Government revenues and tax administration i.e. budget speech, reports of the Finance Commission (State and Central), recommendations of the taxation reforms committee; statistical analysis of the revenue earnings during the past five years, features of the tax administration, audit coverage and its impact during past five years, etc.

Out of 2,056 auditable units, 905 units were planned for audit during 2015-16 and out of which 885 units were audited during the year. In addition to this, one Performance Audit was conducted during the year to ascertain the efficiency and efficacy of the tax administration in realisation of the revenues.

## **1.8 Results of audit**

### **Position of local audit conducted during the year**

Test check of the records of 885 units of Sales Tax/Value Added Tax, State Excise, Taxes on Vehicles, Goods and Passengers, Entertainments Duty, and other Departments conducted during the year 2015-16 revealed under assessment/short levy/loss of revenue aggregating to ₹ 525.23 crore in 2,838

observations. During the course of the year, the concerned Departments accepted under assessment and other deficiencies of ₹ 28.22 crore involved in 707 observations which were pointed out in audit during 2015-16 and earlier years. The Departments collected ₹ 28.45 crore in 732 cases during 2015-16, pertaining to audit findings of 2015-16 and of previous years.

### **Coverage of this Report**

This Report contains 25 paragraphs including one Performance Audit relating to non/short levy of taxes, duties, interest and penalty, etc., involving ₹ 105.44 crore and non-realisation of Value Added Tax arrears amounting to ₹ 529.48 crore.

The Departments/Government accepted audit observations involving ₹ 45.75 crore out of which ₹ 29.48 lakh had been recovered. The replies in the remaining cases have not been received (February 2017). These are discussed in succeeding Chapters II to VI.

## CHAPTER II

### TAXES ON SALES, TRADE, ETC.

#### 2.1 Tax administration

Levy and collection of Value Added Tax (VAT) receipts is governed by the Maharashtra Value Added Tax Act, 2002 (MVAT Act), Maharashtra Value Added Tax Rules, 2005 (MVAT Rules), notifications and instructions issued by the Government from time to time. The Sales Tax Department under the overall control of the Principal Secretary to the Government, Finance Department, is headed by the Commissioner of Sales Tax. He is 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 MVAT Act came into force with effect from 1 April 2005. Prior to the introduction of the MVAT Act, the assessment, levy and collection of Sales Tax was governed by the Bombay Sales Tax Act, 1959 (BST Act) which was repealed with effect from 1 April 2005. However, the assessments pertaining to BST Act that have not been finalised so far, continue to be governed by the erstwhile BST Act.

#### 2.2 Internal Audit

The Department has an Internal Audit wing (IAW) headed by the Joint Commissioner of Sales Tax (Internal Audit).

Information regarding position of cases selected for internal audit and actually audited as furnished by the Department is mentioned in **Table 2.2**.

**Table 2.2**

Year	No. of cases selected for audit by IAW	No. of cases audited by IAW	Audit observations raised By IAW	Audit observations settled till date	Audit observations Pending as on 31 March of the year
2011-12	4,000	3,069	969	679	290
2012-13	6,280	9,682	2,789	2,164	625
2013-14	16,695	18,628	5,808	4,391	1,417
2014-15	13,140	17,209	5,028	2,913	2,115
2015-16	15,660	17,086	4,312	1,377	2,935
<b>Total</b>	<b>55,775</b>	<b>65,674</b>	<b>18,906</b>	<b>11,524</b>	<b>7,382</b>

**Source: Information furnished by the Department**

During the last five years, the number of audit observations raised by IAW increased from year to year and their corresponding settlement has also shown an increasing trend. The Department has settled 61 *per cent* of the observations raised by IAW.

### 2.3 Results of audit

In 2015-16, test check of records of 202 units relating to Taxes on Sales, Trade, etc. showed underassessment of tax and other irregularities involving ₹ 30.88 crore in 1,185 observations, which fall under the following categories as shown in **Table 2.3**.

**Table 2.3**

(₹ in crore)			
Sr. No.	Category	No. of observations	Amount
1	Audit of “Mechanism in the State for Collection of Arrears of VAT (Sales Tax Department)”	1	0.00
2	Audit of “Departmental Mechanism for Information sharing and co-ordination with other Government Departments/Bodies”	1	0.00
3	Non/short levy of tax	246	17.52
4	Incorrect grant/excess set-off	129	4.46
5	Non/short levy of interest/penalty	6	0.04
6	Non-forfeiture of excess collection of tax	6	0.08
7	Other irregularities	796	8.78
<b>Total</b>		<b>1,185</b>	<b>30.88</b>

During 2015-16, the Department accepted underassessment and other deficiencies of ₹ 48.81 lakh in 57 observations which were pointed out during 2015-16 and earlier years. The Department also recovered an amount of ₹ 72.10 lakh in 2015-16 in respect of 82 observations accepted during 2015-16 and earlier years.

This Chapter contains five paragraphs. These include one paragraph on “Mechanism in the State for Collection of Arrears of VAT (Sales Tax Department)” and one paragraph on “Departmental Mechanism for information sharing and co-ordination with other Government Departments/Bodies”.



## **2.4 Audit of “Mechanism in the State for Collection of Arrears of VAT (Sales Tax Department)”**

### **Introduction**

The Maharashtra Value Added Tax Act, 2002 (MVAT Act) came into force with effect from 1 April 2005. Prior to the introduction of the MVAT Act, the assessment, levy and collection of Sales Tax was governed by the Bombay Sales Tax Act, 1959 (BST Act) which was repealed with effect from 1 April 2005. The assessments pertaining to BST Act regime which have not been finalised so far continue to be governed by the erstwhile BST Act. VAT/Sales Tax is a principal source of revenue receipt of the State Government.

Under the BST Act, tax assessed was required to be paid by the assessee in a manner and within the time specified in the notice of demand. Any dealer not satisfied with the demand could prefer an appeal with the Appellate Authority or in a court of law. In case of failure on the part of the assessee to pay the amount within the date mentioned in the demand notice, the Department could recover the amounts which remained unpaid.

As per Section 32 of the MVAT Act, the amount of tax due as per any order passed under the provision of the Act is to be paid with interest and penalty (levied, if any) within 30 days from the date of service of the notice issued in this regard. If these dues are not paid by the dealer within prescribed time limit and also, the dealer does not prefer an appeal in Form-310 to challenge the assessment order within 60 days from the date of service of demand notice, then arrears are created.

As per Recovery Manual of the Sales Tax Department, the officer in charge, where demand is created, should take action to recover the dues by way of attachment (i.e. bank attachment, debtor attachment, etc.). If dues are still not recovered then recovery action under Maharashtra Land Revenue Code, 1966 (MLR Code) should be initiated immediately.

As per Section 32(4) of the MVAT Act, the tax assessed is required to be paid by the dealer in a manner and within the time specified in the notice of demand. In case of failure on part of the dealer to pay the amount within the date mentioned in the demand notice, action of attachment of bank account/debtors attachment (notice in Form-318) may be initiated within 60 days from service of demand notice. If the arrears are still not recovered, then action under Maharashtra Land Revenue Code, 1966 should be initiated as Section 34 of the MVAT Act empowers the Commissioner of Sales Tax to exercise all the powers and perform all the duties under the MLR Code, to recover the amount(s) which remains unpaid as arrears of land revenue.

### **Organisational set up for collection of arrears**

A separate Recovery Branch came into existence with effect from 1 July 2007 after the restructuring of the Department as per Government decision. The Recovery Branch was headed by Joint Commissioner level officers and was responsible for all recoveries except recoveries relating to Large Taxpayers Unit (LTU branch), which were to be pursued by the concerned LTU Officer. However, the Sales Tax Department was again restructured with effect from

1 January 2016 and the existing functional setup was changed into a single desk multifunctional set up (single window system). In the new system Nodal officers were appointed for carrying out all the work (from the registration, return, Business Audit, Assessment to recovery etc.) related to a dealer. Accordingly the erstwhile Recovery Branch was abolished and the recovery cases were transferred to Nodal officers.

### Arrears of VAT and Sales Tax

As per the Departmental manual of recoveries, any arrears in respect of which recovery action is either stayed by the appellate authorities or where Revenue Recovery Certificates (RRCs) have been issued, or where the case is pending with external agencies such as Official Liquidator (OL), Debt Recovery Tribunal (DRT), Courts etc., such arrears are treated as “not available for recovery”, whereas, arrears on which the Department can take action are treated as “available for recovery”.

We called for the information regarding the arrears of Sales Tax as on 31 March 2016. The information furnished by the Department indicated that the VAT arrears in the State amounted to ₹ 80,505.50 crore and BST arrears amounted to ₹ 26,997.75 crore. The stage-wise break-up of the same is given in the following table.

(₹ in crore)				
Sr. No.	Stages of recovery of arrears	Amount involved		
		BST	VAT	Total
1	2	3	4	5
1	Departmental appeal	8,537.81	34,670.13	43,207.94
2	Tribunal	6,995.31	8,415.55	15,410.86
3	High Court/Supreme Court	987.51	528.95	1,516.46
4	Official Liquidator/DRT	668.88	1,679.18	2,348.06
5	RRC	514.42	375.25	889.67
6	Cases under BIFR	485.27	460.81	946.08
7	Dealer not traceable	1,611.89	1,248.29	2,860.18
8	Property not available	794.29	594.63	1,388.92
9	Other reasons	810.12	1,946.77	2756.89
10	Arrears available for recovery	5,592.25	30,585.94	36,178.19
<b>Total</b>		<b>26,997.75</b>	<b>80,505.50</b>	<b>1,07,503.25</b>

Source: Information furnished by the Department

From the above information it could be seen that ₹ 43,207.94 crore (40.19 per cent of total pending recovery) in 2015-16 was pending in Departmental appeal.

### **Methodology and scope of Audit**

We conducted test check of records of “recovery cases” under MVAT Act pending as on 31 March 2016 pertaining to four divisions viz. Mumbai, Nashik, Pune and Thane (which accounted for 90 *per cent* of the arrears of the State) between January 2016 and May 2016. In the Recovery Branches of these divisions, 1,887 cases, each involving recovery of more than ₹ 10 lakh were selected for audit scrutiny. In addition to these, 219 cases of LTU (all cases other than appeal cases) were selected for audit scrutiny in these divisions.

Cases relating to recovery under the erstwhile BST Act have already been covered in the Report of the Comptroller and Auditor General of India on the Performance audit on Arrears of Sales Tax (Report no. 8 of 2011) and hence are not covered in this Report. However, it is pertinent to mention here that even after a lapse of 11 years since the date of repeal of the BST Act, an amount of ₹ 26,997.75 crore was still pending for recovery as on 31 March 2016.

### **Age wise pendency of Arrears**

We called for information regarding the age-wise details of arrears of revenue as on 31 March 2016. The Department furnished consolidated information regarding pre-VAT and VAT periods as on 31 March 2016, which is shown in the following table:

(₹ in crore)			
Periodicity of arrears	No. of cases	Amount	% of arrears
Demand less than 1 year old	56,064	51,866.29	48.25
Demand between 1-2 year old	1,44,342	21,125.43	19.65
Demand between 2-5 year old	24,613	8,339.51	7.76
Demand more than 5 years old	25,454	26,172.02	24.34
<b>Total</b>	<b>2,50,473</b>	<b>1,07,503.25</b>	<b>100</b>

**Source: Information furnished by the Department**

As seen from the above table ₹ 26,172.02 crore (24.34 *per cent* of total pending arrears) in respect of 25,454 cases were pending for recovery for more than five years.

The Government may direct the Department to take prompt action particularly in respect of those cases which are more than five years old, to prevent any risk of these arrears not being recovered due to lapse of time. The Department may take deterrent action against the persons/dealers who have collected taxes from public but have closed<sup>1</sup> business premises and not remitted the dues to the Government.

<sup>1</sup> Discussed in Paragraph No. 2.4.6.

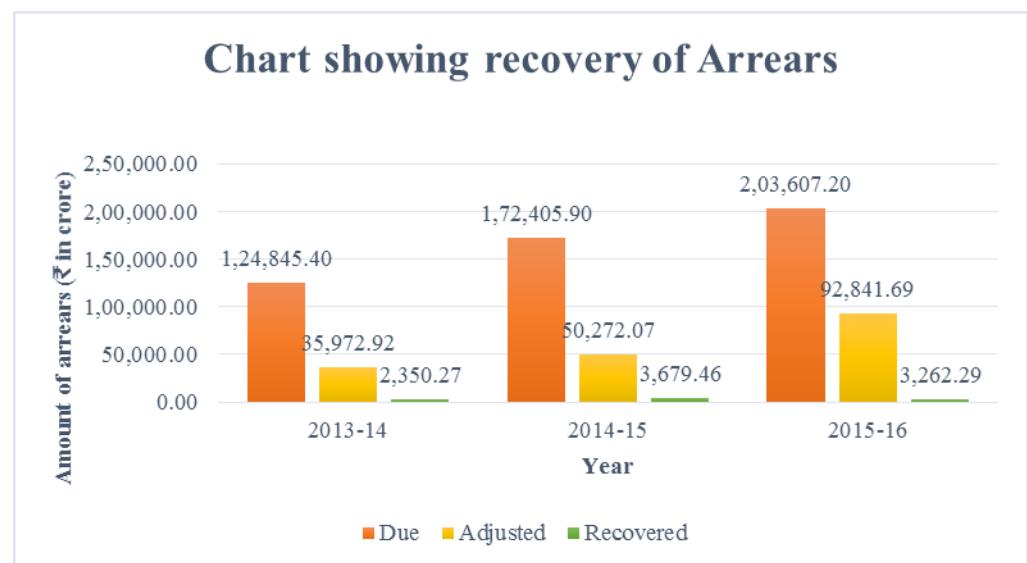
### 2.4.1 Recovery of Arrears

We called for information regarding amount of recovery due, adjusted and recovered under the MVAT Act for the period 2013-14 to 2015-16. However, the Department provided combined information for arrears under the erstwhile BST Act and the MVAT Act, as the bifurcation of the same was not available with the Department. The details are given in **Table 2.4.1**.

**Table 2.4.1**

(₹ in crore)				
Year	Amount Due for recovery	Actual recovery during the year	Adjustments of the arrears	Closing Balance
2013-14	1,24,845.42	2,350.27	35,972.92	86,522.23
2014-15	1,72,405.93	3,679.46	50,272.07	1,18,454.40
2015-16	2,03,607.23	3,262.29	92,841.69	1,07,503.25

Source: Information furnished by the Department



From the above chart it could be seen that during the period 2013-14 to 2015-16 the recovery of arrears was in the range of one to two *per cent* only. The adjustment of arrears on account of cancellation of *ex-parte* orders, write-off etc. of arrears was in the range of 28 to 45 *per cent*.

Since the task of recovery of dues was transferred to individual assessment authorities with effect from 1 January 2016, it is recommended that the Commissioner's office may ensure follow-up of arrears effectively so that these are recovered in a time bound manner.

It would be seen from the succeeding paragraphs that large accumulation of arrears was a result of lack of follow up action for recovery. It was imperative for the arrears to be monitored regularly at higher levels for which digitisation of recovery functions needed to be implemented.

#### **2.4.2 Non-Development of Recovery Module**

Twenty two software modules including Recovery Module were to be developed in software, “MAHAVIKAS” in the Sales Tax Department and these modules were to be implemented in a phased manner from 2006.

We called (August 2016) for information regarding the implementation of Recovery Module from the Department. Reply in this regard has not been received. However, the module was not found available in the official website of the Department, i.e. www.mahavat.gov.in.

Mention of non-development of these modules was made in Paragraph 2.2.10.1 of the Report of the Comptroller and Auditor General of India for the year ended 31 March 2013 on the Revenue Sector, Government of Maharashtra. No reply in this regard was furnished to audit.

#### **2.4.3 Status of recovery of tax dues in case of short filers**

Short filers are dealers paying less tax than the tax actually due as per returns. As per Department’s internal circular No. 13 A of 2014 dated 10 November 2014, all the cases of available recovery such as short filers should be processed immediately and the entire amount available for recovery had to be recovered before 31 March 2015.

We analysed the tax recovery status under MVAT of short filers and position is as shown in **Table 2.4.3**.

**Table 2.4.3**

(₹ in crore)			
Year	Total recoverable	Recovery during the period	Recovery percentage
2013-14	6,953.65	456.69	7
2014-15	6,239.07	484.70	7.8
2015-16	4,814.71	1,650.28	34

**Source: Information furnished by the Department**

The recovery of dues from short filers was very meagre during 2013-14 and 2014-15, being less than eight *per cent* of the dues. However, in 2015-16 it increased to 34 *per cent*.

It could be seen from above that during 2015-16 though, there was steep rise in the collection of the arrears still tax dues amounting to ₹ 3,164.43 crore remained unrecovered from the short filers. The delay in recovery may give an opportunity to the dealers to close down their business before realisation of arrears and the chances of their recovery may become bleak.

#### **2.4.4 Non-achievement of targets in disposal of cases relating to appeals resulting in blockage of revenue**

There are 18 Joint Commissioner (JC) Appeals and 18 Deputy Commissioners (DC) Appeals in the Department. As per the Recovery Manual of the

Department, the target of disposal of appeal cases per year was 12,960<sup>2</sup> cases for JCs and 21,600<sup>3</sup> cases for DCs. However, the Commissioner of Sales tax (CST) assigned cases to JCs and DCs of other wings for disposal and fixed targets which were being watched through monthly progress reports.

The year-wise targets fixed for disposal of appeal cases and achievement thereof by Departmental authorities and the amount pending in appeal for the years 2013-14 to 2015-16 are as given in **Table 2.4.4 (A)** and **Table 2.4.4(B)**.

**Table 2.4.4 (A) (Disposal in terms of number of cases)**

Particulars	2013-14		2014-15		2015-16	
	JC	DC	JC	DC	JC	DC
Target	6,500	19,000	10,510	31,000	12,600	30,876
Disposal of cases	2,827	6,340	2,943	5,315	2,873	7,049
% of non-disposal	56.51	66.63	72.00	82.85	77.20	77.17

**Source: Information furnished by the Department**

The disposal of the cases as compared to the target fixed had shown a declining trend at each level between 2013-14 and 2015-16. At JC level the percentage of non-disposal had increased from 56.51 *per cent* to 77.20 *per cent* and at DC level it has increased from 66.63 *per cent* to 82.85 *per cent*.

**Table 2.4.4 (B) (Pendency in terms of financial impact)**

(₹ in crore)			
Details	2013-14	2014-15	2015-16
Amount pending in appeal	22,444.18	37,736.23	43,207.94
Total arrears of revenue	86,522.23	1,18,454.4	1,07,503.25
% pending in appeal	25.94	31.86	40.19

**Source: Information furnished by the Department**

It could be seen from the above, that during the year 2013-14 arrears of ₹ 22,444.18 crore i.e. 25.94 *per cent* of total pending recovery was locked up in Departmental appeal. The said pendency further increased to ₹ 37,736.23 crore (31.86 *per cent* of total pending recovery) in 2014-15 and ₹ 43,207.94 crore (40.19 *per cent* of total pending recovery) in 2015-16.

In the monthly review meeting held in June 2015, regarding speedy disposal of appeal cases, the Commissioner had observed that litigation/disputes between the Department and assessee/dealers were mainly on account of large number of *ex-parte* orders passed by the Department. The CST had instructed the appellate authorities to minimize the time gap between appeal filing and fixation of part payment, and also between part payment fixation and final disposal. It was also instructed that the cases involved with common issues should be clubbed so as to decide more cases simultaneously. The assessing authorities were also directed to minimize the *ex-parte* orders and supply the assessment files well in time to the appellate authorities. The concerned controlling authorities were directed to do regular inspection to ensure that the Commissioner's instructions were properly complied with.

<sup>2</sup> Target of 60 cases per month X 12 X 18 = 12,960.

<sup>3</sup> Target of 100 cases per month X 12 X 18 = 21,600.

The above facts indicate that despite Departmental instructions, the pendency of arrears in appeal has increased.

It is recommended that the Government may direct the Department to take appropriate steps for speedy disposal of the appeal cases and ensure that the targets fixed by the Department under the manual are adhered to. Timely and quality assessments may be passed so as to avoid *ex-parte* assessment orders.

#### **2.4.5 Non follow-up of dealers who have become untraceable**

As per the information furnished by the Department, the recoveries pending as on 31 March 2014, 31 March 2015 and 31 March 2016 from the dealers who have become non-traceable were ₹ 4,500.75 crore, ₹ 4,974.25 crore and ₹ 2,860.18 crore respectively. The Commissioner of Sales Tax, Maharashtra State, issued instructions in April 2014 detailing procedures to be followed for pursuing recoveries from untraceable dealers. The instructions, inter-alia contained the following:

- (i) The recovery officials should find out the other new business concerns with which the defaulting dealer or its members are doing business using the member search functionality in registration module of the Department and with the help of PAN and old Registration Certificate number of such dealers
- (ii) The Recovery Officer should obtain the whereabouts of the non-traceable dealers and the properties held by them with the various other Government and non-Government authorities. It has also prescribed the format of communication with the various authorities, such as Government/Municipal Officials, Income Tax Department, Regional Transport Authorities, Department of Posts, stock exchanges, etc.

However, during audit the Recovery Officers did not produce any record relating to action taken in this light of the instructions issued. As such, the follow up of the untraceable dealers could not be ascertained.

#### **2.4.6 Audit of VAT arrears in the Recovery branch**

Scrutiny of 1,887 recovery cases under MVAT Act in the Recovery Branch of Mumbai, Nashik, Pune and Thane Division revealed that the arrears aggregating ₹ 342.35 crore were pending for recovery in 581 cases due to inaction at different stages. Out of these ₹ 73.50 crore were pending in 151 cases due to inaction of the Department after assessment of cases, ₹ 164.12 crore were pending in 270 cases due to delay in attachment of bank accounts of the dealers, and ₹ 104.73 crore were pending in 160 cases due to delay in action under MLR Code and subsequent non-pursuance of the recovery process for recovery of arrears of revenue. It was noticed that during the course of time, some of these dealers had closed down their business and left the place of business (POB). These are discussed in following paragraphs.

##### **2.4.6.1 Lack of action for recovery of dues of dealers after finalisation of assessment**

We noticed that in 151 cases relating to the periods between 2005-06 and 2012-13, the dealers were assessed to MVAT dues between October 2010 and

January 2016 amounting to ₹ 73.50 crore. No action for recovery of dues of the dealers such as attachment of bank accounts, warrant of attachment and property attachment etc. had been taken by the concerned Recovery officers even after a lapse of 3-66 months from the date of assessment. The details are as given in **Table 2.4.6.1**.

**Table 2.4.6.1**

(₹ in crore)			
Division	Total no. of cases	Arrears involved	Months elapsed after assessment
Mumbai	79	46.91	3-66
Nashik	9	3.67	18-36
Pune	40	17.22	4-35
Thane	23	5.70	7-36
<b>Total</b>	<b>151</b>	<b>73.50</b>	<b>3-66</b>

Source: Information furnished by the Department

We also noticed from the visit reports (made to visit to the business premises of the dealers) of the Departmental officials that out of the above cases, in 20 cases involving arrears of ₹ 9.94 crore the dealers had closed their business and left the POB.

**2.4.6.2 Delay in attachment of the bank accounts of dealers and absence of follow-up action**

We noticed that in 270 cases relating to the periods between 2005-06 and 2012-13, the dealers were assessed to MVAT dues of ₹ 164.12 crore between August 2010 and January 2016. Thereafter, no action such as, issue of notice in Form-1 and other subsequent actions under MLR Code were taken by the Concerned Recovery officers even after a lapse of 30 days to 48 months from the date of issuance of Form-318 (notice of attachment of bank account). In 241 cases Form-318 was issued after lapse of 3 to 65 months from the date of assessment. The division-wise breakup of such cases is shown in **Table 2.4.6.2**.

**Table 2.4.6.2**

(₹ in crore)				
Division	Total no. of cases	Arrears involved	Months elapsed after assessment (no. of cases)	Months elapsed after issuing F-318
Mumbai	159	78.26	3-65(152)	1-48
Nashik	17	8.76	3-39 (11)	1-31
Pune	70	70.70	3-27 (58)	2-31
Thane	24	6.40	4-32 (20)	2-28
<b>Total</b>	<b>270</b>	<b>164.12</b>	<b>3-65 (241)</b>	<b>1-48</b>

Source: Information furnished by the Department



We also noticed from the visit reports of the Departmental officials that out of the above cases, in 44 cases involving arrears of ₹ 28 crore the dealers had closed their business and left the POB.

### **2.4.6.3 Delay in action under MLR Code**

We noticed that in 160 cases relating to the periods between 2005-06 and 2011-12, the dealers were assessed to MVAT dues of ₹ 104.73 crore between August 2010 and November 2015. The Department issued notice in Form-1 under the MLR Code in these cases, thereafter, no subsequent action under MLR Code such as issue of warrant of attachment/order of attachment and auction of the property had been taken by the concerned Recovery officers despite a lapse of 30 days to 32 months from the date of issue of notice under MLR Code in Form-1. It was further noticed that in 158 cases, notice in Form-1 was issued after a lapse of four to 52 months from the date of assessment. The division-wise breakup of such cases is shown in **Table 2.4.6.3**.

**Table 2.4.6.3**

(₹ in crore)				
Division	Total no. of cases	Arrears involved	Months elapsed after assessment (no. of cases)	Months elapsed after issuing F-1
Mumbai	74	76.45	5-52 (74)	1-18
Nashik	17	7.61	4-34 (16)	1-32
Pune	44	14.56	4-28 (43)	4-13
Thane	25	6.11	6-30 (25)	1-13
<b>Total</b>	<b>160</b>	<b>104.73</b>	<b>4-52 (158)</b>	<b>1-32</b>

Source: Information furnished by the Department

We also noticed from the visit reports of the Departmental officials that out of the above cases, in 22 cases involving arrears of ₹ 22.80 crore the dealers had closed their business and left the POB.

Thus, it could be seen from above that the Department only did the formality of recovery action by issuing the notices belatedly for attachment of bank accounts (F-318) and under MLR Code (Form-1) and did not make adequate efforts for recovery of tax dues.

Thus, it would be seen from the preceding paragraphs, that in 86 cases involving arrears of ₹ 60.74 crore the dealers were not found at their registered addresses.

### **Audit scrutiny of VAT cases**

We scrutinized 1,887 recovery cases under MVAT Act in the Recovery Branches of Mumbai, Nashik, Pune and Thane Division, and 219 recovery cases in the LTU branches of the said Divisions. The records revealed a number of deficiencies, a few are mentioned in the following paragraphs.

### 2.4.7 Cases pending with the Department

We noticed that in eight cases, involving VAT arrears of ₹ 326.44 crore, the dealers either did not file their VAT returns or did not pay the tax in accordance with the turnover mentioned in their returns. There was delay in finalization of these cases resulting in delay/ non-recovery of the demands raised by the Department.

As per Section 32(4) of the MVAT Act, the tax assessed is required to be paid by the dealer in a manner and within the time specified in the notice of demand. In case of failure on part of the dealer to pay the amount within the date mentioned in the demand notice, action of attachment of bank account/debtors attachment (notice in Form-318) may be initiated within 60 days from service of demand notice. If the arrears are still not recovered, then action under Maharashtra Land Revenue Code, 1966 (MLR Code) should be initiated as Section 34 of the MVAT Act empowers the Commissioner of Sales Tax to exercise all the powers and perform all the duties under the MLR Code, to recover the amount(s) which remains unpaid as arrears of land revenue.

**2.4.7.1** During test check of the recovery files of the dealers of Mumbai Division, we noticed that a dealer (an importer and reseller of electronic goods) was in arrears of ₹ 53.57 crore under the MVAT Act for the periods from 2005-06 to 2010-11. The dealer had stopped filing of return since February 2012. In June 2012, notice for assessment for the period 2005-06 was served to the dealer. However, it was found that the dealer's business was closed for last two years. A notice for attaching the bank account was issued to Hong Kong and Shanghai Banking Corporation (HSBC Bank) on 23 October 2013. The bank intimated that the dealer had closed his current account in September 2006. Subsequently, the Department lodged an FIR against the dealer in October 2015, after a delay of more than three years. The registration of the dealer was cancelled on 4 January 2014 retrospectively from 1 February 2012.

The above indicates that the Department became aware (June 2012) of the fact that the dealer had closed his business and had become untraceable, yet the concerned DCST did not take prompt action for finalisation of assessments for the periods from 2005-06 to 2010-11. These were completed belatedly<sup>4</sup> between December 2012 and August 2014. Further, we noticed that neither any property existed in the name of the dealer in the records produced to audit nor was there any mention of any amount in the bank account of the dealer.

Thus, the failure of the Department to assess the defaulting dealer in time and delayed action in attaching the bank account and for prosecution of the dealer has resulted in non-recovery of ₹ 53.57 crore.

After this was pointed out, the Department intimated (January 2017) that the demand, the total amount outstanding against the dealer for these years was ₹ 64.31 crore and confirmed the other facts like the dealer being untraceable, having no bank account etc. The reasons for increase in outstanding amounts have not been intimated.

<sup>4</sup> When they were on the verge of becoming time barred.

**2.4.7.2** During test check of the recovery files of the dealers of Mumbai Division, we noticed that a dealer (reseller of new cars and other vehicles) was in arrears of ₹ 77.49 crore under MVAT for the periods from 2007-08 to 2011-12.

We found that the dealer had not paid the tax in accordance with the returns filed by him for the period November 2008 to October 2009. The Investigation Branch visited the dealer's premises in December 2009 and found that the dealer had collected tax<sup>5</sup> for the periods 2007-08, 2008-09 and 2009-10 (till November 2009). The dealer had deposited tax of ₹ 5.81 crore for this period. The Department after scrutinizing the returns, issued (March 2010) demand notices (Form-213) for amounts aggregating to ₹ 5.75 crore.

Notice in Form-318 for attachment of bank account was issued (January 2011) to six banks (Allahabad bank, HDFC Bank, Standard Chartered Bank, SBI, Corporation Bank and Shamrao Vithal Co-op Bank) against which only HDFC Bank replied (October 2011) that there was only ₹ 2,110 in the dealer's account. FIR was lodged against the dealer in March 2011. The dealer stopped filing returns from September 2011. Subsequently, the Department finalised the assessments for the periods from 2007-08 to 2011-12 between October 2013 and August 2015 and raised a demand of ₹ 77.49 crore.

It would be seen from the above that the Department was aware of the fact that the dealer was a defaulter in payment of tax dues and had completely stopped filing of returns since September 2011, however, the concerned DCST did not take prompt action for finalisation of assessments.

After this was pointed out, the concerned Recovery Officer stated (January 2017) that the dealer had refused to pay the dues collected by him. FIR had already been filed against the dealer, and the said recovery now depends on the outcome of the police investigation. However, the reasons for delay in finalizing the assessments were not furnished to audit.

**2.4.7.3** During test check of the recovery files of the dealers of Pune Division, we noticed that a dealer was in arrears of ₹ 166.57 crore for the periods 2006-07 and 2009-10.

The assessment for the period 2006-07 was completed in March 2014 raising a demand of ₹ 145.30 crore. In June 2014 notice in Form-1 for recovery action under MLR Code was pasted on the business premises of the dealer since the premises were stated to have been closed for the last 4-5 years. A claim on the property of the dealer was lodged by the Department with the Talathi Office Pimpri Waghore in August 2014. The Talathi office stated (September 2014) that the property was not in the name of the dealer as per their records. The assessment for the period 2009-10 was finalised in December 2014 and demand of ₹ 21.27 crore was raised. Thus, the total amount against the dealer aggregated to ₹ 166.57 crore. No further action for recovery of tax dues taken by the concerned DCST was found on record.

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<sup>5</sup> The investigation branch had found that the dealer had collected tax of ₹ 13.10 crore out of which ₹ 5.81 crore was paid, but the Department based on the returns raised a further demand of ₹ 5.75 crore.

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After this was pointed out, the concerned Recovery Officer stated (May 2016) that the dealer (a trader company) was dealing in medicines and drugs. Recovery actions as per provisions of law have been taken against the dealer and since the POB was on rental basis and no other property was available for recovery, the case has been classified as “Property not available”.

However, the fact remains that there was inordinate delay in assessing the case and delay in initiating recovery proceeding resulting in non-recovery of tax dues of ₹ 166.57 crore.

**2.4.7.4** During test check of the recovery files of the dealers of Pune Division, we noticed that a dealer was in arrears of ₹ 1.15 crore on account of short filing of returns for the period from November 2012 to July 2013.

The Department had issued a demand notice of ₹ 1.15 crore in December 2013. However, no response was received. The Department issued notices in Form-318 for attachment of bank account in January 2014 and in Form-1 (for attachment of immovable property) in February 2014. The Department issued (July 2015) a letter to the Talathi, Dhanore, Taluka - Khed, Pune for lodging of claim of tax dues on the property of the dealer. Thereafter no further action taken by the concerned DCST was found on record.

After this was pointed out, the concerned Recovery Officer while confirming (June 2016) the facts stated that the Talathi had been asked (July 2015) to submit all important document including Form-7/12 to the Department. Further action taken in this matter was not intimated (February 2017).

Thus, delay in initiating recovery proceeding and ineffective follow-up action resulted in non-recovery of tax dues of ₹ 1.15 crore.

**2.4.7.5** During the test check of recovery files of the dealers of Nashik Division, we noticed that a dealer was in arrears of ₹ 7.32 crore for the period from 2006-07 and 2008-09 to 2013-14.

The assessments for the periods 2006-07, 2008-09 to 2010-11 were finalised between February 2013 and March 2015 for ₹ 6.32 crore. The assessments for the period 2011-12 to 2013-14 were not finalised. However, as per returns, an amount of ₹ 98.57 lakh was due from the dealer. As such the total amount due from the dealer was ₹ 7.32 crore.

Notices in Form-1 for action under MLR Code for the payment of dues were issued on August 2013 and January 2015, and police prosecution show cause notice was issued in August 2013. A case was also lodged in the court of Chief Judicial Magistrate, Nashik on 21 January 2015 against the Director of the company for penal action under Section 74(2) of the MVAT Act.

As the dealer was defaulter in payment of tax (since 2008) as well as a defaulter in payment of instalment dues (since 2012), the concerned DCST should have initiated immediate action to recover the dues under MLR Code which was not done.

After this was brought to notice, the Department stated (June 2016) that further recovery action under MLR Code would be initiated after the completion of pending assessments for the period 2012-13 and 2013-14. This indicated that the Department was not pursuing recovery dues vigorously. The

Department may take necessary steps for recovery of dues already raised under MLR Code.

**2.4.7.6** During the test check of recovery files of a dealers of Nashik Division, we noticed that a dealer was in arrears of dues of ₹ 38.63 lakh on account of short filing of returns for the period from June 2012 to August 2014, for which notices were issued to the dealer between August 2012 and November 2014. Subsequently as per request of the dealer, an order sanctioning payment of dues in six monthly instalments by the dealer was passed (April 2015) for total amount of ₹ 38.46 lakh to be paid from May 2015 onwards. However, the dealer failed to pay the instalments and notice in Form-1 for action under MLR Code was issued in September 2015. Thereafter, the concerned DCST did not take any action for recovery of pending dues.

After this was pointed out, the Department stated (June 2016) that the properties of the dealer had been attached. The Department further stated that Issue Based Audit for the year 2011-12 is still pending and further valuation and auction process will be initiated after completion of the assessment for the period 2011-12.

Thus, the above facts indicate that despite a lapse of five years, the assessment under Issue Based Audit has still not been completed. The Department may simultaneously take action for recovery of the Government dues without waiting for finalisation of assessment.

**2.4.7.7** During the test check of recovery files of Pune Division, we noticed that a manufacturer of engineering goods was a defaulter for non-payment of tax dues of ₹ 58.00 lakh for the period from November 2008 to September 2009. In addition to this, notice in Form-213 was issued (February 2013) for short filing of dues of ₹ 11.26 lakh for December 2010 and ₹ 2.13 lakh for January 2011.

In February 2011, notices (Form-318) to attach the dealer's bank accounts were issued to the Oriental Bank of Commerce and the Janseva Bank, Pune for tax dues of ₹ 71.39 lakh. In reply, it was stated by the Oriental Bank of Commerce that the dealer was availing credit facility, and the Janseva Bank, Pune stated that the dealer's account was closed since July 2007.

The dealer intimated (February 2011) the Department that the firm was facing financial crisis and besides other loans, cash credit limit of ₹ 6.85 crore had been taken by the firm from Oriental Bank of Commerce. He further stated that the firm was going to sell all properties to repay the loans. The Department issued (February 2011) a letter to the bank lodging a tax claim on the property of the dealer at Maharashtra Industrial Development Corporation, Pune. The bank stated (March 2011) that they had the first charge on the property which was under mortgage. Hence they were not able to pay the MVAT dues of the Sales Tax Department.

The assessments for the periods from 2005-06 to 2010-11 were finalised by the Department between March 2013 to November 2014 for ₹ 19.23 crore and demands were raised accordingly.

The matter was brought to the notice of the Department in June 2016; their reply has not been received.

**2.4.7.8** During the test check of recovery files of the dealers of Nashik Division, we noticed that a dealer was in arrears of dues of ₹ 74.35 lakh for the period from 2007-08 to 2009-10. Scrutiny of the records further revealed that according to the visit report of Sales Tax Inspector dated 29 July 2012, the business of the dealer was closed for the last 4-5 years. Thereafter, the concerned Sales Tax Officer issued (December 2014) RRC to the Collector, Jalore, District Jodhpur, Rajasthan but the Collector, Jalore returned (February 2015) the said RRC stating that it did not pertain to his district.

After this was pointed out, the concerned Recovery Officer stated (June 2016) that the dealer was declared a hawala dealer by the Department and an FIR had been registered at Ambad Police Station, Nashik on 30 April 2016. Action by Police Department under IPC/CrPC is awaited.

It can be inferred from the above that there was delay in issuing the RRC/lodging the FIR resulting in non recovery of the dues of ₹ 74.35 lakh.

#### **2.4.8 Non recovery of arrears from the properties attached by banks**

In the following cases, we noticed that the Department did not attach the properties of the defaulting dealers in time, the properties were attached by the banks and VAT arrears remained unpaid.

**2.4.8.1** During the test check of recovery files in Pune Division, we noticed that a dealer was in arrears of ₹ 1.12 crore for the period from 2006-07 to 2009-10 and return period from August 2012 to June 2013.

The Department assessed the dealer for the periods 2006-07, 2008-09 and 2009-10 for ₹ 38.71 lakh between June 2013 and October 2015. The demand notice of ₹ 73.37 lakh (short filer dues for the period from August 2012 to June 2013) was issued on 2 September 2013 under MVAT Act. Notice in Form-1 under MLR Code was issued on 4 September 2013. Thereafter no further action for recovery of dues was taken by the concerned DCST.

On 24 October 2015, the Bank of Maharashtra published notice in newspaper for auction of properties of the dealer. Thereafter the Department issued order of attachment of property of the Director of the company on 31 October 2015 and informed the bank of the first charge of the Sales Tax Department on the property of the dealer under Section 37 of the MVAT Act.

It could not be ascertained from the records whether the bank had auctioned the property of the dealer. No further action was found to have been taken by the Department. Thus, failure in taking timely action by the Department for recovery of dues has resulted in non-realisation of dues of ₹ 1.12 crore.

The case was pointed out to the Department in January 2016. The reply is still awaited.

**2.4.8.2** During the test check of recovery files of Pune Division, we noticed that a dealer was in arrears of ₹ 4.19 crore for the period from 2009-10 to 2010-11.

The Department issued a notice in Form-318 for bank attachment to the Bank of Baroda on 7 October 2015. However, the State Bank of India took possession of the property of the company on 1 December 2015. This came to the notice of the Department through a public notice in a newspaper. Thereafter, the concerned DCST issued order of attachment of property of the company on 5 December 2015 and informed the bank of the first charge of the Sales Tax Department on the property of the dealer. It could not be ascertained from the records produced whether the bank had auctioned the property of the dealer. Thus, the delay in taking timely action resulted in non-realisation of dues of ₹ 4.19 crore.

After this was pointed out, the concerned Recovery Officer stated (July 2016) that the auction declared by the bank was postponed due to non-response of the bidders and the said property was still unsold.

**2.4.8.3** During the test check of recovery files of Pune Division, we noticed that a dealer was in arrears of ₹ 17.92 crore for the period from 2005-06 to 2010-11. The assessments for the above period were completed between February 2014 and November 2014. During the same period, notices for attachment of bank account and for recovery under MLR Code were also issued. On 7 November 2014, the Bank of India published auction notice in newspaper for auction of properties of the dealer. Thereafter, prohibitory order under Section 38 was issued to the company, Bank of India and Regional Officer MIDC, Pune. No further action for recovery of dues was taken by the concerned DCST.

After this was pointed out, the Department stated (May 2016) that the bank has assured that the property would not be disposed without the NOC of the Department.

The above cases are indicative of the fact that due to the failure of Department to take timely action, property was attached by the banks and the chances of recovery in these cases seem remote.

The Government may direct the Department to devise a system for proper/regular follow-up of RRC cases, cases with the Official Liquidator, Debt Recovery Tribunal and take prompt action of attachment/auction of property of the defaulting dealers.

#### **2.4.9 Non recovery of arrears from the properties sold by banks**

In the following cases, we noticed that the properties of the dealers were sold by the banks for recovery of their dues; however, VAT dues were not recovered by the Department.

**2.4.9.1** During the test check of recovery files of the dealers of Thane Division, we noticed that a dealer was in arrears of dues of ₹ 20.99 crore for the periods from 2005-06 to 2011-12. Initially, the dealer was issued notice in Form-213 on 23 December 2011 for payment of short filer dues of ₹ 42.49 lakh for the periods 2006-07 and 2007-08. Subsequently, prohibitory orders under Section 38 of the MVAT Act were issued on 23 December 2011 to the

dealer and his premises were seized. A copy of the order was also given to various authorities including Axis Bank directing them not to issue NOC for transfer of properties of the dealer. Axis Bank requested (January 2012) the Department to withdraw the prohibitory order stating that the notice was illegal and against the law. In March 2013, the property of the dealer situated at MIDC Ambernath was sold by Axis Bank for ₹ 3.25 crore. After this came to the Department's notice, the Department issued (July 2013) notice under Section 38 to the directors of the company, Axis bank, MIDC and Tahsildar, Ambernath. In reply the Axis Bank justified (August 2013 and October 2013) the sale of property and stated that they had replied to the earlier prohibitory order dated December 2011, but no response was received from the Sales Tax Department. As per the information available on record no further action was taken by the concerned DCST for recovery of dues.

Thus, it can be seen from the above that the dealer was making short payment of tax since 2006-07 and 2007-08 but the Department issued notice in Form-213 for recovery of dues only in December 2011. The delay of the Department in taking effective recovery action resulted in property of the company being sold by the bank. Even after that, no proper follow-up of the case was made with the bank as Department did not respond to the Axis Bank's denial of prohibitory order issued by the Department. The assessments for the period 2005-06 to 2011-12 were completed by the Department only between December 2013 and March 2016 raising total dues to ₹ 20.99 crore. Considering the facts of the case and revenue at stake, the assessments should have been given priority.

After this was pointed out, the Department intimated that an Official Liquidator (OL) was appointed in the case in December 2014, and debt affidavit for ₹ 16.84 crore was lodged with the OL in February 2015 and another debt affidavit for ₹ 4.15 crore was lodged in May 2016.

The fact remains that the delays in finalizing the assessments combined with lack of action by the Department to prevent the sale of property resulted in non-realisation of dues.

**2.4.9.2** During the test check of recovery files in Nashik Division, we noticed that a dealer was in arrears of ₹ 48.69 lakh for the period 2005-06. The assessment for the period 2005-06 was completed *ex-parte* on 15 March 2013 by raising demand of ₹ 48.69 lakh including interest and penalty. The Sales Tax Inspector visited the POB of the dealer on 10 July 2013 for serving demand notice. As no authorised representative of the dealer was there to receive the notice the same was served by pasting. However it was noticed that the said premise was sealed by the State Bank of India. The Department wrote to the State Bank of India on 23 August 2013 stating that the tax dues are first charge on the property of the dealer.

After this was pointed out, the Department stated (June 2016) that the property of the dealer was sold by the SBI, hence letter was issued to Manager, SBI, Mumbai for recovery of sales tax dues. It further stated that Amnesty scheme was declared vide trade circular 10T of 2016 and if the dealer did not avail the benefit of amnesty scheme then further recovery action under MLR Code would be taken. The facts, however, indicate that the Department had not taken effective recovery action for recovery of its dues.



Thus, though the Department was aware in August 2013 that the property of the dealer was in the custody of the State Bank of India, it had taken no action to safeguard Government revenue. These should have been recovered under MLR Code by the concerned DCST. This property was auctioned by the State Bank of India and ₹ 48.69 lakh payable to the Government was not recovered.

#### **2.4.10 Inaction in lodging/pursuing claim with the Official Liquidator**

The Official Liquidators (OL) are the officers appointed by the Central Government under Section 448 of the Companies Act and are attached to the various High Courts. The primary function of the OL is to administer the assets of companies under liquidation, sale of the assets and realisation of all debts of companies in liquidation for the purpose of distributing the same among the various creditors and other shareholders of the companies and to finally dissolve such companies after the affairs are completely concluded. When the High Court orders the winding of a company, the OL appointed by the High Court takes possession of the Company's assets, books of accounts etc. and the company is liquidated as per the orders of the High Court. As per Section 530(i)(a) of the Companies Act, 1956, priority is given to all revenues, taxes, etc., due from the company to the Central, State or local authorities from the date of appointment of the OL or from the date of order for winding up in case a OL is not appointed.

The procedures to be followed by the Departmental tax authorities with the Official Liquidator (OL) are laid down in Para 6.6.5 of the Recovery Manual of the Department. It *inter-alia*, stipulates that the Recovery Officer should file a debt affidavit along with assessment orders and demand notices to the OL and obtain the acceptance of the claim from the OL.

**2.4.10.1** During test check of the recovery files of the dealers of Mumbai Division, we noticed that a dealer was in arrears of ₹ 47.23 crore for the period 2006-07 to 2010-11.

The assessment of the dealer for the year 2008-09 and onwards was taken up (March and December 2014) after a gap of four years from the last assessment (i.e. 2006-07 and 2007-08 in April, May 2010). The Department came to know in September 2010 that the dealer was under liquidation vide Hon'ble Bombay High Court order dated 19 March 2010. Thereafter, it did not file the debt affidavit, as laid down in the Recovery Manual. The debt affidavit was finally filed in September 2015 by the concerned DCST. Thus, there was a delay of more than five years in lodging the claim with OL as per the manual provisions.

After this was pointed out, the concerned Recovery Officer stated (October 2016) that, the assessments in the case were completed in time, and the claim was lodged with the OL in time. The reply is not tenable as the Department did not file the debt affidavit in September 2010 when it came to know about the dealer's liquidation proceedings and finally filed it after a lapse of five years in September 2015.

**2.4.10.2** During test check of the recovery files of the dealers of Pune Division, we noticed that a dealer was in arrears of ₹ 39.63 crore for the period 2010-11 to 2012-13.

The dealer was a manufacturer of copper wire. He had stopped filing of the return since March 2012. In July 2013, the Hon'ble Bombay High Court ordered the dealer to be wound up and an OL was appointed. Scrutiny of the records revealed that though the Department was intimated about the appointment of OL in August 2013, the demand of ₹ 39.63 crore for the period 2010-11 to 2012-13 were raised only between March 2015 and October 2015 by way of assessment. The debt affidavit for recovery of said dues was filed with the OL only in December 2015.

We brought the matter to the notice of the Department in February 2016; their reply has not been received.

Thus, the demands were raised after a delay ranging from 19 months to 26 months and debt affidavit was filed after a delay of 29 months, thereby delaying the recovery of the tax dues.

#### **2.4.11 Lack of follow-up action in cases pending with the Debt Recovery Tribunal**

The Debt Recovery Tribunal (DRT) has been constituted under Section 3 of the Recovery of Debt Due to Banks and Financial Institutions Act, 1993. The aim of the DRT was to receive the claim applications from Banks and Financial Institutions against their defaulting borrowers. The dues of workmen against a company, the State dues and the dues of other non-secured creditors all came before the DRT, if the company's property was under the possession of the DRT. Further, as per Section 37 of the MVAT Act, any amount of tax, penalty, interest or any other sum payable shall be first charge on the property of the dealer. Therefore, in case the possession of the property is taken over by the DRT, the Department has to lodge its claim before the DRT.

During the test check of the recovery files of the dealers of Nashik Division, we noticed that a dealer was in arrears of ₹ 3.56 crore for the period 2008-09 to 2013-14. The property of the dealer was sealed on March 2015 by the Court Receiver under Debt Recovery Tribunal (DRT) as the dealer did not pay the outstanding loan of the State Bank of India.

The DRT, through newspaper advertisement, fixed the date for e-auction of the property of the company on 15 March 2016. After proclamation of auction, the concerned DCST immediately (10 March 2016), filed debt affidavit for claim of dues. Further progress on the case was not on record.

The above facts indicate that the Department had failed to keep track of the dealer's activity and his property and did not file debt affidavit till the proclamation of auction thus reducing the chances of the recovery.

On this being pointed out, the concerned Recovery Officer confirmed that the debt affidavit was filed after the proclamation of auction. However, further action taken in this regard has not been intimated.

#### **2.4.12 Property in the possession of the Department but not auctioned**

During the test check of recovery files of dealers of Pune Division, we noticed that a dealer (manufacturer of Indian Made Foreign Liquor) was in arrears of dues of ₹ 67.50 crore for the period from 2006-07 to 2013-14. After the investigation visit (January 2013) the dealer accepted the liability and filed the revised return for the period 2006-07 to 2012-13. The tax dues of the dealer was initially determined at ₹ 37.43 crore for the period from 2006-07 to 2012-13 which included assessment as well as return dues. Notice in Form-213 for return dues in respect of above periods as well as notice in Form-318 for bank/debtor attachment was also issued in March 2013. Order of attachment of immovable property of the dealer was issued in April 2013. The auction of the property was scheduled on 18 July 2013 which was subsequently deferred on account of the transfer of the Mumbai based Investigation officer who had initiated the recovery proceedings. The Department decided to authorise another officer based in Pune for the recovery proceedings as the principal place of business was in Pune. Thereafter the recovery action under MLR Code was initiated afresh by the new officer and the auction of the property of the dealer was scheduled on 29 March 2014. However the auction was postponed as no bidder came forward for the auction. Thereafter no further recovery action is taken from the Department. However the pending dues increased from ₹ 37.43 crore to ₹ 67.50 crore after the finalisation of assessments for the periods 2006-07, 2007-08, 2009-10, 2010-11, 2012-13 and 2013-14 and the dealer was intimated about the enhanced dues in September 2015.

Thus, the property of the dealer was in possession of the Department since April 2013 but Department failed to auction the property and realise the amount as the recovery case was transferred from Mumbai to Pune at the time of auction of the property. Had timely action been taken in deciding the proper authority for auction of the property, the auction could have been completed and amount realised.

The matter was brought to the notice of the Department in February 2016; their reply has not been received.

#### **2.4.13 Non pursuance of RRC case within the State**

During the test check of recovery files of Pune Division, we noticed that a dealer was in arrears of dues of ₹ 39.43 lakh for the periods 2006-07 and 2007-08. Notice in Form-318 was issued to SBI, Golibar Maidan Branch, Pune on 28 January 2015. Subsequently a letter was issued (March 2015) to the Tahsildar, Mandangarh, District Ratnagiri for registering the tax dues of ₹ 39.43 lakh on three properties of the dealer situated at Ratnagiri. The Tahsildar replied (July 2015) that the dues had been registered against only one property as the one property was already sold by the dealer and the other was not registered in his name.

In September 2015, RRC was issued to Joint Commissioner of Sales Tax, Kolhapur Division for recovery of dues under MLR Code. However, no action has been taken by the JC, Kolhapur in this regard.

After this was pointed out, the concerned Recovery Officer confirmed (August 2016) the facts and stated that a reminder had been issued to JCST, Kolhapur in August 2016.

The inordinate delay in assessing the case and absence of concerted efforts at every stage of recovery resulted in non-realisation of dues.

#### **2.4.14 Conclusion**

The adjustment of arrears due to cancellation of *ex-parte* orders, write-offs, etc. was in the range of 28 *per cent* to 45 *per cent*. This reflected the poor quality of assessments in the Department. The disposal of appeal cases by the appellate authorities declined in the last three years and was much lower than the target fixed. The Department did not pursue the recovery cases properly and limited the recovery action to issue of notices. These notices were issued belatedly for bank attachment and recovery of arrears as arrears of land revenue.

The Department did not adequately monitor the defaulting dealers. RRCs issued were not pursued, properties of dealers were not attached or attached properties were not auctioned in time. There was nothing on record to show that efforts were taken by the Department to pursue cases of non-traceable dealers. The Departmental machinery was not prompt in its approach with respect of recovery of tax dues and claims lodged with Debt Recovery Tribunal and Official Liquidator were not pursued promptly and effectively. These aspects reflect weakness in the system which necessitates the establishment of a strong and effective mechanism in the State for collection of arrears of revenue.

## **2.5 Audit of “Departmental Mechanism for information sharing and co-ordination with other Government Departments/Bodies”**

### **Introduction**

The two main branches in the Sales Tax Department (STD) entrusted with detecting/dealing with cases involving tax evasion are the Investigation Branch and the Economic Intelligence Unit (EIU)

(A) **Investigation branch:** The branch, which is an integral part of the Department, carries out the following functions.

- Collect intelligence about tax evasion/avoidance/suppression/fraud and
- Create deterrence among tax evaders and avoiders
- Investigate specific cases allotted
- Collect and provide evidence/information about evasion of tax to audit divisions.

(B) **Economic Intelligence Unit (EIU):** The EIU was earlier part of the Investigation Branch, but after 2012, it functions as a separate unit. Its functions include –

- Analyzing information regarding sales tax returns, registration data, inter-state goods transaction, commodity deals and ranking dealers based on their statutory compliance history
- Performing compliance risk analysis, risk scoring, 360 degrees analysis i.e. collecting and analyzing tax information from Central Government Departments and
- Generating and recommending cases for Business Audit, Issue based Audit, Investigation, Returns branch and Registration branch

As per revised manual of Investigation Branch, all cases of tax evasion were directed to be referred to EIU, which after analysis, would be forwarded to the Investigation Branch.

### **Audit coverage**

The Sales Tax Department (STD) has 13<sup>6</sup> divisions out of which we selected five divisions viz. Mumbai, Pune, Thane, Thane-Rural and Nashik for audit scrutiny, these being the top divisions in terms of average Gross Sales Tax receipts for the period 2010-11 to 2014-15. A sixth division, Raigad, was subsequently selected only for scrutiny of mining (sand and stone) receipts. Within these divisions we collected information from nine VAT units, four Municipal Corporations, two Collectorates, two Registrar (Stamp) offices and one Zilla Parishad office.

Analysis of the data collected from these offices revealed a number of instances of non-sharing of information/absence of co-ordination with other Government Departments/Bodies, which have led to short collection of VAT. A few cases are discussed in the following paragraphs.

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<sup>6</sup> Amravati, Aurangabad, Dhule, Kolhapur, Mumbai, Nagpur, Nanded, Nashik, Pune, Raigad, Solapur, Thane and Thane Rural (Palghar).

### 2.5.1 Non-registration of contractors

We obtained data regarding payments made to contractors by various Municipal Corporations/Government bodies for various works undertaken and royalty received by Collectorates from sand mining and stone quarry lease contractors during 2010-11 to 2015-16. The data so obtained was cross-verified with the data available in the MAHAVIKAS system in the Sales Tax Department. The observations in this regard are as follows:

**2.5.1.1** Section 16 read with Section 3 of MVAT Act provides that each contractor executing work(s) shall get himself registered if his turnover of sales exceeds the threshold limit of ₹ 5 lakh<sup>7</sup> during a year. As per Section 31 of the MVAT Act and Rule 40 of the MVAT Rules, employers (those awarding contract) are liable to deduct tax from the contractor i.e. TDS (Tax deduction at source). It is two *per cent* in case of registered dealers and four *per cent*<sup>8</sup> in case of unregistered dealers, of the amount payable to the contractor.

We observed that 455 contractors who were paid ₹ 470.99 crores for various works undertaken in various Municipal Corporations/Government bodies were not registered with the STD. The turnover of all these dealers had exceeded the threshold limit of ₹ five lakhs and in all the works undertaken cases, TDS was deducted at the rate prescribed for unregistered dealers by these Corporations/bodies and credited to the VAT tax head. No efforts were found to have been taken on record to bring the dealers under the tax net.

Details of payments received by these unregistered contractors from various Corporations/bodies are shown in **Table 2.5.1.1**.

**Table 2.5.1.1**

(₹ in crore)					
Sr. No.	Name of the organisation	Payment period	Nos. of contractors	Total Payments made	
1	Kalyan Dombivili Municipal Corporation	2010-11 to 2014-15	321	406.62	
2	Pune Municipal Corporation	2010-11 to 2014-15	95	51.21	
3	Ambernath Municipal Council	2010-11 to 2014-15	35	12.48	
4	Zilla Parishad-Thane (Prime Minister Gram Sadak Yojana)	2010-11 to 2014-15	4	0.68	
<b>Total</b>			<b>455</b>	<b>470.99</b>	

**2.5.1.2** Section 31A<sup>9</sup>, provides for TCS (Tax Collection at source) by District Collector<sup>10</sup> of the auction amount of sand, stone etc., from the person

<sup>7</sup> ₹ 10 lakh from 26 June 2014.

<sup>8</sup> Five *per cent* from April 2012.

<sup>9</sup> w.e.f. 1st May 2012.

<sup>10</sup> Notification No. VAT 1512/CR 149/Taxation-1 dated 15th February 2013.

or dealer who has been awarded the right to excavate and credit it to the VAT tax head.

In case of mining and stone quarry lease contractors, we noticed that 79 contractors in respect of whom royalty of ₹ 23.73 crores had been collected by the Collectorates were unregistered with the STD and TCS had not been recovered from these contractors. Details of royalties received by the Collectors from these unregistered contractors are shown in **Table 2.5.1.2**.

**Table 2.5.1.2**

(₹ in crore)				
Sr. No.	Name of the organisation	Payment period	No. of contractors	Total Payments received
1	Thane District Collector (sand mining and stone quarry lease)	2010-11 to 2013-14	61	13.90
2	Raigad District Collector (sand mining and stone quarry lease)	2013-14 to 2015-16	18	9.83
<b>Total</b>			<b>79</b>	<b>23.73</b>

The correct tax liability of these unregistered contractors remained undetermined. The turnover of all these dealers involved a number of items which were not on record. As such the tax liability, if any, of the dealers could not be ascertained in Audit.

The Department may consider registering those dealers that have crossed the threshold limit for registration.

We brought the matter to the notice of the Department between July and September 2016. Their reply has not been received.

### **2.5.2 Concealment of work-receipts by contractors**

Section 20(1)(a) of MVAT Act requires every registered dealer to file correct, complete and self-consistent return. Further, proviso to Section 16(6) of MVAT Act requires that, where the dealer has failed to apply for cancellation of registration, the Commissioner should satisfy himself regarding discontinuation or disposal of the business before cancelling the registration.

We collected data regarding payments made to 3,209 contractors by three Municipal Corporations for various works undertaken during 2010-11 to 2014-15 and compared it with the data available in the MAHAVIKAS system in the Sales Tax Department. It was noticed that:

- Four contractors had executed contract valued at ₹ 1.28 crore but the turnover was not disclosed in their periodical returns.
- Eight contractors who had executed contracts worth ₹ 5.47 crore had not filed their returns.

- Forty one contractors who had executed contracts valued at ₹ 149.39 crore, were dealers whose Registration Certificate (RC) had been cancelled.

In all these cases, TDS was made and remitted to the Department, however, they escaped the assessment of the Department since they were not registered.

We brought the matter to the notice of the Department (July/August 2016). Reply has not been received.

### 2.5.3 Evasion of tax by builders

Beginning from 20 June 2006, transfer of property in goods involved in execution of an agreement for cash, deferred payment, etc. for the building and construction of immovable property was treated as works contract and attracted VAT at five *per cent* under composition scheme. Further, as per Section 42 (3A) of the MVAT Act, 2002, from 1 April 2010, VAT at the rate of one *per cent* of agreement value or on the value specified for the purpose of stamp duty, whichever was higher was leviable under the composition in respect of construction of flats, dwellings, buildings or premises. The tax rate of one *per cent* is leviable only in cases where the building is yet to be granted Occupancy Certificate.

Analysis of data pertaining to registration of flats provided by the Registrar's office, Thane and Kalyan revealed that 16 builders who had sold 480 flats during the period 2010-11 to 2014-15 valued at ₹121.88 crore were not registered with the STD and thus remained outside the tax net. In absence of the information regarding the stage at which the flats were sold, the tax liability could not be ascertained.

We brought the matter to the notice of the EIU (July/August 2016). The EIU stated that it deals with only data available with the STD. The reply indicates that the STD is yet to put in place an effective cross-check mechanism to detect cases of tax evasion by sharing of information with other Government Departments/bodies. This exercise may be done by the Department to check the evasion of taxes in STD.

### 2.5.4 Excess or improper export claims

Proviso to Section 6(1) of the CST Act, 1956 exempts a dealer from payment of tax when the sale of goods is in the course of export out of the territory of India.

We compared export claims of 35 dealers allowed by the STD during their assessments for the periods 2010-11 and 2011-12, with these dealers export data obtained from the Indian Customs EDI System, covering Jawaharlal Nehru Port, Mumbai Port and Air Cargo-Sahar, etc. We found that in three cases though deduction of exports amounting to ₹ 138.17 crore was allowed to the dealers, no exports had been made by them. In eight cases, excess export sales amounting to ₹ 107.06 crore were allowed to the dealers in their assessment. This has resulted in total excess export claims to the dealers to tune of ₹ 245.23 crore. A few instances are shown in **Table 2.5.4**.



**Table 2.5.4**

(₹ in crores)							
Sr. no.	Year	Name of the dealer	Name of the division	Date of Assessment order	Value of exports as per STD	Value of exports as per Customs (FOB)	Difference (6) – (7)
1	2	3	4	5	6	7	8
1	2011-12	M/s A	Palghar	12-02-2015	17.39	14.28	3.11
2	2011-12	M/s B	Pune	01-04-2015	5.36	0	5.36
3	2011-12	M/s C	Pune	28-03-2016	6.87	0	6.87
4	2011-12	M/s D	Pune	30-04-2015	82.78	33.54	49.24

The exact quantum of evasion of tax could not be ascertained as multiple commodities were involved in these export sales. We brought the matter to the notice of the Department (September 2016). The Department may look into matter and the short recovery, if any, may be got recovered.

### 2.5.5 Under-declaration of imports

Section 20(1) (a) of MVAT Act requires every registered dealer to file correct, complete and self-consistent return. The various return forms prescribed for this purpose requires the dealer to declare goods imported by him.

We compared the goods import claims of 79 dealers allowed by the STD at the time of their assessments for the periods 2010-11 and 2011-12, with these dealers import data obtained from the Indian Customs EDI System, covering Jawaharlal Nehru Port, Mumbai Port and Air Cargo-Sahar, etc., we found that in ten cases, under-declaration of imports amounting to ₹ 344.59 crore had been allowed by the STD during the dealers assessment. A few instances are shown in **Table 2.5.5**.

**Table 2.5.5**

(₹ in crores)							
Sr. no.	Year	Name of the dealer	Name of the division	Date of Assessment order	Value of imports as per STD	Total Value of imports assessed by Customs for payment of duty	Difference (7) – (6)
1	2	3	4	5	6	7	8
1	2010-11	M/s V	Pune	05-08-2014	90.41	148.10	57.69
2	2010-11	M/s W	Pune	29-12-2014	33.89	66.08	32.19
3	2011-12	M/s X	Pune	29-03-2016	79.58	107.84	28.26
4	2010-11	M/s Y	Nashik	29-03-2015	70.67	88.34	17.67

The exact quantum of evasion of tax could not be ascertained as multiple commodities were involved in these import purchases. We brought the matter to the notice of the Department (July 2016). The Department may look into the matter and short recovery, if any, may be got recovered.

### **2.5.6 Conclusion**

The above instances of non-registration and non verification of sales income, export claims and imports indicate that the STD's tax evasion detection mechanism was not in place and hence unable to detect such cases either due to absence of information exchange with other Government bodies or due to non-utilisation of such information already available with the Department.

## **2.6 Other audit observations**

Our scrutiny of the assessment records finalised under the Maharashtra Value Added Tax, 2002 (MVAT Act) and the Central Sales Tax Act, 1956 (CST Act) in the Sales Tax Department revealed cases of non-observance of provisions of Acts/Rules, short levy of tax, irregular grant of set-off, etc., 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.

### **2.6.1 Excess allowance of set-off**

**Dy. Commissioner of Sales Tax, E-618 Large Tax Payers Unit, Mazgaon**

#### **Set-off of ₹ 18.75 lakh was allowed without proper verification of taxable local purchases transferred to branches outside the State**

As per the provisions of Rule 53(3) of Maharashtra Value Added Tax Rules, 2005, if any claimant dealer dispatches any taxable goods outside the State, to any place within India, not by reason of sale, to his own place of business or of his agent or where the claimant dealer is a commission agent, to the place of business of his principal, then an amount equal to the amount calculated at the rates, notified from time to time by the Central Government for the purposes of Sub-section (1) of Section (8) of the Central Sales Tax Act, 1956 of the purchase price of the corresponding taxable goods (not being goods treated as capital assets or used as fuel) shall be deducted from the amount of set-off otherwise available in respect of the said purchases.

During test check (October 2015) of records pertaining to the year 2006-07 of a dealer engaged in the business of trading in CDMA handsets, voice data cards, etc. (covered by Schedule entry C-56 and locally taxable @ four *per cent* during 2006-07), we noticed that branch transfers out of Maharashtra State were allowed at ₹ 133.43 crore, which included taxable local purchases of ₹ 8.60 crore. However, instead of deducting an amount of ₹ 33.07 lakh from the set-off granted to the dealer on account of four *per cent* (the rate of Central Sales Tax during 2006-07 being four *per cent* on goods which were locally taxable @ four to 10 *per cent*) of the such RD purchases, the assessing officer deducted only ₹ 14.32 lakh. This resulted in excess allowance of set-off of ₹ 18.75 lakh. Further, interest of ₹ 19.69 lakh on the resulting dues was also leviable.

After we brought the case to the notice of the Department in November 2015, the Department accepted the observation and passed rectification order in December 2015 raising additional demand of ₹ 38.44 lakh including interest of ₹ 19.69 lakh. The Department further stated that the dealer had preferred appeal against the rectification order. A report of recovery in the matter is awaited.

We brought the matter to the notice of the Government in June 2016; their reply has not been received (February 2017).

### 2.6.2 Incorrect allowance of set-off

**Dy. Commissioner of Sales Tax, E-008, Refund & Refund Audit, Kolhapur**

#### **Set-off of ₹ 24.51 lakh was allowed without proper verification**

As per Section 48(5) of Maharashtra Value Added Tax Act, 2002, set-off on any goods purchased shall not exceed the amount of tax in respect of the same goods actually paid under this Act or any earlier law. Tax actually paid means tax remitted into the Government Treasury. Further, Trade Circular dated 21 June 2012 stated that No Input Tax Credit claim shall be allowed unless the corresponding tax is paid by the selling dealer into the Government treasury.

During scrutiny of assessment records (February 2014) in respect of four dealers, we observed that set-off amounting to ₹ 24.51 lakh for the periods from 2008-09 to 2010-11 was allowed on the basis of the suppliers ledger confirmation. A scrutiny of the data available in the Maharashtra Vikrikar Automation System (MAHAVIKAS) revealed that the Registration certificates of the suppliers were cancelled prior to the date of supply of goods or the suppliers had filed nil returns for those periods. It was not evident from the MAHAVIKAS that the taxes collected by the suppliers were paid into the treasury. Thus, allowance of set-off of ₹ 24.51 lakh of without any documentary evidence was incorrect.

At this being pointed out (March 2014), the Department stated that the point would be verified.

We brought the matter to the notice of the Government in July 2016; their reply is awaited (February 2017).

### 2.6.3 Underassessment of dues

**Dy. Commissioner of Sales Tax, E-003 Large Tax Payers Unit, Nashik**

#### **Incorrect adjustment against tax dues instead of interest resulted in underassessment of dues by ₹ 24.13 lakh**

Under the provisions of Section 9(2B) of the Central Sales Tax Act, 1956, if the tax payable by any dealer in Maharashtra under this Act is not paid in time, the dealer shall be liable to pay interest for delayed payment of such tax as per the provisions of Section 30(2) of the Maharashtra Value Added Tax, 2002. Further, as per provisions of Section 40 of the MVAT Act, interest payable, if any, is adjustable against the payments made before adjustment of dues.

During the scrutiny (February 2015) of assessment and other related records under the CST Act, of a dealer engaged in manufacturing of electricity transmission and controls apparatus, we noticed that the dealer had, for the years 2008-09 and 2009-10, paid along with returns, ₹ 63.43 lakh and ₹ 34.28 lakh respectively, including interest of ₹ 12.63 lakh and ₹ 11.50 lakh respectively under Section 30(2).

At the time of passing the assessment order, the assessing officer adjusted the entire amount of ₹ 97.71 lakh against the tax dues instead of ₹ 73.58 lakh which were the actual dues amount paid by the dealer along with return, which

resulted in underassessment of dues including interest, penalty etc. by ₹ 12.63 lakh and ₹ 11.50 lakh for the periods 2008-09 and 2009-10 respectively.

After this being brought to notice (April 2015), the Department accepted the observation and passed rectification order (May 2015) by considering the interest under Section 30(2) of ₹ 11.92 lakh and ₹ 10.01 lakh for the periods 2008-09 and 2009-10 respectively. The Department further stated that as the dealer was in appeal against the original assessment order, the case has been forwarded to appeal. A report on recovery has not been received.

We brought the matter to the notice of the Government in June 2016; their reply has not been received (February 2017).

## CHAPTER III

### STAMP DUTY AND REGISTRATION FEE

#### 3.1 Tax Administration

Receipts from stamp duty and registration fee are regulated under the Indian Stamp Act 1899 (IS Act), Indian Registration Act, 1908 (IR Act) and the rules framed there-under as applicable in Maharashtra and are administered at the Government level by the Principal Secretary, Relief & Rehabilitation. The Inspector General of Registration (IGR) is the head of the Stamp duty & Registration Department who is empowered with the task of superintendence and administration of registration work. He is assisted by Additional Controller of Stamps, Mumbai (ACOS), eight Deputy Inspector General (DIGs), six Collector of Stamps (COS) at Mumbai and Mumbai Sub-urban District, 34 Joint District Registrar (JDR) and 504 Sub-Registrar (SR) at District and Taluka levels.

#### 3.2 Internal audit

The details of audit conducted by the internal audit wings of IGR are as detailed in **Table 3.2**.

**Table 3.2**

Year	No. Of units			Audit observations		
	Planned	Audited	Unaudited	Raised	Settled up to 31/03/2016	Pending as on 31/03/2016
2011-12	72	43	29	251	101	150
2012-13	72	43	29	405	112	293
2013-14	72	38	34	207	53	154
2014-15	72	14	58	55	12	43
2015-16	72	11	61	115	00	115
<b>Total</b>	<b>360</b>	<b>149</b>	<b>211</b>	<b>1033</b>	<b>278</b>	<b>755</b>

**Source : Information furnished by the Department**

Thus, the facts indicate that :

- During the year 2011-12 to 2015-16, audit was carried out only in 149 offices whereas it was planned for 360 units. Thus only 41 *per cent* of units were covered against the unit planned for internal audit.
- Only 27 *per cent* of the audit observations raised by the internal audit were settled.

#### 3.3 Result of audit

In 2015-16, test check of the records of 216 units of the Stamp Duty and Registration Fees Department, showed non/short levy of stamp duty and

registration fees etc. and other irregularities amounting to ₹ 217.27 crore in 593 observations, which fall under the categories given in **Table 3.3**.

**Table 3.3**

(₹ in crore)			
Sl. No	Category	No. of cases	Amount
1	Audit of 'Remission in Stamp Duty'	1	35.72
2	Short levy due to under valuation of property	463	155.52
3	Short levy due to misclassification of documents	34	5.23
4	Incorrect grant of exemption of stamp duty and registration fees	58	13.47
5	Non-levy of stamp duty and registration fees	16	5.93
6	Other Irregularities	21	1.40
<b>Total</b>		<b>593</b>	<b>217.27</b>

In response to the observations made in the local audit through Inspection Reports during the year 2015-16 as well as during earlier years, the Department accepted short levy and other deficiencies and recovered ₹ 2.90 crore in 150 observations, of which 13 observations involving ₹ 51.66 lakh were pointed out during 2015-16 and rest during earlier years.

This Chapter contains nine paragraphs including one paragraph on "Remission in Stamp Duty".

### **3.4 Audit of “Remission in Stamp Duty”**

#### **Introduction**

Levy of stamp duty in Maharashtra on different types of documents is governed by Maharashtra Stamps Act, 1958 herein after called “Act”. The State Government may by rule or order published in the Official Gazette reduce or remit prospectively or retrospectively whole or any part, stamp duty payable under Section 9 of the Act.

Government framed various policies providing tax incentives like remission of stamp duty to attract investment in different sectors. The concerned Departments of these sectors (called as ‘User Departments’<sup>1</sup>) framed the policies which inter-alia provided for grant of remission of stamp duty. There were about twenty such schemes. Revenue and Forest Department (RFD) issued orders for remission of stamp duty in accordance with the concerned policies issued by the User Departments. The Registration and Stamps Department (RSD) is the Implementing Department under the administrative control of RFD. The Stamp Duty Exemption Certificate (SDEC) is issued by User Departments. In case of Package Scheme of Incentive (PSI), IT & ITES Policy and Tourism Policy the beneficiaries produce SDEC before the concerned Sub-Registrars (SRs) for availing the remission of stamp duty at the time of registration of the instrument of the units. In case of Special Economic Zone (SEZ) Policy and Special Township Scheme the letter of approval (LOA)/notification is issued by Government of India (GoI)/user department in favour of the beneficiaries. These LOAs/notifications are produced before the SRs for availing the remission in stamp duty.

#### **Scope and Methodology of Audit**

The audit of RSD for the period from 2011-16 was conducted between February 2016 and July 2016, with a view to ascertain whether the orders for remission of stamp duty issued by Revenue and Forest Department were correctly implemented and system of monitoring was adequate and effective.

An entry conference to discuss audit objectives, scope and methodology was held on 21<sup>st</sup> April 2016 with Revenue and Forest Department wherein representative of the User Departments were also present. The draft report was forwarded to RSD in September 2016. Exit conference was held on 23 January 2017 wherein the audit observations were discussed; however, the reply/report on action taken thereon has not been received from the Government. The replies of the Department, wherever received have been incorporated in the relevant paragraphs.

**Methodology of Audit:-** Out of 36 districts in the State, nine<sup>2</sup> districts, covering all the 15 JDR & COS Offices of these districts were test-checked. Further, 10 *per cent* of the total number of SR offices (21 offices out of 206 offices) in these nine districts was covered.

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<sup>1</sup> Industry, Energy and Labour Department, Tourism and Cultural Affairs Department and Urban Development Department.

<sup>2</sup> Amravati, Aurangabad, Latur, Mumbai, Nagpur, Nashik, Pune, Raigad and Thane.



There were about twenty schemes relating to remission of stamp duty. No data regarding the scheme-wise number of documents on which remission was accorded was available with the RSD. However, as per the data obtained from the User Departments/GoI, it was seen that maximum number of SDECs / Notifications were issued in respect of five schemes. These schemes are Package Scheme of Incentive (PSI), IT & ITES Policy, Tourism Policy, SEZ Policy and Special Township Scheme. As such, these policies/schemes were selected for audit. Audit also cross checked the data/records with the User Department wherever necessary.

### **Audit findings**

#### **3.4.1 Non-maintenance of Scheme wise data base of remission of stamp duty**

RSD in the State of Maharashtra has been computerized. The IT system in place is called as iSARITA. It contains twelve modules. The remission orders issued by the RFD were subject to the fulfillment of conditions mentioned therein.

**3.4.1.1** Audit observed that iSARITA contained the data base of all instruments relating to remission of stamp duty registered in the office of each SR. However, scheme wise data base was neither maintained in the IT system nor was it maintained manually. There was no system for generating reports relating to grant of remission indicating the number of instruments and amount remitted under a particular scheme. Thus, the number of documents registered in each SR could not be ascertained. As a result monitoring of terms and condition mentioned in the remission order of the schemes relating to grant of remission of stamp duty could not be watched by JDR/SRs. Audit found a number of cases where breach of conditions committed by the beneficiaries of the scheme remained un-noticed by the RSD. These are mentioned in the succeeding paragraphs.

**3.4.1.2** As per the information obtained from Industry, Energy and Labour Department (IELD) and Tourism and Cultural Affairs Department (TCAD), 8,017 Stamp Duty Exemption Certificates (SDEC) were issued by them under Package Scheme of Incentives (PSI), IT-ITES Policy and Tourism Policy. Out of these 3,443 units did not start activities and SDECs remained in-operative. The scheme wise information is given in **Table 3.4.1.2**.

**Table 3.4.1.2**

<b>Name of the scheme</b>	<b>Period involved</b>	<b>Number of SDEC issued</b>	<b>Number of units started activity</b>	<b>Number of units did not start activity</b>
PSI 2007	April 2007 to March 2013	7,039	3,746	3,293
IT-ITES policy 2009	August 2009 to June 2015	919	821	98
Tourism Policy 2006	November 2006 to March 2016	59	7	52
<b>Total</b>		<b>8,017</b>	<b>4,574</b>	<b>3,443</b>

**Source : Information furnished by the Department**

There was nothing on record in the RSD to indicate that these units had availed remission of stamp duty. So the amount of remission, if any, availed by the units could not be watched/recovered, in case of the units which had not start their activities within the prescribed time.

**3.4.1.3** The remission in respect of SEZ Policy 2001 is based on letter of approval (LOA) issued by Government of India (GoI) while in case of Special Township Scheme 2004, it is based on notification issued by Urban Development Department (UDD).

As per the information obtained from GoI and UDD, 307 LOAs and notifications were issued by them under said policy/scheme. Out of these 98 projects were not established as shown in **Table 3.4.1.3**.

**Table 3.4.1.3**

Name of the scheme	Period involved	Number of LOA/ notification issued	Number of SEZ projects & units /townships established	Number of SEZ projects & units /townships not established
SEZ Policy 2001	2001 to 2016	291	209	82
Special Township	2005 onwards	16	0	16
<b>Total</b>		<b>307</b>	<b>209</b>	<b>98</b>

**Source : Information furnished by the Department**

Due to non-maintenance of scheme-wise data base, correctness of remission of stamp duty availed by units could not be monitored at the apex level. Besides it could not be ensured that the remission were utilized for the purpose for which these were granted.

It is recommended that RSD may consider maintaining a comprehensive database of all the remission cases for effective monitoring.

In addition to above system deficiency the audit findings noticed during the audit are mentioned scheme wise in the following paragraphs.

### **3.4.2 Remission of stamp duty on account of Package Scheme of Incentives**

The IELD of the State Government introduced a PSI in 1964 which was renewed and amended after every 3-6 years. The operative period of PSI 2007 was from April 2007 to March 2013 and that of PSI 2013 is till March 2018.

#### **3.4.2.1 Grant of remission on instruments not covered under remission order**

As per remission order issued by RFD for PSI 2007 stamp duty was remitted on the instruments of hypothecation, pawn pledge, deposit of title deed (Article 6), conveyance (Article 25), lease (Article 36) and mortgage (Article 40) as mentioned in the schedule-I of the Act. Assignment deed (Article 60) meant transfer of lease by way of assignment. Lease deed (Article 36) is defined as agreement to let or sub-let.

IELD had issued a SDEC (March 2012) to a new industrial unit in Thane district. The unit acquired land admeasuring 34,588 sqms in 2012 from an

existing unit by executing an instrument. This instrument was titled as lease deed and remission of stamp duty of ₹ 52.40 lakh was granted (May 2012) by the JDR & COS, Thane Rural on the basis of SDEC.

Recital of the instrument revealed that the land was earlier allotted to a unit in 1967 by MIDC. That unit transferred its lease hold rights by way of assignment to the beneficiary unit with the consent of the MIDC. Thus, the instrument was an assignment deed and required to be classified as assignment deed under Article 60. However, the JDR classified it a lease deed under Article 36 and incorrectly allowed the remission of stamp duty of ₹ 52.40 lakh.

After this was pointed out in audit, JDR stated that remission was granted on SDEC issued by IELD. The reply was not correct as the recitals of the deed indicated that it was assignment deed and no remission was admissible under the remission order for PSI 2007. The matter should have been brought to the notice of IELD and remission should not have been granted.

#### **3.4.2.2 Grant of Remission to the Developer of an IT Park**

As per remission order issued by RFD for PSI 2007, only a new industrial unit or an existing unit taking up extension, expansion or diversification are entitled to avail remission of stamp duty. However, there is no clause for grant of remission of stamp duty to a developer of an IT park.

Audit scrutiny revealed that in Thane district a Developer was granted (2010) remission of stamp duty of ₹ 84.36 lakh by the JDR & COS on an instrument of sale deed under remission order for PSI 2007 for the land allotted to him for setting up of a private IT park. As the instrument for setting up a private IT park, was not covered under the remission order, the remission granted was irregular.

#### **3.4.2.3 Grant of remission on incorrect issue of SDEC to ITES units**

The PSI 2013 allows remission of stamp duty on IT (Information Technology) manufacturing units only and not on ITES (Information Technology Enabled Services) units. IT enabled services are defined in the IT & ITES Policy 2009.

Audit observed that in 44 cases in three<sup>3</sup> districts IELD issued SDECs under remission order for PSI 2013. All these units were ITES units to whom, RSD granted the remission of stamp duty of ₹ 6.51 crore based on said SDECs. As the ITES units were not covered in PSI 2013, issue of SDEC by IELD was incorrect. This fact was also not noticed by the RSD, resulting in incorrect grant of remission of stamp duty of ₹ 6.51 crore thereon.

### **3.4.3 Remission of stamp duty on account of IT & ITES Policy 2009**

The IELD of the State Government introduced the IT Policy in 1998 followed by IT & ITES Policy 2003 and since then it was renewed and amended after every 5-9 years. The operative period of IT & ITES Policy 2009 was from August 2009 to June 2015 and thereafter IT & ITES Policy 2015 is in force whose operative period is till June 2020.

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<sup>3</sup> Thane-39, Pune-4 and Nashik-1.

### **Grant of Remission on incorrect issue of SDEC to an existing unit**

As per remission order for IT/ITES Policy 2009, remission of stamp duty is allowed to new IT/ITES units or expansions of units located in IT Park/IT SEZ in group A<sup>4</sup> and B<sup>5</sup> area. However, there is no provision to allow remission to existing unit. Existing unit means a unit that had been in operation at the time of promulgation of the policy.

Information obtained by audit from Development Commissioner (DC), SEEPZ, Mumbai revealed that an IT/ITES SEZ unit was established in 2008 in Phase II of MIDC Hinjewadi, in Pune District. It was relocated (2015) to MIDC Hinjewadi Phase III in Pune district with the permission (2013) of DC SEEPZ, Mumbai. There was no change in investment/export target or in the working of the unit. Thus, the unit was not a new unit and was not entitled to any remission of stamp duty. But IELD treated the same as a new unit and issued SDEC which was not in line with the remission order. The SR granted remission of stamp duty of ₹ 4.91 crore on eight instruments of sub-leases executed by the unit, based on said SDEC, which was incorrect.

### **3.4.4 Remission of stamp duty on account of SEZ Policy 2001**

Government Resolution (GR) declaring SEZ Policy 2001, of the state was issued in October 2001 by the IELD of the State, it was valid till March 2006. The Policy provided concession in stamp duty as one of the incentives for setting up of a SEZ. Even though the operative period of the Policy was over in March 2006 for the purpose of giving exemption of stamp duty the time limit was extended by GR issued by IELD (March 2007) for a further period of 10 years. Remission order for stamp duty was issued (March 2007) by RFD based on this GR.

#### **3.4.4.1 Non-recovery of remission of stamp duty from a Developer before de-notification of SEZ**

GoI in September 2011 stipulated that in case of de-notification of SEZ, all benefits claimed under SEZ Act & Rules by the Developer and Co-developer should be refunded. This was to be confirmed by the concerned Development Commissioner (DC) by issue of “no due certificate” before actual de-notification of SEZ.

- Audit scrutiny revealed that GoI had granted formal approval (January 2009) to a Developer (Khed Economic Infrastructure Limited) for 1,559.81 hectares (ha) for setting up of a SEZ in Khed village of Pune district. The developer availed remission of stamp duty (December 2009 to June 2010) on 1705.62 ha. Thus, remission of stamp duty was granted on 145.81 ha of land for which no LOA was issued. It was further noted that the GoI notified (June 2010) only 1000 ha of said land for SEZ. As such the stamp duty on 705.62 ha (559.81 ha + 145.81 ha) of land on which remission was granted but not notified by GoI was required to be recovered.

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<sup>4</sup> Industrially developed as defined in PSI 2007 and 2013 read with their Annexure.

<sup>5</sup> Areas industrially less developed than A area.

Thereafter, the Developer requested (July 2013) GoI for decrease in notified area of SEZ from 1000 ha to 100 ha by de-notification of 900 ha. The request of the Developer was accepted by GoI (September 2013) subject to refund of benefit of any tax/duty availed by Developer on the area of SEZ land approved for de-notification. Hence, the Developer was required to refund the benefit of stamp duty availed by him on 900 ha of area approved for de-notification.

Thus, remission of stamp duty and penalty amounting to ₹ 26.73 crore on total land area of 1,605.62<sup>6</sup> ha not put to use for SEZ was required to be recovered but JDR worked out and recovered stamp duty and penalty of ₹ 22.04 crore on 1361.22 ha and NOC was issued to the Government. This resulted in short recovery of stamp duty and penalty of ₹ 4.69 crore on balance area of 244.40 ha.

After being pointed out in audit, JDR stated that 244.40 ha of lands was reserved for a company established by farmers named “M/s Khed Developers Limited” in view of orders of the Government. The reply of the Department was silent about refund of remission of stamp duty on 244.40 ha of land availed by the developer. In this case 244.40 ha of land was part of 900 ha of land. This was approved for de-notification by GoI. Hence, in view of GoI directives (September 2011) refund of stamp duty was required to be made on 244.40 ha.

- In another case, a Developer of SEZ was granted (November 2008) formal approval by GoI for setting up a SEZ on 10 ha land in Mulshi Taluka of Pune district. The JDR & COS, Pune city granted (2009) remission of stamp duty of ₹ 29.72 lakh on 8.74 ha of said land on six instruments of lease/sale deed for setting up the SEZ. The SEZ was notified by GoI in April 2010. Later on at the request (July 2011) of the Developer, GoI in September 2011 granted approval for de-notification of area of SEZ so notified. Even though the Regional Development Commissioner asked (December 2012 with reminder in April 2013) the IELD for issue of a “No due certificate” but no reply was furnished. Thus, refund of stamp duty remission of ₹ 29.72 lakh availed by the Developer on 8.74 ha of land approved for de-notification could not be made. This resulted in non-realisation of the Government revenue to that extent.

#### **3.4.4.2 Irregular grant of remission on instruments of SEZ not covered in remission order**

As per remission orders issued (2007) by RFD for SEZ Policy 2001, remission of stamp duty to any unit is allowed only on the instrument of first conveyance of land (Article 25) and lease (Article 36) executed between the Developer or Co-developer of the SEZ and the land owner, and the first transaction of transfer of land between the Developer or Co-developer and the units therein.

There was no provision for allowing remission of stamp duty on subsequent instrument.

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<sup>6</sup> LOA not issued -145.81 ha., Final notification not issued – 559.81 ha. and Area approved for de-notification – 900 ha. (145.81+559.81+900= 1,605.62 ha).

- Audit scrutiny revealed that GoI had issued (June 2007) a letter of approval to a Developer for setting up of a SEZ in Nashik district on 1000 ha of land. The JDR & COS, Nashik granted (August 2007) remission of stamp duty on said land. Out of this, the Developer allotted 371.24 ha of land to a Co-developer of SEZ for setting up a power plant. The land was allotted through three instruments of sub-lease deed registered between 2010 and 2012. The Co-developer also availed the remission of stamp duty of ₹ 5.12 crore on sub-lease deeds executed between developer and Co-developer on the basis of LOA issued by GoI. This was irregular, as three instruments of sub-lease deed were not only subsequent instruments of Principle lease deed executed in 2007 with the lessor but also the same were executed between a Developer and a Co-developer.
- In Pune district three instruments of lease deeds for acquiring office premises having constructed area of 33,945.57 sqm were executed between a Developer and a unit. The JDR and COS had granted (2009-10) remission of stamp duty of ₹ 3.63 crore on these instruments. This was irregular as the remission was available only for acquiring land. There was no provision in the remission order to allow remission of stamp duty on the constructed area in the buildings.

After this was pointed out in audit, JDR & COS Pune City accepted the audit observation and referred the case to Chief Controlling Revenue Authority (IGR) under section 53 of the Act.

### **3.4.5 Remission of stamp duty on account of Tourism Policy 2006**

The Home Department of the State had introduced a Package Scheme of Incentives for Tourism 1993 which was first renewed in 1999. Thereafter, Government resolution for Tourism Policy 2006 was issued in December 2006 by TCAD of the State. The operative period of Tourism Policy 2006 was from November 2006 to March 2016. Thereafter the Tourism Policy 2016 has been in operation, and this will continue till March 2026.

#### **3.4.5.1 Irregular grant of remission of Stamp Duty on fake Certificate**

Remission order issued by RFD (October 2007) for Tourism Policy 2006, provides remission of stamp duty for starting a new tourism unit or expansion of an existing unit, on SDEC issued by Maharashtra Tourism Development Corporation (MTDC). MTDC issues a copy of the SDEC to the beneficiary unit, there is no system to forward copy of the SDEC to the concerned registration authorities responsible for allowing the remission so as to ensure genuineness of the SDEC.

Audit cross verified 33 of 59 SDECs made available by the RSD with records of MTDC and found one of these SDECs was fake. The remission of stamp duty allowed on this fake SDEC was ₹ 57.88 lakh. This is briefly detailed as follows :

Audit scrutiny revealed that Sub-Registrar of Velha in Pune district granted (March 2012 to May 2012) remission of stamp duty of ₹ 57.88 lakh on 36.90 ha of land, on four instruments executed by a unit M/s Eiffel Developers and Realtors Ltd. In these four cases, a copy of the SDEC issued in February 2012

was produced before the SR by the beneficiary at the time of registration between March 2012 and May 2012. Cross verification done by audit revealed that the SDEC available with MTDC differed in date of issue, signature and official seal with that available in RSD. After this was pointed out by audit, MTDC confirmed that SDEC of February 2012 was not issued by their office.

Thus, grant of remission of stamp duty of ₹ 57.88 lakh on this fake SDEC was incorrect and escaped the notice of the Department. The MTDC stated that it had issued the SDEC to the Eiffel in August 2012 but on the request of M/s Eiffel Developer and Realtors Ltd., it was revised in December 2012 in favour of a unit M/s Eden Landmarks Pvt. Ltd. and SDEC issued to M/s Eiffel Developer and Realtors Ltd. stands already cancelled. However, audit found that Eden Landmarks Pvt. Ltd. had not used it for registering any document. Thus, the land continued to be in the name of Eiffel Developer and Realtors Ltd.

It was further noticed in audit that the unit was required to start the activity within the period of three years from the date of grant of remission. But audit found that 15.26 ha of the aforesaid land was divided and sold (February to December 2013) to 34 parties.

After this was pointed out the MTDC accepted the facts that the parties had committed breach of conditions and therefore remission of stamp duty granted is required to be recovered.

It is recommended that the Department may consider putting in place a system to ensure that SDECs are forwarded by the User Departments to JDRs and are further sent to SRs to enable them to cross verify the SDECs given with instruments at the time of registration.

#### **3.4.5.2 Non-recovery of stamp duty and penalty thereon for breach of condition**

Remission Order dated 1<sup>st</sup> October 2007 under Tourism Policy 2006 issued by RFD provided that if any unit fails to start the activities within a period of three years from the date of instrument for which the reduction of stamp duty is granted or commits breach of any of the conditions of the Tourism Policy of the State 2006, it shall be liable to pay the whole of the stamp duty and penalty, if any, as if there was no reduction in stamp duty from the beginning.

Audit scrutiny revealed that eight Tourism units in six<sup>7</sup> of nine test-checked districts were granted reduction in stamp duty of ₹ 2.42 crore on 28 instruments during the period from 2009 to 2013. The units did not start their activities even after lapse of 3-7 years from the date of the instrument. Hence, remission of stamp duty granted was required to be recovered along with penalty.

There was no co-ordination between RSD and Tourism Department to ascertain the status of activities of the units within the prescribed period and recovery of the stamp duty wherever necessary.

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<sup>7</sup> 32 instruments of Pune and one each of Mumbai, Nashik, Aurangabad, Nagpur and Kolhapur.

In reply, MTDC confirmed the fact that the units had not started activities but further action taken was not intimated. Thus, to safeguard government revenue co-ordination needs to exist between Tourism Department and RSD. The RSD may be asked to prepare scheme wise data in respect of the remission allowed and send it to the concerned User Department.

#### **3.4.5.3 Grant of remission of stamp duty on instruments not covered under remission order**

As per remission order (October 2007) for Tourism Policy 2006, assignment deed (Article 60), partnership deed (Article 47) and lease deed (Article 36) of land executed between private parties are not entitled to any remission of stamp duty.

Audit scrutiny in three<sup>8</sup> districts, revealed that three instruments were titled as Partnership deed, Deed of Assignment and Agreement of lease executed between private parties. These instruments were not entitled to the remission of stamp duty under the remission order of the Tourism policy. But remission of stamp duty of ₹ 59.45 lakh was incorrectly allowed (2010 to 2012) by the SRs. This resulted in incorrect grant of remission of stamp duty.

#### **3.4.5.4 Irregular grant of remission of stamp duty**

In the remission order issued (October 2007) for Tourism Policy 2006, the remission of stamp duty is granted on the first conveyance of the land. There is no provision for grant of remission of stamp duty for building, apartments constructed on the land.

Audit scrutiny revealed that MTDC had issued two SDECs (September 2012 and July 2015) to a unit for purchase of a total land area of 6253.28 sqm in Pune district for setting up a new Hotel project and expansion thereof. However, instead of purchasing land, the unit purchased 'built to suit' (apartments) premises having constructed area of 8,783.72 sqm by registering two instruments as "Agreement to Sale" (September 2012 and September 2015). The concerned SR granted remission of total stamp duty of ₹ 76.27 lakh which was irregular.

After being pointed out in audit, MTDC confirmed that they had issued SDEC for purchase of land only. Reply of the SRs for grant incorrect remission was not received.

#### **3.4.6 Remission of stamp duty on account of Special Township Scheme 2004**

The Government of Maharashtra had approved Special Township Scheme in the year 2004 as a part of Development Control Rules of all the Municipal Corporations/ Councils and Development Control Regulation of Regional Plan area. Accordingly, Government Resolution was issued by the UDD incorporating Regulation for Development of Special Township in area under regional plan of Pune (November 2005) followed by Nagpur, Mumbai Metropolitan region and Thane (February-May 2006). The scheme is still in operation.

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<sup>8</sup> Thane, Mumbai and Nagpur.



**3.4.6.1 Incorrect grant of remission on instruments not covered under remission order**

As per remission orders (January 2008) for Special Township Scheme 2004 (STS), remission of stamp duty to a developer is allowed only on instrument of agreement or conveyance (Article 25) and there is no provision for grant of remission of stamp duty on Development agreement falling under Article 5 (g) (a), of the Maharashtra Stamp Act 1958.

In Pune district a developer had purchased a piece of land admeasuring 19 acres for the development of STS. He executed (2013) an Agreement of joint venture with land owners for this purpose. The recital of the instrument revealed that the land owners had decided to transfer the land for development on joint venture basis. The instrument was titled as Joint Venture. The recitals of the instrument revealed that it was a development agreement classifiable under article 5 (g) (a). However, the Sub-registrar incorrectly allowed the remission of 50% of stamp duty and levied stamp duty of ₹ 2.86 crore. Besides, the SR had incorrectly valued the property. The stamp duty leviable was ₹ 6.10 crore. Thus, there was a short levy of stamp duty of ₹ 3.24 crore.

**3.4.6.2 Irregular grant of remission on instruments not covered under remission order**

The remission order for Special Township Scheme 2004 was issued on 15<sup>th</sup> January 2008 and amended on 6<sup>th</sup> January 2015. As per amended remission order, remission of stamp duty to a developer is allowed only on first instrument of agreement or conveyance (Article 25) and there is no provision for remission on subsequent instruments. The amendment was made effective retrospectively from January 2008.

In Thane district, a total area of 82.22 ha in village- Kavesar and Kolshet was notified (March-August 2009) vide two notifications issued by the UDD. Out of this, 34.38 ha land was Government land and remaining 47.84 ha was private land. The developer executed an instrument for acquiring Government land admeasuring 19.51 ha and availed (December 2010) remission of stamp duty of ₹ 1.52 crore thereon as a first instrument. The Developer partially developed township on part area and constructed residential flats in that area.

Audit scrutiny revealed that the Developer had executed 93 instruments of sale deed of flats constructed in that Township area during 2012-15, which were subsequent to the instrument of acquiring land (2010). Out of these 30 instruments were registered after amendment of remission order on 6<sup>th</sup> January 2015 on which remission of stamp duty of ₹ 1.65 crore was granted which was irregular. Further, 63 instruments were registered during 2012- 2014 on which remission of stamp duty of ₹ 2.87 crore was granted. Hence in view of amendment of the remission order from January 2008, action was required to be taken to recover the remission of stamp duty on these instruments.

Thus, issue of amendments retrospectively after a lapse of seven years is not prudent and in the interest of revenue. There may be more cases that need revision and recovery of the remission amount allowed. The IGR had not issued any directions/instructions for tracing of the cases in which remission was allowed and the manner in which recovery should be made.

### **3.4.7 Systems for monitoring through inspections**

IGR office had issued instructions (June 2001 as amended in December 2007) for monitoring mechanism by periodical inspection of sub-ordinate offices by controlling officers. This included monthly targets<sup>9</sup> for Internal Audit wing of RSD, regional DIGs and JDR. The instructions required checking of all instruments on which remission of stamp duty was granted and of complex instruments like release deed, partition deeds, lease deeds etc. by the JDRs.

The deficiencies noticed in monitoring by RSD are as follows:

- During the period from 2011 to 2015, there were shortfalls in annual inspection of Sub-Registrar offices by internal audit wing headed by Assistant IGR at IGR office (Hqrs), eight regional DIGs, and all the JDRs, which ranged between 22 and 80 *per cent*. Similarly shortfall in the number of instruments relating to grant of remission of stamp duty checked by the JDRs during the above period ranged from 17 to 53 *per cent* as shown in **Table 3.4.7**.

**Table 3.4.7**

Year	Shortfall in inspection of Sub-Registrar offices by			Shortfall in checking remission instruments by JDR
	Eight DIGs	Asst.IGR	JDRs	
2011	64.06	80.56	62.87	53.83
2012	22.40	40.28	27.70	17.45
2013	42.71	40.28	38.85	49.74
2014	46.35	47.22	41.67	38.07
2015	44.79	80.56	43.26	49.61

**Source: Information furnished by the Department**

Due to shortfall in inspection the monitoring of the working of SRs for correctly allowing remission of stamp duty under various schemes could not be done. As a result various irregularities as pointed out in foregoing paragraphs occurred.

### **3.4.8 Conclusion**

The audit revealed that due to non-maintenance of scheme-wise database of instruments on which remission was granted, RSD was not able to identify the erring units. There was no mechanism to ensure fulfillment of conditions prescribed in the remission orders and policies. Due to non-existence of system of sending SDECs by the User Department to Registration authorities at district and taluka level, a case of availing remission on fake certificate was noticed. In many cases the remission was granted, though not admissible, as per remission orders. The User Departments issued SDEC to ineligible units. The monitoring mechanism in RSD was weak as is evidenced by the shortfall in periodical inspection of the Sub-registrar offices.

<sup>9</sup> Three SR offices by each of the two Desk of Internal audit wing of IGR office, two SR offices by each regional DIG(8) and two by each JDR (34).

### **3.5 Other audit observation**

During scrutiny of records of the various registration offices, we noticed several cases of non-compliance of the provisions of the Maharashtra Stamp Act, 1958 and Government notifications and instructions and other cases as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on our test check of records. The Government / Department need to improve internal control mechanisms so that such cases can be avoided, detected and corrected.

#### **3.5.1 Short levy of stamp duty due to non-consideration of License fees, Security Deposits, etc in Lease Agreement**

**Levy of stamp duty without treating the license fees, security deposits, etc. as consideration, in terms of Explanation-I of Article 36 (iv), resulted in short levy of stamp duty of ₹ 19.61 crore**

Article 36 (iv) of the MS Act, 1958, provides levy of stamp duty at the rates of three *per cent* on 90 *per cent* of the market value of the property in cases of leases exceeding 29 years. Further, Explanation-I of the Article stipulates 'Any consideration in the form of premium or money advanced or to be advanced or security deposit by whatever name called shall, for the purpose of market value be treated as consideration passed on'.

Two lease Agreements were executed (July 2014) for two pieces of land admeasuring 4,68,367.63 sqm in Office of the Joint Sub Registrar-III, Kalyan, District Thane (SR), valued at ₹ 51.10 crore. The Department levied the stamp duty at the rate of five *per cent* at ₹ 2.56 crore. Scrutiny of instruments revealed (August 2015) that consideration of the instruments was ₹ 821.10 crore. The SR had excluded consideration received in the form of license fees, cost of infrastructure, security deposits valued at ₹ 770 crore. The instruments were liable to a stamp duty of ₹ 22.17 crore instead of ₹ 2.56 crore levied by the SR. This resulted in short levy of stamp duty of ₹ 19.61 crore<sup>10</sup>.

After being pointed out (August 2015 and June 2016), the IGR, Pune stated (July 2016) that the order for recovery of short levy of stamp duty had been passed, on which the party had filed an appeal in the Court of law.

This was pointed out to the Government in June 2016; their reply has not received (February 2017).

#### **3.5.2 Short levy of stamp duty of ₹ 11.94 crore due to non-inclusion of encumbrance on the property in consideration**

**Incorrect calculation of consideration of property (without considering the unearned income and encumbrance of sales tax on property) resulted in short levy of stamp duty of ₹ 11.94 crore**

As per Section 2(n)(a) of MS Act, 1958, market value in relation to any property which is the subject matter of an instrument, means the price at which such property would have fetched if sold in open market on the date of

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<sup>10</sup> ₹ 22.17 crore – (₹ 1.51 crore + ₹ 1.05 crore).

execution of such instrument or the consideration stated in the instrument whichever is higher. Further, as per Section 25 (b), a charge or encumbrance<sup>11</sup> upon the property, shall be deemed to be the consideration and is chargeable with stamp duty. Accordingly, unearned income or any debt paid by the purchaser is part of consideration.

**3.5.2.1** Scrutiny of instruments in Office of the Joint Sub Registrar-IX, Thane, revealed (August 2015) that an Agreement to Sale was executed (December 2014) between 'Vendor' and 'Purchaser' for a 'Sanad Land'<sup>12</sup> admeasuring 2,55,643.97 sqm along with structures situated at villages Dhokali, Kolshet and Balkam of Tahsil and District Thane. The Department worked out market value/consideration of property at ₹ 386.57 crore and stamp duty at the rate of six *per cent* amounting to ₹ 23.19 crore was levied. The 'Indenture of Conveyance' was executed in March 2015.

As per 'Indenture of Conveyance', the 'Purchaser' had deposited one cheque and three post-dated cheques (December 2014) aggregating to ₹ 193.27 crore on account of unearned income. The unearned income was not treated as consideration and stamp duty of ₹ 11.60 crore was not levied. This resulted in short levy of stamp duty to that extent.

After this was pointed out (August 2015 and June 2016), the IGR, Pune stated (August 2016) that the action for recovery of short levy of stamp duty had been initiated under Section 32 (A) of MS Act against which the party had filed an appeal in the Court of law and Court directed that no coercive steps be taken.

**3.5.2.2** Scrutiny of instruments in Office of the Sub Registrar, Sinnar, Nasik, revealed (August 2014) that a Deed of Confirmation was executed (May 2013) between 'Seller' and 'Buyer' for a plot admeasuring 15,000 sqm situated at mouza Musalgaon-Industrial area, Taluka Sinnar, District Nasik. The Department worked out market value/consideration of the property at ₹ 1.42 crore and stamp duty at the rate of five *per cent* amounting to ₹ 7.11 lakh was levied and recovered at the time of registration. The calculation of market value was not found on the record.

As per recital of the instrument and 'Sale Certificate' (April 2012) attached with it, the consideration amount of the property was ₹ 6.56 crore along with encumbrance of sales tax of ₹ 1.73 crore which was to be borne by the buyer. Thus, total consideration worked out to ₹ 8.28 crore on which stamp duty of ₹ 41.41 lakh at the rate of five *per cent* should have been levied. Non-inclusion of encumbrance on property in calculation of consideration resulted in short levy of stamp duty of ₹ 34.30 lakh.

After this was pointed out (August 2014 and May 2016), the IGR, Pune stated (July 2016) that the action for recovery of short levy of stamp duty had been initiated under Section 32 (A) of MS Act.

The above observations were brought to the notice of Government (June 2016). Reply thereto was awaited (February 2017).

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<sup>11</sup> Burden, obstruction, or impediment on property that lessens its value or makes it less marketable.

<sup>12</sup> Means authority given in writing by the government to hold land.

**3.5.3 Short levy of stamp duty due to non-consideration of 'Revenue Sharing' aspect**

**'Revenue Sharing' aspect between Owners and Purchasers was not considered for calculating the market value, resulting in short levy of stamp duty of ₹ 10.87 crore**

As per provision contained in Article 5 (g-a) (i) of MS Act, if immovable property is given to a Developer for development, construction, sale or transfer then stamp duty is leviable on conveyance under Article 25 (b) under the said Act. Also, for the purpose of determining consideration that is passed on by the developer to the owner, in the form of revenue share after selling of the constructed unit, the rate of residential unit as per ready reckoner would be considered (i.e. unit rate).

Scrutiny of instruments in Offices of five<sup>13</sup> Sub Registrars, revealed (November 2013 and July 2015) that in eleven cases the Development Agreements were executed between 'Owners' and 'Developers' for development of land. As per recital of the agreement the owners and developers had agreed to develop the properties on the basis of revenue sharing<sup>14</sup> on certain percentage<sup>15</sup>. The Department levied stamp duty of ₹ 5.32 crore on market value/consideration of ₹ 93.74 crore.

Audit observed that the Department did not consider the revenue sharing aspect while calculating the market value/consideration of the property. The consideration as per revenue sharing was worked out to ₹ 379.99 crore involving stamp duty of ₹ 16.19 crore. Thus, there was short levy of stamp duty by ₹ 10.87 crore.

After this was pointed out (November 2013, July 2015 and June 2016), the IGR, Pune accepted (July/August 2016) the audit observations. However, while calculating the consideration it incorrectly applied ASR of 2015 instead of ASR of the respective years. The Department raised demand of ₹ 9.27 crore. The matter relating to short levy has been taken up with the Department.

All the above observations were brought to the notice of Government (June 2016). Reply thereto was awaited (February 2017).

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<sup>13</sup> Joint Sub Registrar, Haveli-XII, Pune, Sub Registrar, Haveli-XXVI, Pune, Joint Sub Registrar-I, Kalyan, Thane, Sub Registrar, Haveli-XXI, Pune, Sub Registrar, Haveli-XIII, Pune.

<sup>14</sup> Revenue realized from selling of constructed units in open market.

<sup>15</sup> Ranged between 38:62 and 48:52.

### 3.5.4 Short levy of stamp duty due to applying of incorrect rate on Gift Deed

**Department allowed the concession of stamp duty on Gift Deed, though not admissible as the ‘Donor’ and ‘Donee’ were not lineal ascendant or descendant, which resulted in short levy of stamp duty amounting to ₹ 1.15 crore**

As per Article 34 of Schedule-I of MS Act, 1958, for property gifted to a family<sup>16</sup> member or any lineal ascendant or descendant of the donor, the amount of stamp duty chargeable on Gift Deed was three *per cent* (which includes one *per cent* additional Municipal Cess) of the market value of the property; otherwise the stamp duty was same as that leviable at the rate of six *per cent* on a Conveyance Deed which was of the market value of property.

Scrutiny of instruments in Offices of the Joint Sub Registrar-IX, Haveli, Pune and Joint Sub Registrar-VII, Thane at Bhayandar, revealed (July 2014 and September 2014) that two Gift Deeds were executed (May 2013, August 2013) between ‘Donors’ and ‘Donees’ for a land admeasuring 1,83,511.80 sqm and 8,450 sqm bearing various Survey Nos. 9,10,11,12 and 19 at village Lohgaon, Tahsil and District Pune and new survey no. 166 at village Bhayandar within the limits of Mira Bhayandar Municipal Corporation, Thane, respectively.

Further, audit observed that the Donees and donors were not covered under Article 34 of MS Act, as family member or lineal ascendant or descendant of the Donor. Therefore, stamp duty levied by the Department amounting to ₹ 0.90 crore by granting of concession was incorrect. The market value of land worked out to ₹ 34.26 crore involving stamp duty of ₹ 2.05 crore at the rate of six *per cent*. This resulted in short levy of stamp duty of ₹ 1.15 crore. The details are shown in **Table 3.5.4**.

**Table 3.5.4**

(₹ in crore)						
Sr No	Name of Office	Market Value as per Department	Stamp Duty levied	Market Value as per the ASR	Stamp Duty leviable	Short levy of Stamp Duty
1	Jt SR-IX, Haveli, Pune	19.17	0.57	23.36	1.40	0.83
2	Jt SR-VII, Thane at Bhayandar	10.90	0.33	10.90	0.65	0.32
<b>Total</b>		<b>30.07</b>	<b>0.90</b>	<b>34.26</b>	<b>2.05</b>	<b>1.15</b>

**Source : Information furnished by the Department**

After this was pointed out (July 2014, September 2014 and May 2016), the IGR, Pune stated (July 2016) that the action for recovery of short levy of stamp duty had been initiated under Section 32 (A) of MS Act.

This was brought to the notice of Government (June 2016). Reply thereto was awaited (February 2017).

<sup>16</sup> As per notes under Article 34 (Gift) the family member of the donor means father, father’s father etc. and the lineal descendant means son, son’s son and daughter etc.

**3.5.5 Short levy of stamp duty of ₹ 57.95 lakh due to undervaluation of property**

**Incorrect calculation of market value of property resulted in short levy of stamp duty of ₹ 57.95 lakh**

As per Article 25 of MS Act, 1958, stamp duty is leviable on true market value of property, which is the subject matter of Conveyance. As per the Section 2 (na) of MS Act, “market value” in relation to any property which is the subject matter of an instrument means the price which such property would have fetched if sold in open market on the date of execution of such instrument or the consideration stated in the instrument, whichever is higher. True market value is determined by considering the rates prescribed in the ASR.

**3.5.5.1** Scrutiny of instruments in Office of the Joint Sub Registrar-IV Bhayandar, District Thane, revealed (March 2015) that a Deed of Conveyance was executed (December 2013) between the Owner and Purchaser for land admeasuring 4,444.75 sqm bearing Survey No. 82 at village Navghar within the limits of Mira-Bhayandar Municipal Corporation for the consideration of ₹ 2.79 crore. The Department determined the market value of the land at ₹ 2.78 crore and levied stamp duty of ₹ 16.74 lakh.

It was observed that as per ASR-2013, rate of ₹ 20,300 per sqm was applicable to the property and accordingly the market value worked out to ₹ 7.81<sup>17</sup> crore involving stamp duty of ₹ 46.89 lakh. Thus, incorrect application of rate of the land resulted in short levy of stamp duty of ₹ 30.15 lakh.

After this was pointed out (March 2015 and June 2016), the IGR, Pune stated (July 2016) that the action for recovery of short levy of stamp duty had been initiated under Section 32 (A) of MS Act.

**3.5.5.2** As per Instruction No. 17 of Annual Statement of Rates (ASR), various slabs on the basis of areas to determine the market value of the bulk land are prescribed. If two or more pieces of land are consolidated together, the bulk land benefit (slab rate) should not be given on consolidated area which means valuation of each piece of land should be done separately.

Scrutiny of instruments in Office of Joint Sub Registrar-I, Haveli, Pune (March 2012), audit noticed that Sale Deed was executed (December 2010) between Owner and Purchaser for sale of property consisting of 16<sup>18</sup> pieces of

<sup>17</sup> Market Value as per instruction 16 (B) of ASR-2013

Market value of land 294.75 sqm of S No 82/hissa-4, 294.75 sqm X ₹ 20,300 X 100% = ₹ 59,83,425...(A)

Market value of land 4,150 sqm of S No 82/hissa-6, 500 sqm X ₹ 20,300 X 100% = ₹ 1,01,50,000/-

1,500 sqm X ₹ 20,300 X 90% = ₹ 2,74,05,000/-

2,000 sqm X ₹ 20,300 X 80% = ₹ 3,24,80,000/-

150 sqm X ₹ 20,300 X 70% = ₹ 21,31,500/-

Total = ₹ 7,21,66,500...(B)

Total market value = ₹ 7,81,49,925/- (₹ 59,83,425 + ₹ 7,21,66,500) say ₹ 7,81,50,000/-.

<sup>18</sup> 16 pieces of land at survey numbers 331/1, 331/2, 331/4, 331/5, 331/6, 331/8, 331/9, 331/3, 331/7, 336/1, 336/5, 336/2, 336/6, 337/2, 337/1 and 338/2 of Mouza Bawhan (Budruk), Tahsil Mawal, District Pune.

land (Total land 31,640 sqm) as a single piece of land. Department applied the rate applicable to bulk land for a consideration of ₹ 8.21 crore and levied stamp duty of ₹ 32.84 lakh on it. As per instruction no. 17 of ASR the market value of the land should have been calculated separately for each piece of land which worked out to ₹ 11.96 crore involving stamp duty of ₹ 47.87 lakh. Thus, there was a short levy of stamp duty of ₹ 15.03 lakh (₹ 47.87 lakh - ₹ 32.84 lakh).

After this was pointed out (March 2012 and May 2016), the IGR, Pune stated (August 2016) that the action for recovery of short levy of stamp duty had been initiated under Section 32 (A) of MS Act.

**3.5.5.3** Scrutiny of instruments in Office of Joint Sub Registrar-IX, Haveli, Pune, revealed (March 2011) that a Sale Deed was executed (June 2009) between the 'Owner', 'Subsequent Owner' and 'Purchaser' for the property. The property consists of a plot admeasuring 841.40 sqm together with two new buildings admeasuring 1,116.17 sqm and old structure admeasuring 349.67 sqm in Survey No. 212 Pune. The Department worked out market value of the property at ₹ 1.41 crore for which calculation was not available and levied stamp duty at the rate of five *per cent* of ₹ 7.02 lakh.

As per the recital of the instrument, the new buildings were used for commercial as well as residential purpose. Hence, total market value of the property should have been worked out as per the use of the property for commercial as well as residential purpose. The total market value of the property as per ASR was worked out at ₹ 3.96<sup>19</sup> crore on which stamp duty of ₹ 19.80 lakh at the rate of five *per cent* was leviable. This resulted in short levy of stamp duty of ₹ 12.77 lakh.

After this was pointed out (March 2011 and June 2016), the IGR, Pune stated (July 2016) that the action for recovery of short levy of stamp duty has been initiated under Section 32 (A) of MS Act.

All the above observations were brought to the notice of Government (June 2016). Reply thereto was awaited (February 2017).

### **3.5.6 Incorrect exemption in stamp duty**

#### **Incorrect grant of exemption on Lease Deed by the Department, resulted in non-levy of stamp duty of ₹ 21.05 lakh**

As per Government Notification, Revenue Department No. STP. 1364 dated 29 October 1954, stamp duty is exempted for certain instruments (Deeds of Settlements, Gift Deeds and Trust Deeds) executed for any educational purpose by or in favor of any Educational Institutions recognized by State Government. Further, as per Article 36 (iv) of MS Act, 1958, on Lease Deed, stamp duty is leviable on a conveyance under clause (a), (b), (c), or (d) as the

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<sup>19</sup> **Wing A** : Commercial area = 746.93 sqm X ₹ 38,000 = ₹ 2,83,83,340/-... (i)  
**Wing B** : Commercial area (at ground floor) = 73.31 sqm X ₹ 38,000 = ₹ 27,85,780/- (ii)  
Residential area (I, II and III floor) = 295.60 X ₹ 24,200 = ₹ 71,53,520/- (iii)  
**Total area of old Building** = 349.54 sqm X ₹ 24,200 X 15% = ₹ 12,68,830/- (iv)  
**Total market value** = ₹ 3,95,91,470/- (₹ 2,83,83,340 + ₹ 27,85,780 + ₹ 71,53,520 + ₹ 12,68,830).



case may be, of Article 25, on 90 *per cent* of the market value of the property, where such lease purports to be for a period exceeding twenty-nine years.

Scrutiny of instruments in Office of the Joint Sub Registrar-III, Haveli, Pune, revealed (January 2015) that a Lease Deed was executed in July 2013 between Lessor and Lessee for a period of thirty years. The Department granted exemption of stamp duty in terms of notification *ibid*.

As the exemption of stamp duty under the notification stated above was not available for the Lease Deed, the exemption given by the Department was incorrect. As per ASR 2013 the market value of the property worked out to ₹ 4.21 crore involving stamp duty of ₹ 21.05 lakh. This resulted in non-levy of stamp duty of ₹ 21.05 lakh.

After this was pointed out (January 2015 and May 2016), the IGR, Pune stated (July 2016) that the action for recovery of stamp duty has been initiated under Section 32 (A) of MS Act.

This was brought to the notice of Government (June 2016). Reply thereto was awaited (February 2017).

### **3.5.7 Short levy of stamp duty due to non-consideration of renewal clause as part of Lease Deed for calculation of market value**

**Department did not consider the renewal clause as part of 'Lease Deed' for calculation of market value resulted in short levy of stamp duty of ₹ 10.27 lakh**

According to Article 36 (iii) of the MS Act 1958, stamp duty leviable on Lease Deed was on 25 *per cent* of the market value of the property if period of lease is up to 10 years and on 50 *per cent* of the market value of the property if period of lease is exceeding 10 years but not exceeding 29 years, with a renewal clause contingent or otherwise. Further, as per Explanation-II under Article 36, the renewal, if specifically mentioned, shall be treated as part of present lease.

Scrutiny of records in Office of the Joint Sub Registrar Thane-1, revealed (February 2015) that a lease deed was executed (December 2012) between the Lessor and the Lessee for the property of built-up area of 11,958 sqft. The said lease was from 1<sup>st</sup> January 2010 for period of 10 years. The Department worked out the market value of the property at ₹ 6.39 crore and levied stamp duty of ₹ 7.98 lakh at the rate of five *per cent* on 25 *per cent* of market value by considering the period of lease as 10 years. The details of the calculation of market value were not found on the record. As per the ASR 2012 market value of the property was worked out to ₹ 7.30 crore.

The recital of the instrument revealed that the lessee was given option of renewal for a further period of 10 years after 31<sup>st</sup> December 2019 on mutually acceptable terms and conditions. Thus, by considering the further lease renewal period as part of lease, the stamp duty of ₹ 18.25 lakh at the rate of five *per cent* of 50 *per cent* of the market value (₹ 7.30 crore) should have been levied. This has resulted in short levy of stamp duty of ₹ 10.27 lakh.

After this was pointed out (February 2015 and June 2016), the IGR, Pune stated (July 2016) that the action for recovery of short levy of stamp duty has been initiated under Section 32 (A) of MS Act.

This was brought to the notice of Government (June 2016). Reply thereto was awaited (February 2017).

**3.5.8 Short levy of stamp duty due to misclassification of instrument**

**Misclassification of instrument of Release Deed resulted in short levy of stamp duty amounting to ₹ 10.57 lakh**

Article 52 (a) of Schedule-I of MS Act, 1958 provides that if the Release Deed is in respect of ancestral property or part thereof and is executed by or in favour of blood relations of the renouncer or the legal heirs of the blood relations then stamp duty of ₹ 200/- is levied. Further, Article 52 (b) provides that in any other case stamp duty is levied as per Article 25 of MS Act.

Scrutiny of instruments in Office of the Joint Sub Registrar-III, Vasai, Thane, revealed (March 2013) that a Release Deed was executed in May 2009 for a non-agricultural land admeasuring 9,960 sqm situated at Mouza Bolinj, Taluka Vasai, District Thane. The instrument was classified under Article 52 (a) and stamp duty of ₹ 200 was recovered at the time of registration.

From the recital of the instrument it was observed that the releaser had purchased the property and was the sole owner of the property. Thus, the property in question was not ancestral. Therefore, stamp duty of ₹ 10.57 lakh at the rate of six *per cent* should have been levied under Article 52 (b) on market value of ₹ 1.76 crore. This had resulted in short levy of stamp duty of ₹ 10.57 lakh.

After this was pointed out (March 2013 and May 2016), the IGR, Pune stated (July 2016) that the action for recovery of short levy of stamp duty had been initiated under Section 32 (A) of MS Act.

This was brought to the notice of Government (June 2016). Reply thereto was awaited (February 2017).

## CHAPTER IV

### LAND REVENUE

#### 4.1 Tax Administration

The administration of Land Revenue Department vests with the Principal Secretary, Revenue Department. For the purpose of administration, the State has been divided into six divisions and each division is headed by the Divisional Commissioner who is assisted by District Collectors. There are 36 District Collectors, 121 revenue Sub Divisions, 358 Talukas headed by the Tahsildar. The Revenue Inspector and Village Officers (Talathi) are responsible at the grass root level for collecting the land revenue and dues recoverable as arrears of land revenue.

#### 4.2 Result of audit

In 2015-16, test check of the records of 109 units of the Land Revenue, showed Non levy/short levy of Occupancy Price, Lease Rent, Unearned Income, Non levy of Non-Agriculture Assessment etc. and other irregularities amounting to ₹ 201.16 crore in 203 observations, which fall under the categories given below in **Table 4.2**.

**Table 4.2**

(₹ in crore)			
Sl. No.	Category	No. of observations	Amount
1	Audit of "Utilisation of Government land allotted for Educational purpose"	1	1.00
2	Non levy/short levy of measurement fees, sanad fees, license fee etc.	9	0.94
3	Non levy/short levy of fine, non-auction/short recovery of surface rent on account of sand ghats, royalty etc.	21	3.64
4	Non levy/short levy/incorrect levy of Non-Agriculture Assessment (NAA), ZP/VP cess and conversion tax.	63	5.80
5	Non levy/short levy of occupancy price, lease rent, unearned income etc.	60	67.43
6	Others	49	122.35
<b>Total</b>		<b>203</b>	<b>201.16</b>

In response to our observations made in the local audit reports during the year 2015-16 as well as during earlier years, the Department accepted and recovered under assessments/other deficiencies involving ₹ 19.57 crore in 189 observations, out of which 16 observations involving ₹ 77.18 lakh were pointed out during 2015-16 and the rest during earlier years.

This Chapter contains four paragraphs including a paragraph on "Utilisation of Government land allotted for Educational purpose"

### 4.3 Audit of “Utilisation of Government land allotted for Educational purpose”

#### Introduction

Maharashtra Land Revenue (MLR) Code, 1966, empowers the Government to allot any land vested in it for educational purpose on occupancy basis or on lease basis subject to the conditions mentioned in the allotment order or in Government Resolutions issued from time to time. It can also be allotted free of occupancy price and free of revenue. The Government land can also be leased out for playground of schools and colleges for a period of 15 years, on payment of lease rent at the prescribed rate.

Audit has test checked 114<sup>1</sup> cases of land allotted for educational purpose in five<sup>2</sup> districts. The findings noticed as a result of audit are discussed in the succeeding paragraphs.

#### 4.3.1 Short levy of lease rent

As per Government Resolution (GR) (June 1992) lease rent should be levied at the prescribed rate on 50 *per cent* of market value of the land as on 1<sup>st</sup> January prior to five years from the date of allotment/renewal of lease order. Further, the prescribed rate of lease rent as per GR (May 1984) is eight *per cent*.

Audit observed that land admeasuring 7,900 square meters (sqm) was granted on lease in September 1991 for a period of 15 years for playground. The annual lease rent of ₹ 506 was fixed on the basis of market value<sup>3</sup>. The lease expired in September 2006 and the Government in their order (July 2014) extended the lease by another 30 years. Government also instructed that the lease rent should be recovered as prescribed in GR of June 1992 from the date of expiry of lease.

As per the GR, the annual lease rent worked out to ₹ 5.93 lakh<sup>4</sup>, thus, lease rent for 10 years from 2006-07 to 2015-16 aggregated to ₹ 59.34 lakh. However, the Department incorrectly recovered ₹ 30 for 30 years at the rate of ₹ one per year. This resulted in short levy of lease rent of ₹ 59.34 lakh. Besides, if the mistake is not rectified, there will also be short recovery on account of the incorrect levy of lease rent in the ensuing years.

After this was pointed out the Department issued notice to the lessee. Further progress in this case has not been reported.

<sup>1</sup> Audit called for 741 cases of land allotted for educational purpose in five districts of which 114 cases were submitted to audit.

<sup>2</sup> Kolhapur, Nashik, Raigad, Solapur and Thane.

<sup>3</sup> Lease rent at the rate of eight *per cent* on 10 *per cent* of market value as on 1976 in terms of GR dated 9 May 1984.

<sup>4</sup> Area of land 7,900, Rate of land ₹ 2,420 per sqm as per ASR 2009 (i.e. five years prior to the date of allotment in 2014) Market Value = [(6,000 X ₹ 2,420 X 80%) + (1,900 X ₹ 2,420 X 70%) = ₹ 1,48,34,600 and 50% of the MV = ₹ 74,17,300.  
Lease Rent per annum = 8% of ₹ 74,17,300 = ₹ 5,93,384.

### **4.3.2 Short levy of unearned income**

Government Resolution of September 1983 issued by R&FD stipulates that permission to sell Government land shall be granted to the land holder holding land as Class-II occupant, subject to payment of 50 *per cent* of market value as net unearned<sup>5</sup> income.

GoM permitted (June 2008) to transfer the land admeasuring 16,000 sqm. It was allotted (July 1995) as revenue free to an educational trust Pawai, Mumbai (Trust) Raigad for Ashram school. The trust transferred the land to another society. R&FD directed<sup>6</sup> the Collector to recover the unearned income at the rate of 10 *per cent* instead of 50 *per cent* of the market value as net unearned income. As per the record, the net unearned income was ₹ 32 lakh. But the Department recovered only ₹ 6.40 lakh. This resulted in short recovery of unearned income of ₹ 25.60<sup>7</sup> lakh.

After this was pointed out, Collector, Raigad accepted (September 2016) the short levy and stated that the recovery would be made.

### **4.3.3 Non-execution of lease agreements and conveyance deeds**

Rule 17 (1) (d) of Registration Act 1908 provides for compulsory registration of lease of immovable property from year to year, or for any term exceeding one year. Further, R&FD vide GR dated 31 October 2006 stipulated that in all cases of allotment of Government land to institutions, local bodies, individuals on occupancy rights or on lease, an agreement shall be executed with the allottee and shall be registered under Maharashtra Stamp Act-1958 by levying proper stamp duty and registration fee so that Government could earn revenue. It was also intimated that the possession of land shall not be given unless the agreement was executed and registered.

Audit found (February-May 2016) that in eight cases in four Collectrates (Kolhapur, Raigad, Solapur and Thane); land was allotted to various educational societies/institutes between May 2007 and July 2011. The land was allotted on occupancy basis and lease basis. This should have been registered as per Article 25 and 36 respectively of the Maharashtra Stamp Act 1958. However, though the possession was given, audit noticed that no lease agreement was executed between the concerned parties. The allotment of Government land on lease without agreement was not inconsonance with the provisions of the Act. It also resulted in non-realisation of revenue of ₹ 14.76 lakh in the shape of stamp duty and registration fee.

After this was pointed out, the Department stated (April-May 2016) that steps would be taken for registration of the document as stated by the Audit.

<sup>5</sup> Unearned income means the difference between current market value or the price realised by way of sale, whichever is higher, and the occupancy price paid at the time of allotment plus cost of improvement.

<sup>6</sup> As, in case where Government land is allotted on concessional rate for educational purpose and subsequently the land is sold, there is no specific GR/instruction available regarding the rate at which unearned income is to be levied R&FD directed to recover it @ 10 *per cent*.

<sup>7</sup> Cost of the land= ₹ 64 lakh; unearned income = ₹ 32 lakh. Amount recovered = ₹ 6.40 lakh.

### 4.3.4 Non-resumption of government land

#### 4.3.4.1 Non-utilisation of land

Rule 8 of the Maharashtra Land Revenue (Disposal of Government Lands) Rules, 1971, stipulates that the land shall be resumed by the Government for breach of condition or if the land was not used for the specific purpose for which it was granted by such date as the Collector may fix.

Scrutiny of the records<sup>8</sup> in four districts revealed that in 15 cases, the land admeasuring 2,13,023 sqm was allotted to the education societies. These societies had not utilized the land (June 2016). The utilisation period in all these cases stipulated by the Collector had expired. A few instances are shown in **Table 4.3.4.1**.

**Table 4.3.4.1**

Sl. No.	Village & District	Purpose	Area	Date of allotment	Date by which construction was to be completed	Present Status mentioned in the Department records
1	Bhudargad Kolhapur	Education	28,000 sqm	28 August 2008	27 August 2010	Land is barren and unused
2	Rajaram Nagar, Dindori, Nashik	Education and Playground	12,000 sqm	16 January 2006	15 January 2008	The construction was not completed
3	Bokardare Niphad, Nashik	Education	60,000 sqm	7 September 2009	6 September 2012	Land is barren and unused
4	Nashik (Main town)	Education	4,200 sqm	4 January 2010	3 January 2013	Land is barren and unused
5	Moriwali, Thane	Education	9,840 sqm	17 December 2002	16 December 2005	Land is barren and unused

**Source : Information furnished by the Department**

In addition to above, in one case of Nashik district Government land admeasuring 4,000 sqm was allotted for education purpose in October 1933. The land was allotted on occupancy basis. As such, the title of the land remained with the Government. As per the report submitted by the Talathi<sup>9</sup> to the Tahsildar Nashik, the land was barren and no construction was found on the land. This indicated that the land was not being used for the purpose for which it was granted. The allotment should have been cancelled and land should have been resumed to the Government.

<sup>8</sup> Panchanama indicating the present status report prepared by the Talathi on the spot were also checked.

<sup>9</sup> Revenue Inspector.

After this was pointed out, three Collectors (Kolhapur, Solapur and Thane) replied that matter would be investigated through concerned Tahsildar. Reply from the Collector, Nashik is still awaited (February 2017).

**4.3.4.2 Violation of condition in allotment of land**

Revenue and Forest Department (R&FD) in their circular dated 8 February 1983 had laid down a procedure for allotment of land. It prescribed that the Collector of the concerned district should scrutinize the proposal received for grant of land for educational purposes. It was further impressed upon that wherever necessary, the proposals should be sent through police intelligence.

Audit found that Government land admeasuring 394.60 sqm in Thane district was allotted (February 2009) by R&FD to Maharashtra Koli Samaj (Society) for its office as well as for educational purpose. The occupancy price of the land amounting to ₹ 51.30 lakh was recovered (May 2010) from the Society. Scrutiny of the case revealed that the Collector, Thane had forwarded the case without fulfilling the conditions laid down in the circular. These are mentioned in **Table 4.3.4.2**.

**Table 4.3.4.2**

Sl. No.	Conditions for allotment of land	Violation of condition in allotment of land
1	As per R&FD circular of February 1983, before allotting the land for education purpose, Collector should scrutinize whether the applicant institute seeking Government land for education purpose had obtained permission from Education Department for starting the school.	Government land admeasuring 394.6 sqm was allotted to Maharashtra Koli Samaj for its office as well as education purpose. Audit noticed that the applicant had not obtained permission from Education Department.
2	R&FD circular of February 1983 also provides that the institute should have financial resources to meet at least 25 per cent of estimated cost of construction.	As per the statement furnished by the applicant the total estimated cost of the project was ₹ 25.03 lakh. The applicant should have financial strength of ₹ 6.26 lakh. As per the financial statement submitted by the applicant it had only ₹ 1.05 lakh (4 per cent of cost instead of 25 per cent)
3	As per the circular of 1983, the applicant should submit the building plan in the prescribed format along with the application.	The applicant had not submitted the building plan either at the time of application or afterwards.
4	As per the circular of 1983, the applicant should submit information in prescribed format which include information on antecedents / bonafide of the institutions, their promoters/office bearers which needs to be checked by the Collector before forwarding the proposal of allotment of land to the Government.	The institution had not submitted the information. The Collector had asked the Police Department to intimate the position of legal cases, if any, pending against the applicant. Police Department intimated that the President of the Society was involved in 36 offences in eight cases registered with them.

Despite the above deficiencies/shortcomings in the proposal, the Collector, Thane recommended to the Government for grant of land to the applicant. The land was granted in February 2009. The educational institution was required to complete the construction within two years from the date of allotment of land. As per the report submitted (December 2016) by the Talathi to the Tahsildar,

Thane, the institution has not completed the construction of building. In view of the above, the land should have been resumed to the Government.

After this was pointed out (April 2016) Collector, Thane stated (October 2016) that the matter would be investigated.

#### **4.3.4.3 Non-renewal of leases for educational purpose**

As per the terms and conditions of orders passed by the Collectors, the allotment of land for playground purpose was for a period of 15 years. It was required to be renewed before the expiry of the lease period by the Government.

Audit noticed that in 42 cases in four<sup>10</sup> districts, the lease period of land allotted for playground to educational institutes had expired between June 1966 and August 2016. The lease of the lands was required to be renewed or the land was required to be resumed to the Government. The lessees neither applied for renewals nor did the Department take any action for resumption of the land. A few instances are given below:

- Collector, Solapur allotted (November 1986) land admeasuring 9,146.10 sqm for playground purpose on lease for a period of 15 years. The Lease expired in November 2001. Paragraph 15 of the terms and conditions of the allotment order stipulated that in case of non-renewal of lease, the Collector shall resume the land. However, the Collector has not resumed the land though more than 15 years have lapsed from the date of expiry of lease.
- Collector, Solapur allotted (June 1988) land admeasuring 6,300 sqm for playground purpose on lease for a period of 15 years. The Lease expired in June 2003. Paragraph 15 of the terms and conditions of the allotment order stipulated that in case of non-renewal of lease, the Collector shall resume the land. However, the Collector has not resumed the land though more than 13 years have lapsed from the date of expiry of lease.
- Collector, Solapur allotted (April 1997) land admeasuring 18,179 sqm for playground purpose on lease for a period of 15 years. The Lease expired in April 2012. Paragraph 15 of the terms and conditions of the allotment order stipulated that in case of non-renewal of lease, the Collector shall resume the land. However, the Collector has not resumed the land though more than 4 years have lapsed from the date of expiry of lease.
- Collector, Kolhapur allotted (March 1994) land admeasuring 8,000 sqm for playground purpose on lease for a period of 15 years. The Lease expired in March 2009. Paragraph 12 of the terms and conditions of the allotment order stipulated that at the end of the lease tenure the lease shall be deemed to be expired and the land shall be resumed. However, even after lapse of more than 6 years, the Collector has not resumed the land.

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<sup>10</sup> Kolhapur, Nashik, Raigad and Solapur.



- Collector, Nashik allotted (April 1988) land admeasuring 8,000 sqm for playground purpose on lease for a period of 15 years. The Lease expired in March 2003. Paragraph 13 of the terms and conditions of the allotment order stipulated that in case of non-renewal of lease, the Collector shall resume the land. However, the Collector has not resumed the land though more than 13 years has lapsed from the date of expiry of lease.

After this was pointed out (February to May 2016), Collector, Kolhapur and Solapur stated (May-September 2016) that the matter would be investigated from the Tahsildar concerned and necessary action would be taken. Collector, Raigad confirmed (September 2016) that concerned education society had not applied for extension of lease. However, reasons for non-resumptions were not intimated. Reply from Collector, Nasik is still awaited (February 2017).

#### **4.3.4.4 Lack of action for resumption of land**

Rule 8 of the Maharashtra Land Revenue (Disposal of Government Lands) Rules, 1971, stipulates that the land shall be resumed by the Government for breach of conditions mentioned in the allotment order. It also stipulates that if the land is not used for the specific purpose for which it was granted by such date as the Collector may fix, the land shall be resumed.

Land admeasuring 60,700 sqm was allotted (July 1963) to Adarsha Vidya Prasar Sanstha, Kulgaon for educational purpose. Out of the above land, 240 sqm of land was sublet by the Sanstha to a Bank. Hence, Tahsildar, Ambarnath prepared and forwarded (July 2007) the proposal for breach of condition to Sub-Divisional Officer (SDO), Ulhasnagar for necessary action. Thereafter, no action was taken till date either by SDO or by Collector, Thane.

This was pointed out to the Collector, Thane in April 2016, their reply has not been received (February 2017).

#### **4.3.5 Conclusion**

The above facts indicate the allotment of land without lease agreements was not in consonance with provision of the Act. Land was not utilised for the purpose for which it was allotted; though the lease period of land allotted to educational institutes had expired, these leases were neither renewed nor was the land resumed to the Government. The Department may like to take necessary steps to rectify the defects in this regard.

## 4.4 Other Audit Observations

During scrutiny of records of the various land records and land revenue offices, we noticed several cases of non-compliance of the provisions of the Maharashtra Land Revenue Code, 1966 (MLR code), Government notifications/instructions as mentioned in the succeeding paragraphs of this chapter. These are illustrative cases and are based on the test check carried out by Audit. As, such cases are pointed out by Audit repeatedly; there is need on the part of the Government to improve the internal control system so that recurrence of such cases can be avoided.

### 4.4.1 Short levy of occupancy price

#### Application of incorrect slab rates and incorrect rate for valuation of land to calculate occupancy price resulted in short levy of ₹ 33.58 lakh

As per Government of Maharashtra (GoM), Revenue & Forest Department (R&FD) resolution (May 2006), allotment of Government land on occupancy or on lease basis and in all the cases where valuation of Government land is to be done, valuation of such land should be determined as per the rates prescribed in Annual Statement of Rates (ASR) as on date on which order is passed for allotment of Government land or other orders consisting of valuation is passed. Further, Government of Maharashtra, Revenue & Forest Department prescribed (April 2008) the specific slabs for valuation of Government land allotted to the various institutions on occupancy price basis. As per instruction 29 of ASR 2013, if Government land situated in rural area is allotted for non-agriculture purpose, market value shall be determined at 50 per cent of non-agriculture rates prescribed in the ASR for that zone.

**4.4.1.1** Scrutiny of records in Office of the District Collector, Beed revealed (May 2014) that Collector, Beed sanctioned (July 2013) allotment of Government land admeasuring 49,500 sqm bearing Gut No. 35/1 in mouza Gawari, Tahsil Beed, with advance possession to Maharashtra State Electricity Distribution Company Limited, Latur. The District Collector, Beed recovered the occupancy price amounting to ₹ 40.25 lakh as per the calculation conveyed by Joint District Registrar (Class-I), Beed.

On verification of occupancy price worked out by Joint District Registrar (Class-I), Beed with ASR 2013 it was noticed that he had applied incorrect slab<sup>11</sup> rate. As per instruction 29 of ASR 2013 and the provisions of GR quoted *ibid*, the occupancy price worked out to ₹ 55.83<sup>12</sup> lakh. Thus,

<sup>11</sup> Slab rate of 100, 80, 60 and 40 applied in place of rates 100, 90, 80 and 70.

<sup>12</sup> Area of land 4.95 Hectare (i.e. 49,500 sqm), Gut No 35/1, Zone Number 2, Rate of Open Land ₹ 350/- sqm. As per instruction 29 of ASR-2013, rate of open land = ₹ 175/- sqm (50% of ₹ 350)

2,000 sqm X 175 X 100% = ₹ 3,50,000/-

2,000 sqm X 175 X 90% = ₹ 3,15,000/-

2,000 sqm X 175 X 80% = ₹ 2,80,000/-

4,000 sqm X 175 X 70% = ₹ 4,90,000/-

39,500 sqm X 175 X 60% = ₹ 41,47,500/-

**Total = ₹ 55,82,500/-.**

application of incorrect slab rates resulted in short levy of occupancy price of ₹ 15.58 lakh.

After this being pointed out (May 2014), the Collector, Beed stated that difference amount would be recovered.

**4.4.1.2** Scrutiny of records in Office of the Tahsildar, Ambegaon revealed (January 2015) that Government of Maharashtra, Revenue & Forest Department, Mumbai sanctioned (February 2013) allotment of Government land with advance possession to Maharashtra State Road Transport Corporation, Pune admeasuring two hectare (20,000 sqm) bearing gut number 28/1/A situated at mouza Tambademala, Taluka Ambegaon, District Pune. The Department recovered (August 2013) the occupancy price amounting to ₹ 17.50 lakh.

Further, it was observed that while calculating the occupancy price, the Department reduced the rate of open land to ₹ 250 per sqm (i.e. 50 per cent of ₹ 500) and calculated the market value at ₹ 35 lakh with arithmetical mistake and again reduced it by 50 per cent and worked out occupancy price as ₹ 17.50 lakh. As per instruction 29 of ASR 2013 and applying the provisions of GR quoted ibid, the occupancy price should have been worked out at ₹ 35.50<sup>13</sup> lakh. Thus, incorrect calculation<sup>14</sup> had resulted in short levy of occupancy price of ₹ 18 lakh (₹ 35.50 lakh - ₹ 17.50 lakh).

After this being pointed out (January 2015 and December 2015), the Tahsildar, Ambegaon stated that report would be furnished after consultation with Divisional Commissioner, Pune Division and Collector, Pune (January 2015).

The above matter was brought to the notice of Government in June 2016. Their reply was awaited (February 2017).

#### **4.4.2 Short recovery of VAT on auction amount from bidders**

##### **Award of right for excavation of sand, without collecting VAT at the rate of 10 per cent at source resulted in short recovery of VAT of ₹ 16.18 lakh**

Government of Maharashtra, Finance Department notified (February 2013) that the District Collector having jurisdiction over the area, for the purpose of Section 31(A) (1) (a) of the Maharashtra Value Added Tax 2002 (MVAT), shall collect with effect from 15 February 2013, from the successful bidders in addition to the amount fixed for the auction of sand, an amount at the rate of 10 per cent of the auction amount from the person or dealer who has been awarded the right for excavation of sand.

Scrutiny of records in the Office of the District Collector, Nandurbar revealed (May 2015) that the Collector, Nandurbar carried out e-auction of sand ghats

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<sup>13</sup> Area of land 2 Hectare (i.e. 20,000 sqm), Gut No 28/1/A, Zone Number 2, Rate of Open Land ₹ 500/- sqm, As per instruction 29 of ASR-2013, rate of open land = ₹ 250/- sqm (50% of ₹ 500).

2,000 sqm X 250 X 100% = ₹ 5,00,000/-, 2,000 sqm X 250 X 90% = ₹ 4,50,000/-  
2,000 sqm X 250 X 80% = ₹ 4,00,000/-, 4,000 sqm X 250 X 70% = ₹ 7,00,000/-  
10,000 sqm X 250 X 60% = ₹ 15,00,000/-, **Total = ₹ 35,50,000/-.**

<sup>14</sup> Reduction of rate of land by 50 % and again reduction of total cost of land by 50%.

between March 2013 and September 2014 and two successful bidders were awarded the right for excavation of sand from designated area. The auction amount of ₹ 323.52 lakh and VAT thereon of ₹ 16.17 lakh was collected from two bidders.

As the VAT at the rate of 10 *per cent* of the auction amount was required to be collected, there was short recovery of VAT amounting to ₹ 16.18 lakh (as against ₹ 32.35 lakh amount of ₹ 16.17 lakh collected) by the District Collector, Nandurbar.

After being pointed out (May 2015) Collector, Nandurbar, accepted to recover balance amount of VAT of ₹ 16.18 lakh.

The matter was brought to the notice of the Government in June 2016. Reply thereto was awaited (February 2017).

#### 4.4.3 Short recovery of un-earned income

##### Non-working of market value as per ASR resulted in short recovery of un-earned income amounting to ₹ 57.69 lakh

As per Government of Maharashtra, Revenue & Forest Department's Resolution (September 1983), the occupant shall pay to Government an amount equal to 50 *per cent* of the net un-earned income i.e. 50 *per cent* of the difference between current market value and the price realized by way of sale whichever is higher. Further, as per circular issued (July 2002) by R&FD, if the Class-II land is converted into Class-I land (Inam/Vatan land) for non agricultural purposes, 50 *per cent* of amount of market value<sup>15</sup> should be recovered on account of nazrana/un-earned income from the applicant.

Scrutiny of records in the Office of the Tahsildar, Karvir revealed (January 2016) that the occupant of the Inam/Vatan land admeasuring area of 3,109 sqm bearing revised survey number 911/C situated at mauza Kasba Bawada, E-ward within the jurisdiction of Kolhapur Municipal Corporation, Kolhapur (KMC) applied (June 2013) for the Transferable Development Rights (TDR<sup>16</sup>) to KMC as the land was coming under the development project of road. The Commissioner, KMC instructed (December 2014) to the Tahsildar, Karvir to recover the amount of nazrana from occupant for conversion of above land. Accordingly, the Tahsildar, Karvir recovered (April 2015) 50 *per cent* nazrana/un-earned income of ₹ 6.04 lakh on the market value of the land of ₹ 12.09 lakh. The detail of working of market value was not found on record.

As per recital of the document executed (June 2013) between the occupant and KMC for transfer of above land, the market value of the land was valued at ₹ 1.27 crore in terms of ASR 2013 as against ₹ 12.09 lakh worked out by the Department. Thus, the nazrana/un-earned income of ₹ 63.74 lakh was to be

<sup>15</sup> Market value as per Section 2 (na) of Maharashtra Stamp Act, 1958, means the price which such property would have fetched if sold in open market on the date of execution of such instrument, or the consideration stated in the instrument, whichever is higher.

<sup>16</sup> In certain circumstances, the development potential of a plot of land may be separated from the land itself and may be made available to the owner of the land in the form of Transferable Development Rights (TDR) which can be loaded on development of a receiving plot.

recoverable instead of ₹ 6.04 lakh. There was a short recovery of nazrana/un-earned income of ₹ 57.69 lakh (₹ 63.74 lakh - ₹ 6.04 lakh).

After being pointed out (January 2016), Tahsildar, Karvir, accepted the observation (January 2016). However, latest on recovery has not been intimated.

The matter was brought to the notice of the Department as well as Government in June 2016. Their reply was awaited (February 2017).

## CHAPTER V

### TAXES ON VEHICLES

#### 5.1 Tax administration

Levy and collection of taxes and other receipts under the Motor Vehicles sector are regulated by the Central Motor Vehicles Act, 1988, the Maharashtra Motor Vehicle Tax Act, 1958, the Maharashtra Motor Vehicles Transportation of Passengers Act, 1958, and the Rules made there under. These Acts and Rules are implemented by the Transport Commissioner under the overall control of the Principal Secretary (Transport) to the Government in Home Department, assisted by an Additional Commissioner, a Joint Commissioner, Deputy Commissioners and Regional and Deputy Transport Officers. The motor vehicles receipts mainly comprise taxes on motor vehicles and taxes on goods and passengers.

#### 5.2 Results of audit

In 2015-16, test check of the records of 28 units relating to Maharashtra Motor Vehicles Tax Act, etc. showed under assessment of tax and other irregularities involving ₹ 11.57 crore in 128 observations, which fall under the following categories shown in **Table 5.2**.

**Table 5.2**

(₹ in crore)			
Sr. No.	Category	Number of observations	Amount
1	Performance Audit on “ <b>Assessment and Collection of Tax on Motor Vehicles and Financial Controls in the Department</b> ”	1	7.45
2	Non/short recovery/levy of tax	81	4.06
3	Miscellaneous	46	0.06
<b>Total</b>		<b>128</b>	<b>11.57</b>

In response to our audit observations pointed out during the year 2015-16 as well as earlier years, the concerned Department accepted underassessment, short levy, etc. and recovered ₹ 62.75 lakh in 95 observations.

This Chapter contains two paragraphs including a Performance Audit on “Assessment and Collection of Tax on Motor Vehicles and Financial Controls in the Department”.

### **5.3 Performance Audit on “Assessment and Collection of Tax on Motor Vehicles and Financial Controls in the Department”**

#### **Highlights**

- Computerised application system for registration of vehicles, i.e. VAHAN in respect of transport vehicles was not implemented in 40 out of 50 offices, whereas in case of non-transport vehicles, it was implemented in 49 offices. Fitness Module and Enforcement Module had not been implemented in any office.

**(Paragraph 5.3.1.1)**

- Local databases of the different Regional Transport Offices (RTOs) were not interlinked, the data between different wings of the same RTO were also not interlinked.

**(Paragraph 5.3.1.2)**

- There was no co-ordination between the Enforcement wing and the Driving license wing within the same RTO offices, resulting in issue of duplicate licenses, against seized driving licenses.

**(Paragraph 5.3.2)**

- In five offices, entries relating to issue of fitness certificates in respect of 35,535 transport vehicles registered during the years 2010-11 and 2011-12 were not found.

**(Paragraph 5.3.3)**

- It was noticed that 92,682 omnibuses were not registered under “transport category”. This was in contravention of the notification of the Government of India. It also resulted in non-realization of minimum revenue on account of fitness fees of ₹ 4.63 crore during the last five years.

**(Paragraph 5.3.4)**

- Registrations of 95,283 non-transport vehicles, registered prior to March 2002, were not renewed. Neither the vehicle owners had applied for renewal nor had the Department taken any action for the same.

**(Paragraph 5.3.5)**

- The Government of Maharashtra had not implemented the High Security Registration Plate Order 2001, notified by the Government of India, despite clarifications/instructions of the Supreme Court/Ministry of Road Transport and Highways in this regard, even after a lapse of 15 years.

**(Paragraph 5.3.6)**

- The Motor Vehicle Department recovered ₹ 199.89 crore on account of Environment Tax during the period 2010-16 but it had neither asked for budgetary provision out of the fund nor had the Government of Maharashtra allocated any amount for the purpose for which the fund was created.

**(Paragraph 5.3.7)**

- The Department had not forwarded 1,52,709 offence cases relating to overloading, violation of traffic norms, incomplete documents, etc., to the court for prosecution of offenders, within the specified period of six months from the date on which the offences were committed resulting in the offenders being let free, besides non-realisation of minimum revenue in the shape of fines aggregating ₹ 1.53 crore.

(Paragraph 5.3.10)

- The Department had not recovered Passenger Tax and Child Nutrition Surcharge of ₹ 388.04 crore and ₹ 22.98 crore respectively up to March 2015 from the stage carriage operators (fleet owners).

(Paragraph 5.3.11.2)

## Introduction

Motor Vehicle Tax (MVT) is one of the major sources of tax revenue receipts of the State. The levy and collection of Motor Vehicle Tax is governed by the Maharashtra Motor Vehicle Tax Act, 1958 (MMVT Act), the Maharashtra Motor Vehicle (Taxation of Passengers) Act, 1958 (MMVT(TP) Act) and Rules made thereunder. Motor vehicle tax in respect of non-transport vehicles is realized in the form of one lump-sum tax as onetime tax, whereas tax from transport vehicles is realized on monthly/quarterly/annual basis at the rates specified under the MMVT Act. Section 3 of the Act empowers the State Government to fix the rate of tax by issue of notifications from time to time. Section 12 of the Act provides for recovery of tax due, interest and penalty, from the owner of the vehicle in the same manner, as arrears of land revenue.

The fees for registration, fitness certificate, permits, licence, appeal and fines for violations are levied and collected under the provisions of Motor Vehicles Act, 1988 (MV Act) and the Central Motor Vehicles Rules, 1989, (CMV Rules) framed thereunder. Section 40 of the MV Act stipulates that a motor vehicle should be registered by the registering authority in whose jurisdiction the owner of the motor vehicle resides or where the motor vehicle is normally kept. Section 66 of the Act lays down that no motor vehicle shall be used as a transport vehicle<sup>1</sup> without a permit issued by transport authorities to use the vehicle in a public place. The vehicle plying should also carry a valid certificate of fitness issued under Section 56 of the Act. The vehicle owner is required to maintain the vehicle in accordance with the requirements of the Act and the rules made thereunder.

In Maharashtra, the registration, permit, taxes, fitness, enforcement of the vehicles is covered by the software called “VAHAN” and Driving Licenses, Conductors License are issued on smart cards with the help of software called “SARATHI”. Both these software are developed by National Informatics Centre, New Delhi.

<sup>1</sup> “Transport Vehicle” means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle. All vehicles other than transport vehicles are classified as non-transport vehicles.



### **Organisational set up**

The Additional Chief Secretary, Home Department (HD) is the administrative authority at the Government level and is responsible for the administration of the Acts. The Transport Commissioner (TC), Mumbai heads the Maharashtra Motor Vehicle Department and is assisted by an Additional Transport Commissioner, a Joint Transport Commissioner and six Deputy Transport Commissioners. The State of Maharashtra is divided into 15 regions each under control of the Regional Transport Officer (RTO) and 35 sub offices under control of Deputy Regional Transport Officers (DRTO). Besides, there are 22 border check posts (BCP) in the State for collection of revenue and verification of documents from the vehicles entering into the State.

### **Audit Objectives**

The Performance Audit was taken up with a view to ascertain whether:

- the statutory provisions of the enabling Acts and Rules were being enforced effectively for registration and issue of driving licenses/commercial permits;
- the assessment, levy and collection of motor vehicle taxes and fees was in accordance with the provisions of the Act; and,
- An effective monitoring and internal control mechanism was in place.

### **Audit Criteria**

Audit criteria adopted for ensuring the above audit objectives were:

- The Motor Vehicle Act, 1988
- The Central Motor Vehicle Rules ,1989
- The Maharashtra Motor Vehicle Rules, 1989
- The Maharashtra Motor Vehicles Tax Act, 1958
- The Bombay Motor Vehicles Tax Rules, 1959
- The Maharashtra Motor Vehicles (Taxation of Passengers) Act, 1958
- The Bombay Motor Vehicles (Taxation of Passengers) Rules, 1958

### **Audit scope and methodology**

Performance Audit was conducted between April 2016 and November 2016 for the period 2010-11 to 2015-16 wherein records of the 21<sup>2</sup> units, selected out of 50 units in the State on the basis of stratified random sampling, were test checked. The selection of units was based on maximum revenue realization and the geographical location of each unit in such a way that the sample represented the entire State.

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<sup>2</sup> RTOs- Aurangabad, Dhule, Kolhapur, Mumbai (C), Mumbai (E), Mumbai (W), Nashik, Nanded, Panvel, Pune and Thane; DRTOs - Beed, Hingoli, Jalgaon, Kalyan, Malegaon, Osmanabad, Pimpri-Chinchwad, Solapur, Vasai and Vashi.

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An entry conference was conducted (May 2016) with the Additional Chief Secretary, Motor Vehicle Department, Mantralaya, Mumbai wherein the scope of Audit, audit objectives and criteria to be adopted was discussed for conduct of the Performance Audit.

The draft Audit Report was forwarded to the Department and to the Government on 2 September 2016. An Exit Conference for discussing the audit findings was held with the Additional Chief Secretary (Transport and Ports), Home Department on 3 November 2016. The replies received during the conference or at other points of time have been incorporated in the relevant paragraphs.

**Reasons for taking up the Performance Audit:** The topic was selected for overall scrutiny of the functioning of the Motor Vehicles Department in key areas viz. registration of vehicles, issue of driving licences, issue of vehicle fitness certificates, etc., procedure for assessment and recovery of taxes and fees under various Acts/Rules governing the Department and procedure of internal control in the Department as we had noticed a number of system and compliance deficiencies during course of transaction audit.

### Acknowledgement

We acknowledge the co-operation of the Transport Department and subordinate offices for their assistance rendered during the course of Performance Audit.

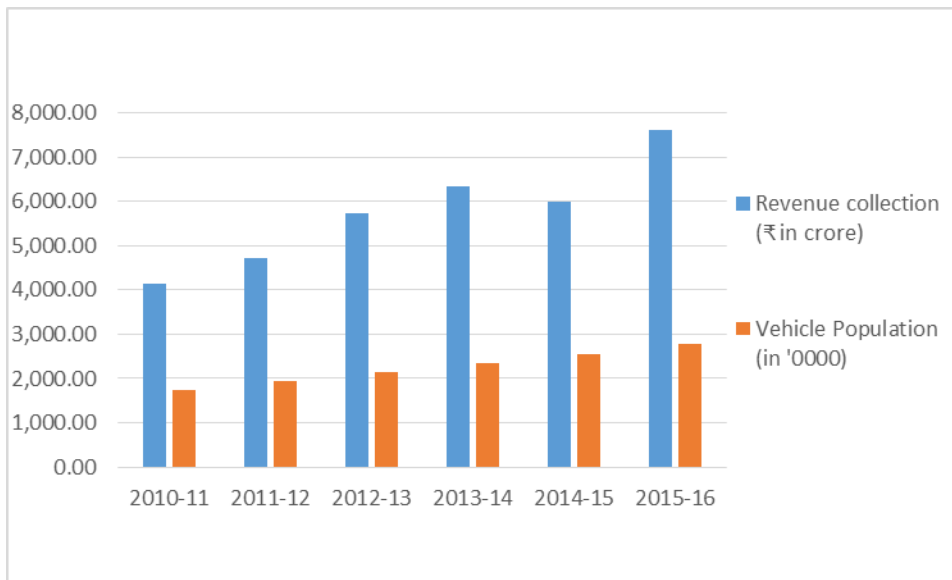
### Trend of revenue

The details of revenue collected from taxes including taxes on vehicles, taxes on goods and passenger, various fees and penalty and the number of registered vehicles during the period from 2010-11 to 2015-16 are given below:

(₹ in crore)				
Year	Revenue collection	Increase in Revenue (%)	Vehicle Population	Increase in Vehicle Population (%)
2010-11	4,132.78	18.16	1,74,34,099	10.56
2011-12	4,711.67	12.3	1,94,32,361	11.46
2012-13	5,718.16	21.4	2,14,88,152	10.58
2013-14	6,336.60	10.8	2,33,93,776	8.87
2014-15	5,991.53	(-)5.44	2,55,92,175	9.40
2015-16	7,599.32	26.83	2,78,69,866	8.89

Source: Finance Accounts

Source: MVD Statistics



The receipts from taxes kept increasing for the period from 2010-11 to 2015-16 except during the year 2014-15. The decrease during the year was mainly on account of decrease in the collection of tax under the head “Tax on entry of goods into Local Area”.

**Audit Findings**

**5.3.1 Computerisation**

The Motor Vehicle Department started its computerisation since December 2006 in phased manner in the State. VAHAN and SARATHI developed by National Informatics Centre, New Delhi cover various activities performed by the Motor Vehicle Department. There are five modules viz. vehicle registration, permit, taxes, fitness, enforcement in VAHAN and two modules viz. Driving License and Conductors License in SARATHI. These are briefly discussed in the following paragraphs.

**5.3.1.1 VAHAN and SARATHI**

The functions and status of implementation of various modules are mentioned in the **Table 5.3.1**.

Table 5.3.1

Name of the Module	Main functions of the Module	Number of offices in which modules are in operation	
		Transport	Non Transport
Registration	Registration of new vehicles, renewal of registration, re-registration of vehicles on account of transfer from other States, transfer of ownership, change of address etc.	10	49
Permit	Issue and renewal of various permits viz. national, inter-state, contract carriage, stage carriage, private service vehicle, goods carriage for transport vehicles.	10	NA
Taxation	Assessment and payment of motor vehicle tax for transport and non-transport vehicles.	10	49
Fitness	Issue and renewal of fitness certificates to transport and non-transport vehicles.	Not operational (in three offices, the information was available in standalone form)	
Enforcement	Issue of challan and levy of penalty for offences committed by the owners of the vehicles, confiscation of DL, RC, permits etc.	Not operational	

**Source: Information furnished by the Department**

Thus, it would be seen from the above that in respect of transport vehicles, VAHAN was not implemented at all in 40 offices as against non-transport vehicles, where it was implemented in 49 offices. The Fitness Module was implemented in only three offices, whereas the enforcement module had not been implemented in any office.

After this being pointed out, the Department stated that NIC was developing a new type of VAHAN called VAHAN 4.0 as such computerisation of transport vehicles in 40 offices was not done.

**Implementation of SARATHI:** The SARATHI consists of two modules viz. Driving License and Conductors License. It has been implemented in 49 out of 50 offices.

The above facts indicate that VAHAN and SARATHI had not been fully implemented despite a lapse of 10 years and a complete database was still not created.

In the Exit Conference, the Transport Commissioner accepted the above facts and stated that unified database accessible through remote devices would only solve these problems i.e. VAHAN 4.0.

### **5.3.1.2 Linking of Database**

One of the important objectives of the VAHAN/SARATHI was interlinking the databases of the all offices of the transport Department in the State.

We noticed that the local database of the different RTOs/DRTOs was not interlinked. Thus, the licenses issued by one RTO could not be traced by another RTO. Similarly, information regarding offences committed by a vehicle in one RTO could not be shared by other RTOs/DRTOs. Even the data between different wings of the same RTO office was not interlinked. The non-sharing of information has resulted in issue of duplicate licences which has been discussed in Paragraph 5.3.2.

Absence of the interlinking has resulted in a number of irregularities. A few are discussed in succeeding paragraphs.

### **5.3.2 Absence of co-ordination between different wings resulting in issuing of duplicate driving licenses**

Section 206 of the Motor Vehicles Act, 1988, read with notification dated 3 December 2011 issued by the GoM, empowers the officers of the Transport Department to impound the documents of any vehicles committing an offence. The documents include driving licenses issued by the Department.

Under Rule 11 of Maharashtra Motor Vehicle Rule, 1989 wherein at any time a driving license (DL) is lost by the holder or is destroyed or mutilated the holder shall intimate the fact in writing to the licensing authority in whose area he has his place of residence and under the Rule 13 duplicate driving licenses may be issued which should be clearly stamped “Duplicate” in red. The Department issues duplicate driving licenses on the basis of NOC issued by the Police Department.

We test checked 223 duplicate driving licenses in seven<sup>3</sup> offices and found that out of these, 92 licenses (in original) were impounded by the enforcement wing of the same RTO as shown in **Table 5.3.2**.

**Table 5.3.2**

<b>Sr. No.</b>	<b>Name of Unit</b>	<b>Cases Checked</b>	<b>Impounded License</b>
1	RTO, Aurangabad	59	5
2	RTO, Mumbai (E)	37	14
3	RTO, Mumbai (W)	23	10
4	RTO, Nanded	35	9
5	DRTO, Osmanabad	25	20
6	DRTO, Solapur	30	21
7	DRTO, Vashi	14	13
<b>Total</b>		<b>223</b>	<b>92</b>

<sup>3</sup> The cases were selected by random sampling in these seven RTOs. In other 14 RTOs/DRTOs such type of mistake was not found.

In all these cases, the offences committed by the defaulters were pending with the enforcement wing. Despite this, the concerned licensing authority issued duplicate driving licenses on the production of the NOC from the Police Department by the DL holders.

We found that there was no co-ordination between the Enforcement wing and the Driving license wing though both the wings were within the same office. Had the concerned RTO updated their SARATHI database, the issue of duplicate license could have been avoided.

In the Exit Conference, the Transport Commissioner accepted the fact that the problem was due to lack of institutional database and this would be sorted out with implementation of VAHAN 4.0 and computerisation.

The fact, however, remains that the Department had not updated the data regarding the impounding of the licenses in the SARATHI database in the above seven units as such the discrepancies continue to exist. Audit found that two offices, RTO Pune and DRTO Hingoli, had updated their database regarding impounded licences. This prevented issue of duplicate licenses in these two offices. It would be in the interest of the Department if the practice is replicated in other offices till the implementation of VAHAN 4.0.

### 5.3.3 Renewal of Fitness Certificate

Under Section 56 of Central Motor Vehicle Act, 1988 and Rule 62 of Central Motor Vehicle Rules, 1989 a transport motor vehicle shall not be deemed to be validly registered unless it carries a certificate of fitness. A certificate of fitness in respect of a newly registered vehicle is valid for two years and it is then required to be renewed every year. A fee is collected for conducting test of a vehicle for grant and renewal of fitness certificate. Further, plying vehicles without valid fitness certificate is a compoundable offence under Section 192 of MV Act which may attract a fine and imprisonment for a second or subsequent offence.

The Public Accounts Committee, Maharashtra while discussing Paragraph 3.2 of the Report of the Comptroller and Auditor General of India on the Revenue Receipts of the Government of Maharashtra for the year 2004-05 had recommended in paragraph number 2.28 of Sixth Report of the Public Accounts Committee for the year 2010-11, for incorporating a provision relating to issue of notices to vehicle owners who have not applied for renewal of fitness certificate under the MMV Rules, 1989. Audit found that no action has been taken on the recommendation till date and the vehicles continue to ply without FCs as mentioned in the following paragraph.

Analysis of data available in five<sup>4</sup> offices revealed that the entries relating to issuance of fitness certificates were not found in respect of 35,535 transport vehicles registered during the years 2010-11 and 2011-12. In the remaining 16 offices, the RTOs/DRTOs had maintained information regarding fitness certificate separately in computers. This was not linked with VAHAN and a number of discrepancies like absence of registration year, model year, etc. were noticed in the data.

<sup>4</sup> RTOs- Mumbai (C), Nanded and Nashik; DRTOs - Pimpri-Chinchwad and Solapur.

We also found that no checklist indicating the number of vehicles that had remained without fitness certificate was handed over to the flying squads. As such, the vehicles plying without fitness certificates could not be traced out.

In the Exit Conference, the Transport Commissioner stated that it was not possible to carry out fitness tests of such a large number of vehicles due to shortage of staff.

As per report of National Crime Record Bureau, Ministry of Home Affairs, Government of India on Accidental Deaths and Suicides in India, 2014 the State of Maharashtra falls under high accident prone category. Vehicles plying without valid fitness certificate compromises on public safety, endangering lives of people. A stringent monitoring mechanism for renewal of fitness certificates should be evolved by the Department on priority.

#### **5.3.4 Registration and issue of Fitness Certificates of omnibuses**

As per Section 2 of the Motor Vehicle Act, 1988 any motor vehicle constructed or adopted to carry more than six persons excluding driver is an omnibus. As per notification dated 19 June 1992 issued by the Government of India classification of omnibuses as transport and non-transport vehicle depended upon their end use. Further, the Government of India for the purpose of issue of fitness certificate put the omnibuses under transport category vide gazette notification issued (November 2004). The levy of taxes as transport or non-transport on such vehicles was left to the State Government.

Scrutiny of records in 16<sup>5</sup> offices revealed that 92,682 omnibuses owned by individuals had been registered under non-transport category. These Omnibuses were required to be brought under transport category for the purpose of issue of fitness certificates. This has not been done till date and the vehicles continue to ply as non-transport vehicles, and without issue of fitness certificate compromising the norms of public safety.

It also resulted in non-realization of revenue on conducting fitness tests @ ₹ 200 per vehicle and a fee of ₹ 100 for grant and renewal of fitness certificate. The revenue foregone in the shape of fee at the minimum rate of ₹ 100 per vehicle per year amounted to ₹ 4.63 crore during the past five years.

In the Exit Conference, the Transport Commissioner stated that he did not have detailed information regarding registration of omnibuses and he would discuss it with the officials of the Department.

#### **5.3.5 Renewal of registration of non-transport vehicles**

As per section 41 (7) of the Motor Vehicle Act, 1988 and Rule 52, Central Motor Vehicle Rules, 1989 made thereunder registration of a motor vehicle other than transport vehicles shall be valid only for a period of 15 years from the date of registration and renewal of certificate of registration shall be made within 60 days before the date of its expiry. Renewal of certificate of registration of such vehicles shall be accompanied by appropriate fees for

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<sup>5</sup> RTOs- Aurangabad, Dhule, Kolhapur, Mumbai (C), Mumbai (E), Mumbai (W), Nanded; Panvel and Pune; DRTOs - Beed, Jalgaon, Kalyan, Malegaon, Osmanabad, Solapur and Vasai.

registration and fitness tests as specified under Rule 81 of the Central Motor Vehicle Rules, 1989. If a motor vehicle has been destroyed or has been rendered permanently incapable of use, the owner shall intimate the fact to registration authority within 14 days for cancellation of registration under provisions of Section 55 of Motor Vehicle Act, 1988. In case the owner fails to make an application for such renewal or cancellation, a sum not exceeding ₹ 100 may be realized as penalty under Rule 49 of the Maharashtra Motor Vehicle Rules, 1989.

Analysis of the database available in VAHAN of 15<sup>6</sup> offices indicated that 95,283 non-transport vehicles (two wheelers - 47,462 and others - 47,821) were registered prior to 31 March 2002, as such the vehicles required renewal of their registration for plying on road as on 31 March 2016. Audit noticed that neither vehicle owner had applied for renewal for their registration nor had the Department taken any action for the same. The possibility of plying of these vehicles without fitness certificates could not be ruled out, thus compromising the standards of public safety. Apart from this, the Government could have also earned revenue by way of collection of fitness fee of ₹ 1.24<sup>7</sup> crore.

In the Exit Conference, the Transport Commissioner stated that it had only 60 flying squads for entire State and it was not possible to enforce such issues with such a shortage of staff. The Department was taking up recruitment drive for enforcing the provisions of the Act.

### **5.3.6 Non Implementation of High Security Registration Plate (HSRP) Order, 2001**

Government of India notified specific standards for High Security Registration Plate (HSRP) for motor vehicles and the process used by a manufacturer or vendor for manufacturing or supplying such plates with reference to the amendment in the Central Motor Vehicle Rules, 1989 (Rule 50). This order was effective from 28 September 2001 for newly registered vehicles after this date and in case of already registered vehicles, two years from the date of publication of this order in the official gazette.

The Government of Maharashtra initiated the process of implementation of HSRP, wherein number plates having a patented chromium hologram and embossed registration numbers would be supplied to the vehicle owners after registration. The GoM issued a tender for manufacture and supply of such license plates to the RTOs in June 2007 for which financial bids were opened in 2008. Records further revealed that the tendering process was cancelled by the State Government as it wanted to add a Radio Frequency Identification Device (RFID) technology in HSRP, which was not agreed to by the Ministry of Road Transport and Highways (MoRTH). The Supreme Court in its judgment dated 7 April 2011, had directed the State to complete the tendering process within a period of six weeks.

<sup>6</sup> RTOs - Aurangabad, Dhule, Mumbai (C), Mumbai (E), Mumbai (W), Kolhapur, Nanded, Panvel and Pune; DRTOs - Beed, Kalyan, Malegaon, Osmanabad, Solapur and Vasai.

<sup>7</sup> Fitness renewal fee- ₹60 for two wheelers; ₹200 for other vehicles.



The GoM again floated tenders for implementation of HSRP in July 2013, for which five bidders responded, out of these, two bidders were found ineligible. The ineligible bidders filed writ petition against the Government to cancel the tender process. In the meantime, MoRTH published a new Road Safety Bill on 30 November 2014. A High Power Committee headed by the Chief Secretary discussed and finalized the qualification criteria for bidders on 5 March 2014. The GoM intimated the Court that a new criterion was under preparation and fresh bidders will be called. The petition was dismissed. However, no further action has been taken by the Government till date.

Thus, even after lapse of 15 years the Government of Maharashtra has not implemented the HSRP order, 2001 despite clarifications/instructions of the Supreme Court/Ministry of Road Transport and Highways though other states such as Madhya Pradesh, Andhra Pradesh/Telangana, Delhi, Bihar, Goa, Meghalaya etc. have implemented the same successfully.

In the Exit Conference, the Transport Commissioner stated that the new Request For Proposal to implement HSRP and RFID has been drafted wherein HSRP was compulsory and RFID was optional and the draft was ready for submission to the Government.

### **5.3.7 Allocation of proceeds of Environment Tax**

Section 3A of the Maharashtra Motor Vehicles Tax Act, 1958 provided for levy of Environment Tax on motor vehicles which have completed eight years (transport)/15 years (non-transport) of age and being used or kept for use in the State. Section 11 provided *inter alia* utilization of receipts for strengthening the public transport system, develop vehicle inspection centre, pollution checking centre, training drivers, advance vehicle testing centres to issue or renew fitness certificates.

As per the information available in Finance Accounts of the State, the Motor Vehicle Department has recovered ₹ 199.89 crore during the period 2010-11 to 2015-16 on account of environment tax. The Motor Vehicle Department had neither asked for the budgetary provisions out of the fund nor had the Government allocated any amount for the purposes for which the fund was specified for the items for which it was created.

In the Exit Conference, the Transport Commissioner stated that the matter would be taken up with the Government.

### **5.3.8 Adherence to the National Road Safety Policy**

The Central Government approved (March 2010) a National Road Safety Policy which outlined the initiative to be undertaken by the Government at all levels to improve the road safety in the country. The policy initiative included, *inter alia*, creating Road Safety Fund (RSF), raising awareness about road safety, ensuring safer road infrastructure, safer drivers, safer vehicles, enforcing safety laws etc. In pursuance of the above policy the Government of Maharashtra notified the 'Maharashtra State Road Safety Policy' in 2015 i.e. after lapse of five years.

As per the policy the Government was to put in place a system of driving licenses and training to improve the competence of the drivers. However, we found lack of infrastructure as mentioned in the following paragraphs:

- There were no test tracks in 36 out of 50 offices for conducting tests before issue of driving licenses and fitness certificates. No vehicle fitness centre was established by the Department in units selected for test check.
- Equipment relating to road safety like alcoholmeter, speed guns, interceptors, etc. were not available with the Department. Only a smoke meter for testing vehicular pollution was provided to each Regional Transport office in Maharashtra by the Ministry of Road Transport and Highways (MoRTH), New Delhi.
- Enforcement module of VAHAN software was not in operation in any of the selected offices. Implementation of enforcement module will facilitate easy retrieval of the history of offences and for taking stringent action against habitual offenders.

In the Exit Conference, the Transport Commissioner stated that State Road Safety Fund has been created on 24 October 2016 in the State and all the expenditure to implement various road safety measures would be met out of this fund.

### 5.3.9 Non- monitoring of disposal of seized and unclaimed vehicles

Under provisions of Section 207 of Central Motor Vehicle Act, 1988 any Police Officer or other person authorized in this behalf by the Government may detain and seize vehicles in prescribed manner if he has reason to believe that a motor vehicle has been or is being used in contravention of the provisions of the Act. Further, as per procedure under Rule 18A of the Maharashtra Motor Vehicle Tax Rules, 1959 for seizure and detention of motor vehicles in case of non - payment of tax, an officer authorized by State Government under Section 12B may detain the vehicle if tax remains unpaid for more than 30 days. If the registered owner of the motor vehicle so seized and detained fails to produce necessary proof of payment of tax before expiry of 10 days from the date of seizure, the taxation authority shall cause the vehicle to be further detained till the due is paid or proof of payment of due is furnished. Where no such payment is made or proof of payment is not produced within reasonable period after expiry of the aforesaid period, the taxation authority shall forward a certificate of recovery of the tax and penalty as arrears of the land revenue to the Collector of the district in which the owner of the registered vehicle resides.

As per information furnished by 13<sup>8</sup> offices, 1,934 vehicles were seized by the Department as on March 2016. The vehicles were lying unclaimed and were not disposed off for periods ranging from one to sixteen years. The age-wise position of vehicles is mentioned in **Table 5.3.9**.

<sup>8</sup> RTOs – Aurangabad, Mumbai (C), Mumbai (E), Mumbai (W), Nanded, Nashik, Panvel and Thane; DRTOs – Malegaon, Osmanabad, Pimpri-Chinchwad, Solapur and Vasai.

**Table 5.3.9**

<b>Period</b>	<b>Number of vehicles</b>
More than 15 years	3
Ten to fifteen years	40
Five to ten years	232
Three to five years	600
Less than three years	283
Without date of detention	776

**Source: Information furnished by the Department**

Once the vehicle was seized 'Checking Report Memo' was being prepared by the prosecution section of the Department. Thereafter, it was noted in a register called 'Detained Vehicle Register'. Audit found that no reason for seizing the vehicles was recorded in their registers. The records also did not indicate the name of any person, authority or company that had claimed the ownership of the vehicles. There was no indication in the records test checked that any of the vehicles had been seized for non-payment of tax so that these could be recovered under the provisions of Maharashtra Land Revenue Code, 1966. The vehicles were kept in the open and were subject to vagaries of nature. The value of the vehicle was not determined at any stage as such the loss on account of non-disposal of the vehicles could not be ascertained.

It is recommended that the Government may issue instruction to the Department for disposal of the vehicles or for production in a court of law in a time bound manner.

In the Exit Conference, the Transport Commissioner stated that he would look into the matter.

#### **5.3.10 Non filing of cases in courts of law**

Section 200 of the Motor Vehicle Act, 1988 provides that any offence whether committed before or after the commencement of this Act punishable under various Sections of the Act may be compounded by such officers or authorities for such amount as the State Government may specify by notification in the official gazette in this behalf and as per Section 208 of the Motor Vehicle Act, 1988 and Rule 164 of Central Motor Vehicle Rules, 1989 the court will take cognizance of the offences. However, as per Section 468 of the Criminal Procedure Code, 1973, the court will not take cognizance of the offences which are punishable with fine only after expiry of six months from the date of commencement of the offence.

Scrutiny of records of prosecution section in 15<sup>9</sup> offices revealed that as on 31 March 2016, 1,52,709 offence cases were not sent to the court within the specified period of six months. The RTO-wise breakup of the offence cases is as in given in **Table 5.3.10**.

<sup>9</sup> RTOs- Aurangabad, Dhule, Kolhapur, Mumbai (C), Mumbai (E), Mumbai (W), Nanded, Panvel and Pune; DRTOs – Jalgaon, Kalyan, Malegaon, Osmanabad, Solapur and Vasai.

Table 5.3.10

Sr. No.	Name of the RTO/DRTO Office	No. of cases
1	Aurangabad	938
2	Dhule	5,067
3	Jalgaon	6,514
4	Kalyan	13,486
5	Kolhapur	42,128
6	Malegaon	368
7	Mumbai (E)	33,800
8	Mumbai (W)	8,593
9	Mumbai (C)	7,048
10	Nanded	10,374
11	Osmanabad	3,206
12	Panvel	7,975
13	Pune	1,868
14	Solapur	8,689
15	Vasai	2,655
<b>Total</b>		<b>1,52,709</b>

Source: Information furnished by the Department

Thus, it could be seen from the above 1,52,709 cases were not produced to the court within stipulated period of six months and no action could be taken for the offences committed by the offenders.

- Out of the above, the maximum number of cases 42,128 i.e. 27.58 per cent of the total cases was pending in RTO, Kolhapur.
- The minimum number of cases 368 i.e. 0.24 per cent of the total cases was pending in DRTO, Malegaon.

The Department had not prescribed any return to watch disposal of the cases at the apex level. The cases pertained to various offences like overloading, seizure of licenses for violation of traffic norms, incomplete documents, etc. The inaction on the part of the Department not only resulted in letting the offenders free but also resulted in loss in revenue in the shape of fines which could have been levied from the offenders i.e. minimum fine at rate of ₹ 100 leviable under Sections 177 to 198 of the MV Act would have aggregated to ₹ 1.53 crore.

In the Exit Conference, the Transport Commissioner stated that Motor Vehicle Department does not have the power under the Criminal Procedure Code to deal with such cases. However, legal opinion would be taken in this matter.

The fact remains that the Department has not followed the rules and filed the cases against the offenders in a Court of law within the stipulated period of six months.

It is recommended that the Transport Commissioner may devise a system for constant monitoring of the cases by way of returns so that each offence is brought to the notice of Court.

### **5.3.11 Non-recovery of arrears**

#### **5.3.11.1 Motor vehicle Tax**

According to Section 12 of the Maharashtra Motor Vehicle Tax Act, 1958, if any tax or interest thereon as provided by or under the Act remains unpaid for more than 30 days the Government may take appropriate measures to recover it in the same manner as arrears of land revenue as per provisions of the Maharashtra Land Revenue Code (MLRC). A statement showing category-wise/ year-wise tax arrears has been prescribed by the Department for sending information to Transport Commissioner.

We found that out of 21 units test checked, only six units had maintained 'Dormant Register' and has submitted the returns to the Transport Commissioner up to the date mentioned in the following table. The remaining 15 units had not maintained the Dormant Register. These units were neither submitting the returns nor were asked for submission of the same by the authority. All these 15 units intimated that position of arrears was not available with them. Information furnished by six<sup>10</sup> offices is detailed in **Table 5.3.11.1**.

**Table 5.3.11.1**

(₹ in crore)				
Sr. No	RTO/DRTO	Year ended 31 <sup>st</sup> March	No. of Cases	Amount
1	Mumbai (C)	2014	37,060	10.74
2	Osmanabad	2015	3,139	2.26
3	Nashik	2015	NA	1.70
4	Pimpri-Chinchwad	2015	19,561	6.09
5	Thane	2015	1,32,882	38.41
6	Vashi	2015	1,514	5.41
<b>Total</b>			<b>1,94,156</b>	<b>64.61</b>

**Source: Information furnished by the Department**

Of the above, unit at Sr. No.1 had maintained position of arrears up to the year 2013-14 and units at Sr. No. 2 to 6 had maintained up to the year 2014-15. Thus it would be seen from the above that there was lack of monitoring of recovery of arrears at the apex level. Absence of the information indicates that

<sup>10</sup> RTOs - Mumbai (C), Nashik and Thane; Dy. RTOs – Osmanabad, Pimpri-Chinchwad and Vashi.

the Department could not recover the arrears from the defaulting vehicle owners.

It will be in the interest of revenue if appropriate steps are taken for maintaining the records relating to outstanding arrears and their timely recovery by the concerned RTOs/DRTOs and monitoring the recovery of the arrears at the apex level.

### 5.3.11.2 Passenger Tax

As per provision of the Section 9 read with Sections 6, 7 and 8 of the Maharashtra Motor Vehicles (Taxation of Passengers) Act, 1958, the Tax Officer shall serve a notice of demand on the operator for the sums payable to the State Government. The sums specified in such notices may be recovered as arrears of land revenue from the operator.

Audit scrutiny of returns submitted by six stage carriage operators (fleet owners) out of ten fleet owners revealed that Department has not recovered Passenger Tax and Child Nutrition Surcharge (CNS) of ₹ 388.04 crore and ₹ 22.98 crore respectively up to March 2015 from various operators as detailed in **Table 5.3.11.2**.

**Table 5.3.11.2**

(₹ in crore)			
Sr. No	Name of the Operator	Arrears as on 31 March 2015	
		Passenger Tax	CNS
1	Brihanmumbai Electric Supply and Transport (BEST)	202.15	15.26
2	Pune Mahanagar Parivahan Mahamandal Ltd. (PMPML)	142.39	5.35
3	Kalyan-Dombivali Municipal Transport (KDMT)	6.10	0.21
4	Kolhapur Municipal Transport (KMT)	8.08	0.25
5	Thane Municipal Transport (TMT)	15.62	0.88
6	Navi Mumbai Municipal Transport (NMMT)	13.70	1.03
<b>Total</b>		<b>388.04</b>	<b>22.98</b>

Source: Information furnished by the Department

It was noticed that Department had issued demand notices to the fleet owners. Thereafter, no reasons were found on record for not taking action for recovery of the arrears as arrears of land revenue.

In the Exit Conference, the Transport Commissioner stated that it has been decided that the arrears will be recovered through book adjustment.

### 5.3.12 Internal Control

Internal control helps in creation of reliable financial management system for adequate safeguards against misappropriation or evasion of taxes. A robust

internal control system ensures effectiveness, efficiency and compliance with rules and policies. Deficiencies noticed in the internal control mechanism have been commented in the following paragraphs.

**Internal Audit:**

- As per Transport Commissioner's instruction inspection wing of the Department was required to conduct annual inspection of each office up to 2012, thereafter, inspection wing was required to conduct inspection of only 15 RTOs. Each RTO was required to conduct inspection of the concerned DRTOs. As per the information furnished the inspection wing had conducted audit of 50 units during the period 2010-11 to 2014-15 and raised 1,165 observations involving amount of ₹ 9.44 crore. Out of these, the wing had closed 458 paras involving ₹ 1.03 crore and 707 paras involving ₹ 8.41 crore were outstanding.
- It was noticed in two<sup>11</sup> offices that nine cheques issued by vehicle owners for payment of MVT amounting to ₹ 5.75 lakh were dishonoured by concerned banks. These amounts were required to be recovered in cash along with interest under Rule 98(2)(v) of the Maharashtra Treasury Rules. However, no effort was made to watch the encashment of the dishonoured cheques. This resulted in non-realisation of revenue amounting to ₹ 5.75 lakh and interest thereon.
- It was noticed that reconciliation of remittance of motor vehicle tax with Pay and Accounts Office was not done by the Transport Commissioner in Mumbai Region<sup>12</sup> for the period from September 2013 to April 2016 and for profession tax it was not done for the period from April 2008 to April 2016.
- A packet containing one DL or RC has a weight of less than 50 gms and as per tariff of DOP the service charges payable is ₹ 17 for local areas. The Department charged service payment of ₹ 50 per article (DL/RC) instead of ₹ 17<sup>13</sup> for payment to Department of Posts (DOP). After this excess charge to the public was pointed out by us, the Transport Commissioner stated in the Exit Conference that the issue will be taken up with the Department of Posts.

**5.3.13 Conclusion and recommendations**

The VAHAN application was not fully implemented in the State in respect of transport vehicles, and the local databases were not interlinked within all RTO offices in the State, thereby sharing of information could not be done. Fitness Module of the application was also not being utilized to its full potential.

- The Government may direct the Department to implement the VAHAN application in the entire State for transport vehicles and to consider interlinking of databases of local offices with each other for sharing of information, and to utilize all modules to their full potential.

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<sup>11</sup> RTOs- Aurangabad and Thane.

<sup>12</sup> RTOs - Mumbai (C), Mumbai(E) and Mumbai (W).

<sup>13</sup> DL/RC has a weight of less than 50 gms and as per tariff of DOP the service charges payable is ₹ 17 for local areas.

Omnibuses were not being registered under transport category despite the Government of India's instruction to do so for bringing them into the fitness regime. Though the Government of India issued orders for implementation of High Security Registration Plates for motor vehicles, the same was yet to be introduced in the State.

- The Government may direct the Department to implement the Government of India's/Departmental instructions in respect of omnibuses and HSRP.

The Department was issuing duplicate driving licences in cases where the original licences were impounded by and lying with the Department as the details of these licences were not being updated on SARATHI application.

- The Government may consider issuing instructions to the Department to update the information regarding impounded licences on SARATHI application so that instances of fraudulent issue of licences are kept in check.

The Department was yet to take action on the recommendation of the Public Accounts Committee for incorporation of provisions in the Rules for issue of notice in respect of renewal of fitness certificates.

- The Government may consider integrating the issue of fitness certificate in VAHAN software, so that a watch is kept on the fitness certificates issued as well as due.

Compounding cases were not being forwarded to the Courts for prosecution of offenders within the stipulated time of six months resulting in their being time-barred.

- The Government may direct the Department to act on the compounding cases within the stipulated time to avoid time-barring.

In the Exit Conference, the Transport Commissioner, Maharashtra State, accepted all the recommendations.



**Other audit observations**

**5.4 Short recovery of Motor Vehicle Tax on Passenger Buses**

**Tax exemption available for school buses was incorrectly granted to the buses operated in one institution. This resulted in short levy of Motor Vehicle Tax of ₹ 16.65 lakh**

As per Section 3 (iii) of Bombay Motor Vehicles Tax Act, 1958, an ordinary omnibus permitted to carry more than twenty four passengers, should be levied a tax of ₹ 1,900 per seat per annum for every passenger that the vehicle is permitted to carry. Further, Government of Maharashtra, Home Department, vide notification dated 16 October 2010 exempted omnibuses partially from the tax levied under the Motor Vehicle Tax (MV Tax) Act. Under this notification, tax exemption in excess of ₹ 100 per seat per annum for school buses transporting school children (to and fro) was notified. Further, under the notification, 'School Bus' has been explained as a four wheeled motor vehicle registered to carry children or students to and fro at school up to secondary education level.

Scrutiny of records in the Office of the Deputy Regional Transport Officer, Wardha (Dy. RTO) revealed (January 2015) that 22 busses were registered during 2012-13 in the name of M/s Narayan Vision for Advance Skill with the address of a degree college namely Agnihotri College Campus, Bapuji Wadi, Ramnagar, Wardha. As per registration records all these 22 buses were registered as 'School Buses' by Dy. RTO and levied tax at the rate of ₹ 100 per seat per annum amounting to ₹ 0.93 lakh as against the tax to be levied at the rate of ₹ 1,900 per seat per annum amounting to ₹ 17.58 lakh. Granting exemption of Motor Vehicle Tax to the advance study institution was incorrect and in contravention to the notification *ibid*. This resulted in short levy of MV Tax amounting to ₹ 16.65 lakh.

After this being pointed out (January 2015), the Dy. RTO, Wardha accepted (January 2015) the observation and issued notice (April 2016) to the bus owner for recovery of balance MV Tax.

The matter was brought to the notice of Government in May 2016. Reply thereto was awaited (February 2017).

## CHAPTER VI

### OTHER TAX AND NON-TAX RECEIPTS

#### 6.1 Tax administration

This chapter consists of receipts from State Excise, Entertainments Duty, State Education Cess (EC), Employment Guarantee Cess (EGC), etc. The administration is governed by Acts and Rules framed separately for each Department.

#### 6.2 Results of audit

In 2015-16, test check of the records of 330 units relating to the State Excise, Entertainments Duty, Taxes and Duties on Electricity, Education Cess/Employment Guarantee Cess, Profession Tax, Repair Cess, etc., showed short levy of licence fees, entertainments duty and other irregularities amounting to ₹ 64.35 crore in 729 observations, which fall under the following categories as indicated in **Table 6.2**.

**Table 6.2**

(₹ in crore)			
Sr. No.	Category	No. of observations	Amount
1	Audit of "Receipts from Co-operative Societies"	1	1.92
2	State Excise	115	3.28
3	Entertainments Duty	364	28.63
4	Taxes and Duties on Electricity	36	4.67
5	Repair Cess	19	5.75
6	Education Cess and Employment Guarantee Cess	96	15.75
7	Maharashtra Tax on Buildings (with Larger Residential Premises)	22	0.06
8	Profession Tax	71	0.87
9	Non-Tax Receipts	5	3.42
<b>Total</b>		<b>729</b>	<b>64.35</b>

In response to our audit observations pointed out during the year 2015-16 as well as earlier years, the concerned Department accepted underassessment, short levy, etc. and recovered ₹ 4.63 crore in 216 observations of which 16 observations involving ₹ 35.24 lakh related to 2015-16 and the rest to earlier years.

This Chapter contains five paragraphs including a paragraph on "Receipts from Co-operative Societies".

### 6.3 Audit of “Receipts from Co-operative Societies”

#### Introduction

The Maharashtra Co-operative Societies Act, 1960 (MCS Act) governs the promotion, registration, development, supervision, inspection and annual audit of Co-operative Societies. The receipts from co-operative societies were administered/monitored by Commissioner/ Registrar of Co-operative Societies under the jurisdiction of Department of Co-operation, Marketing and Textiles<sup>1</sup>. The major functions of the Department were as follows:

The Department was responsible for audit of each society annually. The audit fees were payable by the Societies to the Registrar. The Registrar was empowered to notify that any society or class of Societies may get its or their accounts audited by an auditor selected from the panel of certified auditors maintained by the Registrar. The Department also recovered the charges known as Surcharge for assistance given to societies for recovering their loans and also watches the recovery of share capital invested by the Government and other dues of the Government.

There were 1,96,907 societies registered with the Registrar as on 31 March 2016. We selected five divisions viz., Pune, Nashik, Kolhapur, Mumbai and Nagpur division. The total number of societies in these divisions was 1,40,530. The results of audit are briefly discussed in the following paragraphs:

#### 6.3.1 Non-realisation of audit fee

As per the information furnished by the Commissioner of Co-operative Societies, an amount of ₹ 69.64 crore was recoverable from 34,997 Societies as on 31 March 2016. The year wise breakup for the last five years is given in **Table 6.3.1**.

**Table 6.3.1**

(₹ in crore)					
Year	Opening balance	Addition	Total recoverable	Recovery	Closing balance
2011-12	52.23	24.60	76.83	18.79	58.04
2012-13	58.04	25.99	84.03	19.40	64.63
2013-14	64.63	12.29	76.92	7.19	69.73
2014-15	69.73	11.26	80.99	7.74	73.25
2015-16	73.25	6.64	79.89	10.25	69.64

Source : Information furnished by the Department

<sup>1</sup> The Department of Co-operation, Marketing and Textiles consist of Co-operation Commissionerate, Sugar Commissionerate and Directorate of Marketing. The scope of Audit has been limited to Co-operation Commissionerate and does not cover societies under Sugar Commissionerate and Directorate of Marketing.

It could be seen from the above that amount of arrears has increased from ₹ 52.23 crore to ₹ 69.64 crores, i.e. by 33 *per cent* while the pace of recovery has been gradually going down.

After this was pointed out, the Department stated that the amounts could not be recovered as a number of societies were running in loss, had gone for liquidation or were closed down.

Audit, however, found that out of 10,648 audited societies registered in Pune, only 637 societies were under liquidation or had closed or were not found at the registered address. Similarly in Kolhapur out of 9,593 audited societies, only 177 societies were under liquidation or had closed or were not found at the registered address. Thus, the number of societies that had closed their business was very small.

The arrears were being reflected in Monthly Reports submitted to the Commissioner, however, no action was taken for recovery of dues as envisaged in Section 155 of the MCS Act which stipulated that all sums due from the society to the Government may be recovered as arrears of land revenue.

### 6.3.2 Non-recovery of Government Share Capital

As per the terms and conditions attached with the GRs<sup>2</sup> issued by the GOM, each society was required to create a Share Capital Refund Fund to ensure redemption of the Government's share capital. The society had to deposit 1/15<sup>th</sup> of the amount of share capital every year in the Fund. However, we noticed that neither the Societies had created the Share Capital Refund Fund and nor had the Department taken any action for enforcing the conditions for creating the fund. Thus, the recovery of share capital was not ensured.

### 6.3.3 Dividend from profit making Co-operative societies not ensured

As per the terms and conditions attached with the GR's authorizing share capital issued by the GOM, each society in profit could pay dividend not more than four *per cent* of the share capital until the entire Government Share Capital has been paid up. Audit found that 1,004 societies were running in profit during the year 2014-15. The Government had invested ₹ 7.14 crore as share capital in these societies. Had the societies declared dividend the Government could have earned revenue of ₹ 28.56 lakh. There was no provision in the MCS Act for mandatory declaring of dividends as in Andhra Pradesh Co-op Societies Act, 1964<sup>3</sup>.

### 6.3.4 Non-remittance of surcharge into Government Account

Under provisions of Rule 107 (e) of the MCS Rules, cost of recovery of loans to the societies @ 1.75 *per cent* of the total amount recovered was to be credited to the GOM as 'Surcharge'. As per the information furnished to audit, the Department had collected ₹ 1.79 crore as surcharge during 2011-12

<sup>2</sup> Authorising Share Capital.

<sup>3</sup> Section 36 (5)(d).

to 2015-16 from seven societies in Pune (City), Pune (Rural), Solapur and Nashik divisions. Out of this, the Department had not remitted ₹ 1.64 crore into the treasuries and had shown this as cost of recoveries. No document in support of the expenditure incurred was produced to audit. The Department may consider collecting the information for the entire State and ensure correctness of the expenditure incurred.

### **6.3.5 Audit of Societies and its Compliance**

Under Section 81 of the MCS Act, the Registrar shall audit or cause to be audited the accounts of every society at least once in each year. As per the information furnished to audit by the Commissioner of Co-operative Societies out of total 1,96,907 number of societies in all divisions only 1,47,689 (75 *per cent*) were allotted for audit out of which 13,091 societies were pending for audit by Departmental auditors and 62,186 were pending for audits that were allotted to other<sup>4</sup> auditors. Thus the pendency of audit works out to 51 *per cent* of the allotted units and 63 *per cent* of the total societies. The Department may consider a time bound program for audit of these societies.

Section 82 of the Maharashtra Co-operative Societies Act, requires every society to explain to the Registrar, within three months of the receipt of the audit report in 'O' Form, the defects or irregularities pointed out by the auditor and take steps to rectify the defects, remedy the irregularities and report to the Registrar the action taken by it thereon. These reports furnished by the societies were called 'Rectification Reports' by the Department. As per the information furnished by the Department it was seen that as on 31 March 2016, 54,554 societies out of 75,628 societies (72 *per cent*) had not submitted 'Rectification Reports'. Thus corrective action taken by the concerned societies could not be ascertained by the Department. In absence of Rectification reports from the societies the efficiency in working of the Societies could not be ensured.

The matter was reported to the Government (July 2016). Their reply has not been received (February 2017).

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<sup>4</sup> Other auditors include Chartered Accountants, Chartered Accountant Firm, Certified Auditors empanelled by the Department.

**Other audit observations**

**6.4 Non recovery of Entertainments Duty from cable operators**

**ED amounting to ₹ 70.33 lakh was not paid by 158 cable operators**

Under section 3(4) of the Bombay Entertainments Duty Act, 1923 (BED Act), Entertainments Duty was payable by the cable operators at rates specified in the Act. Under Rule 14 of the Collection of Entertainments Duty on Cable Television (including Entertainments Duty leviable on DTH Broadcasting Services) by way of Public Auction Rules 2003, the Collector is required to assess the cable operators and recover the Entertainments Duty. These cable operators are required to file monthly returns in Form 'E' along with the payment of Entertainments Duty with the Collector. As per Section 4B(4) of the BED Act, if the return is not filed within the prescribed time, the State Government may, after giving the cable operator a reasonable time, assess to the best of its judgment, the Entertainments Duty due from the cable operators and also direct them to pay the Entertainments Duty and penalty, if any. Failure of compliance to the provisions of Section 4B is punishable under Section 5A by imprisonment for a term extending up to six months or fine not more than ₹ 5,000 or both. As per Section 9B of the BED Act, interest at the rate of 18 *per cent* per annum for the first 30 days and 24 *per cent* per annum thereafter is also to be levied in case of default in payment.

Test check of records of seven<sup>5</sup> offices in May 2014 and July 2015 revealed that the returns were not filed by 158 cable operators along with Entertainments Duty amounting to ₹ 70.33 lakh during various periods between August 2012 and March 2015. The demands were not raised by the concerned Collectors resulting in non-realisation of ED to that extent. Interest at the prescribed rates was also leviable.

After we pointed out these cases, the Department accepted the observations and communicated recovery of ₹ 28.63 lakh from 51 cable operators between June 2014 and March 2016. A report on balance recovery has not been received.

We brought the matter to the notice of the Government in June 2016; their reply has not been received (February 2017).

**6.5 Non recovery of Entertainments Duty from discotheques**

**ED amounting to ₹ 28.00 lakh was not paid by three discotheques**

Under the provisions of Section 3(17) of the Bombay Entertainments Duty Act, 1923 (BED Act), there shall be levied and paid by the proprietors of discotheques, the entertainments duty at the rates specified from time to time, in advance by the tenth day of every calendar month. In case the entertainments duty is not paid by the due date, a demand notice is issued for payment of the duty. As per Section 9B of the BED Act, interest at the rate of 18 *per cent* per annum for the first 30 days and 24 *per cent* per annum

<sup>5</sup> Resident Deputy Collectors: Ratnagiri and Solapur; Taluka Magistrates: Barshi, Karmala, Madha, Mohol and Pandharpur.

thereafter is also to be levied in case of default in payment. Non-compliance of the demand notice is punishable by imprisonment for a term extending up to six months or fine not more than ₹ 5,000 or both.

Our scrutiny (June 2014) of records in two<sup>6</sup> offices revealed that Entertainments Duty amounting to ₹ 28.00 lakh was not paid by proprietors of three discotheques during various periods between September 2012 to March 2014. The demands in these cases were also not raised by the concerned Collectors resulting in non-realisation of ED to that extent. Interest at the prescribed rates was also leviable.

After we pointed out these cases, the Department accepted the observations. A report on recovery has not been received.

We brought the matter to the notice of the Government in July 2016; their reply has not been received (February 2017).

## **6.6 Short recovery of Licence Renewal Fees**

### **Licence renewal fees amounting to ₹ 11.71 lakh was not recovered in respect of nine licences**

In exercise of the powers conferred by Clause (a) of Rule 4 of the Maharashtra Potable Liquor (Periodicity and fees for grant, renewal or continuance of licence) Rules, 1996 and the provisions under Bombay Prohibition Act, 1949 read with Maharashtra Country Liquor Rules, 1973 for grant, renewal or continuance of licences in respect of CL-III, CL/FL/TOD-III, FL-II, FL-III etc., the Commissioner notifies the rates for each financial year for licences mentioned in Column No. 2 of the Schedule of the notification, which are based on the population of that area where the licence is granted or renewed.

During the scrutiny of records of the three<sup>7</sup> State Excise Superintendent offices between January 2015 and September 2015, it was noticed that renewal fees in respect of nine licences was not recovered as per the schedule rates based on the population census. The short recovery in this regard worked out to ₹ 11.71 lakh.

After this was brought to the notice of the Department between February 2015 and October 2015, the Department accepted the observation and reported recovery of ₹ 0.85 lakh in four cases in February 2016. A report on the recovery of the balance amount is awaited.

We brought the matter to the notice of the Government in June 2016; their reply has not been received (February 2017).

## **6.7 Short remittance of State Education Cess (SEC) and Employment Guarantee Cess (EGC)**

### **Amount collected on account of Education Cess and Employment Guarantee Cess was short remitted by ₹ 11.70 crore**

As per the provisions under section 4 and 6(b) of the Maharashtra Education and Employment Guarantee (Cess) Act, 1962, read with Rule 4 of Education

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<sup>6</sup> Dy. Collector (BEDA), Zone VIII and Dy. Collector (BEDA), Zone IX, Mumbai.

<sup>7</sup> Superintendent of State Excise: Ahmednagar, Raigad and Thane.

(Cess) Tax on lands and Buildings (Collection and Refund) Rules, 1962, amounts of cess and penalty collected by any Municipal Corporation (MC) during any calendar week are required to be credited into the Government account before the expiry of the following week. If any MC defaults in payment of any sum under the Act, Government may, after holding such enquiry as it thinks fit, fix a period for the payment of such sum. The Act also empowers the Government to direct the bank/treasury in which the earnings of the MC are deposited, to pay such sum from the bank account to the Government. There is no provision in the Act to levy interest or penalty on delay in remittance of Government revenue by the MC.

During the scrutiny (August 2014 and December 2015) of the Tax Collection Registers of two Municipal Corporations (Aurangabad and Bhiwandi-Nizampur), we noticed that the Corporations had remitted only ₹ 9.81 crore out of ₹ 21.51 crore collected as State Education Cess and Employment Guarantee Cess during the period 2011-12 to 2014-15, thereby resulting in short remittance of ₹ 11.70 crore.

After this was brought to notice, the Corporations stated that matter would be verified.

The matter was also brought to the notice of the Department in January 2016. However, details of action taken by the Department have not been received.

We brought the matter to the notice of the Government in July 2016; their reply has not been received (February 2017).



(SANGITA CHOURE)

Principal Accountant General (Audit)-I,  
Maharashtra

Mumbai  
The 20 April, 2017

Countersigned



(SHASHI KANT SHARMA)

Comptroller and Auditor General of India

New Delhi  
The 25 April, 2017





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