### EXECUTIVE SUMMARY

<table>
<thead>
<tr>
<th>Trend of receipts</th>
<th>The revenue collection under VAT increased by 89 per cent in 2011-12 as compared to 2007-08.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenue Impact of Audit Reports</td>
<td>During the last five years, 2006-07 to 2010-11, we had pointed out cases of under-assessments/non/short levy/loss of revenue of Sales Tax, etc., interest and other irregularities with revenue implication of ₹ 1,879.59 crore in 1,217 cases. Of these, the Department had accepted audit observations in 344 cases involving ₹ 510.27 crore and had recovered ₹ 1.07 crore in 59 cases.</td>
</tr>
<tr>
<td>Results of audit</td>
<td>We reported underassessment/short levy/loss of revenue and potential tax revenue, etc., amounting to ₹ 41.13 crore in 424 cases on the basis of test check of the records of the Sales Tax Department conducted during the year 2011-12. During the year 2011-12 as well as during earlier years, the Department accepted underassessments/other deficiencies involving ₹ 1.66 crore in 140 cases. Out of this, 19 cases involving ₹ 11.14 lakh were pointed out during 2011-12 and the rest during earlier years. During the year 2011-12, the Department recovered ₹ 59.65 lakh in 34 cases out of which ₹ 7.77 lakh in 10 cases were pointed out during 2011-12 and the rest in earlier years.</td>
</tr>
<tr>
<td>What we have highlighted in this Chapter</td>
<td>A performance audit report on &quot;VAT on Works Contract&quot; revealed the following:</td>
</tr>
<tr>
<td></td>
<td>• Seventeen registered contractors had received payments of ₹ 509.98 crore from Konkan Irrigation Development Corporation (KIDC) but had disclosed turnover of sales of ₹ 187.11 crore only in their VAT returns. This resulted in short reflection of turnover of sales of ₹ 322.87 crore.</td>
</tr>
<tr>
<td></td>
<td>Four contractors had received payments from KIDC for the work done but they were not found registered with the Sales Tax Department (STD). They were liable to pay tax of ₹ 66.50 lakh but tax of ₹ 33.02 lakh only was recovered. This resulted in short recovery of TDS of ₹ 33.48 lakh.</td>
</tr>
</tbody>
</table>

(Paragraph 2.2.8.1)
• Cross verification of data obtained from Nashik Irrigation Division with the data available with the STD revealed short disclosure of turnover of sales of ₹ 9.14 crore by two registered dealers.

(Paragraph 2.2.8.2)

• Seven contractor dealers received payments aggregating to ₹ 1.48 crore from Nashik Municipal Corporation (NMC) but these were not registered with the STD. Three registered contractor dealers of NMC had received payment aggregating to ₹ 6.21 crore but disclosed sales turnover of ₹ 5.68 crore in their returns. The tax payable on the differential turnover of sales of ₹ 53 lakh remained unrecovered.

(Paragraph 2.2.8.3)

• Sixty seven contractor dealers of Pimpri-Chinchwad Municipal Corporation (PCMC) were not found registered with the STD. TDS of ₹ 1.13 crore was recovered short in these cases.

(Paragraph 2.2.8.4)

• Short realisation of tax due to less reflection of turnover of ₹ 48.66 lakh was noticed in case of a contractor dealer paid for work done by Central Railway (Dadar Unit), Mumbai.

(Paragraph 2.2.8.5)

• 941 Builders and Developers (B&D) though liable for registration were not registered under MVAT Act. Further 66 registered B&Ds, did not pay tax on turnover of sales of ₹ 733.50 crore.

(Paragraph 2.2.10)

• Non-levy of interest on delayed payment of tax by six employers resulted in non-realisation of revenue of ₹ 17.68 lakh.

(Paragraph 2.2.11.3)

• Selection of dealers for business audit was very low, it was only 17 per cent of the total works contract, out of which, only 12 per cent was completed in departmental audit.

(Paragraph 2.2.13)
- In five divisions deductions under composition scheme though inadmissible were allowed to 82 dealers. This resulted in grant of incorrect deductions aggregating ₹ 67.98 crore and consequential short levy of tax of ₹ 4.87 crore.

(Paragraph 2.2.14)

- Twenty four dealers in four divisions had not maintained accounts of the deductions allowed and were entitled to a deduction of ₹ 36.16 crore instead of ₹ 64.18 crore allowed to them. This resulted in excess deduction of taxable turnover of ₹ 28.02 crore with tax effect of ₹ 2.51 crore.

(Paragraph 2.2.15)

- Six dealers engaged in works contract, were allowed incorrect deductions of ₹ 4.58 crore resulting in short levy of tax of ₹ 40.52 lakh.

(Paragraph 2.2.16)

**Recommendations**

The Government may consider:

- developing a module with full details of TDS in MAHAVIKAS for filing e-return (Form 405) and for making e-payment compulsory in respect of TDS. TDS certificates may be generated online so that genuineness of the same can be ensured;

- introducing a system of obtaining information relating to the payments made to the contractors periodically and cross checking the same with the data available in MAHAVIKAS for detecting unregistered dealers to prevent evasion of tax;

- introducing a mechanism for cross linkage of records relating to the principal and subcontractors in order to detect cases of evasion of tax; and

- issuing necessary directions to the Department to draw up an action plan to complete the Business Audit cases as well as set a time frame for completion of the departmental audits so that the under-declaration /short recovery of tax could be detected and recovered early.
CHAPTER-II : VALUE ADDED TAX/SALES TAX

2.1 Introduction

2.1.1 Tax revenue administration

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

2.1.2 Trend of receipts

Actual receipts from Sales tax, Value Added Tax (VAT), etc., during the years 2007-08 to 2011-12 along with the total tax receipts during the same period is exhibited in the following table and graphs:

<table>
<thead>
<tr>
<th>Year</th>
<th>Budget estimates</th>
<th>Actual receipts</th>
<th>Variation excess (+)/ shortfall (-)</th>
<th>Percentage of variation</th>
<th>Total tax receipts of the State</th>
<th>Percentage of actual receipts vis-à-vis total tax receipts</th>
</tr>
</thead>
<tbody>
<tr>
<td>2007-08</td>
<td>27,465.00</td>
<td>26,752.80</td>
<td>(-) 712.20</td>
<td>(-) 2.59</td>
<td>47,528.41</td>
<td>56.29</td>
</tr>
<tr>
<td>2008-09</td>
<td>29,039.00</td>
<td>30,680.53</td>
<td>(+) 1,641.53</td>
<td>(+) 5.65</td>
<td>52,029.94</td>
<td>58.97</td>
</tr>
<tr>
<td>2009-10</td>
<td>27,006.00</td>
<td>32,676.02</td>
<td>(+) 5,670.02</td>
<td>(+) 21.00</td>
<td>59,106.33</td>
<td>55.28</td>
</tr>
<tr>
<td>2010-11</td>
<td>35,986.18</td>
<td>42,482.72</td>
<td>(+) 6,496.54</td>
<td>(+) 18.05</td>
<td>75,027.09</td>
<td>56.62</td>
</tr>
<tr>
<td>2011-12</td>
<td>46,000.00</td>
<td>50,596.36</td>
<td>(+) 4,596.36</td>
<td>(+) 9.99</td>
<td>87,608.46</td>
<td>57.75</td>
</tr>
</tbody>
</table>

As can be seen from the above table, the revenue collection under VAT increased by 89 per cent in 2011-12 as compared to 2007-08.
2.1.3 Analysis of arrears of revenue

The arrears of revenue as on 31 March 2012 in respect of Sales Tax/VAT as furnished by the Department amounted to ₹ 34,694.02 crore, of which ₹ 12,161.13 crore had been outstanding for more than five years, as mentioned in the following table:

<table>
<thead>
<tr>
<th>Sl. no.</th>
<th>Head of revenue</th>
<th>Amount outstanding as on 31 March 2012 (₹ in crore)</th>
<th>Amount outstanding for more than five years as on 31 March 2012 (₹ in crore)</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Sales Tax, etc.</td>
<td>34,694.02</td>
<td>12,161.13</td>
<td>Stay orders were granted by the appellate authorities for ₹ 22,291.40 crore; recovery proceedings for ₹ 2,543.62 crore were not initiated as the time limit was not over and the remaining amount was in different stages of recovery.</td>
</tr>
</tbody>
</table>

2.1.4 Arrears in assessment

The following table shows the details of pending assessment cases under the Bombay Sales Tax Act, 1959 and allied Acts for the years 2009-10, 2010-11 and 2011-12 as furnished by the Sales Tax Department:

<table>
<thead>
<tr>
<th>Year</th>
<th>Opening balance</th>
<th>New cases due for assessment</th>
<th>Total assessments due</th>
<th>Cases not to be assessed</th>
<th>Disposal</th>
<th>Balance at the end of the year</th>
<th>Percentage of column 8 to 4</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(1)</td>
<td>(2)</td>
<td>(3)</td>
<td>(4)</td>
<td>(5)</td>
<td>(6)</td>
<td>(7)</td>
</tr>
<tr>
<td>Sales Tax</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2009-10</td>
<td>1,83,992</td>
<td>1,20,248</td>
<td>3,04,240</td>
<td>91,524</td>
<td>1,29,990</td>
<td>2,21,514</td>
<td>82,726</td>
</tr>
<tr>
<td>2010-11</td>
<td>82,726</td>
<td>45,935</td>
<td>1,28,661</td>
<td>24,743</td>
<td>80,877</td>
<td>1,05,620</td>
<td>23,041</td>
</tr>
<tr>
<td>2011-12</td>
<td>23,041</td>
<td>9,634</td>
<td>32,675</td>
<td>10,982</td>
<td>11,565</td>
<td>22,547</td>
<td>10,128</td>
</tr>
<tr>
<td>Motor Spirit Tax</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2009-10</td>
<td>4,342</td>
<td>86</td>
<td>4,428</td>
<td>1,037</td>
<td>142</td>
<td>1,179</td>
<td>3,249</td>
</tr>
<tr>
<td>2010-11</td>
<td>3,249</td>
<td>77</td>
<td>3,326</td>
<td>1,998</td>
<td>199</td>
<td>2,197</td>
<td>1,129</td>
</tr>
<tr>
<td>2011-12</td>
<td>1,129</td>
<td>142</td>
<td>1,271</td>
<td>478</td>
<td>29</td>
<td>507</td>
<td>764</td>
</tr>
<tr>
<td>Purchase Tax on sugarcane</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2009-10</td>
<td>881</td>
<td>144</td>
<td>1,025</td>
<td>51</td>
<td>57</td>
<td>108</td>
<td>917</td>
</tr>
<tr>
<td>2010-11</td>
<td>917</td>
<td>75</td>
<td>992</td>
<td>115</td>
<td>179</td>
<td>294</td>
<td>698</td>
</tr>
<tr>
<td>2011-12</td>
<td>698</td>
<td>128</td>
<td>826</td>
<td>364</td>
<td>219</td>
<td>583</td>
<td>243</td>
</tr>
<tr>
<td>Entry Tax</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2009-10</td>
<td>65</td>
<td>308</td>
<td>373</td>
<td>36</td>
<td>259</td>
<td>295</td>
<td>78</td>
</tr>
<tr>
<td>2010-11</td>
<td>78</td>
<td>175</td>
<td>253</td>
<td>10</td>
<td>193</td>
<td>203</td>
<td>50</td>
</tr>
<tr>
<td>2011-12</td>
<td>50</td>
<td>264</td>
<td>314</td>
<td>44</td>
<td>247</td>
<td>291</td>
<td>23</td>
</tr>
</tbody>
</table>

1 These cases were not to be assessed according to the Government Resolution dated 5 January 2007.
<table>
<thead>
<tr>
<th>(1)</th>
<th>(2)</th>
<th>(3)</th>
<th>(4)</th>
<th>(5)</th>
<th>(6)</th>
<th>(7)</th>
<th>(8)</th>
<th>(9)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lease Tax</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2009-10</td>
<td>4,236</td>
<td>363</td>
<td>4,599</td>
<td>1,015</td>
<td>448</td>
<td>1,463</td>
<td>3,136</td>
<td>68</td>
</tr>
<tr>
<td>2010-11</td>
<td>3,136</td>
<td>284</td>
<td>3,420</td>
<td>1,596</td>
<td>600</td>
<td>2,196</td>
<td>1,224</td>
<td>36</td>
</tr>
<tr>
<td>2011-12</td>
<td>1,224</td>
<td>1,149</td>
<td>2,373</td>
<td>1,306</td>
<td>127</td>
<td>1,433</td>
<td>940</td>
<td>40</td>
</tr>
<tr>
<td>Luxury tax</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2009-10</td>
<td>6,195</td>
<td>2,113</td>
<td>8,308</td>
<td>1,168</td>
<td>2,397</td>
<td>3,565</td>
<td>4,743</td>
<td>57</td>
</tr>
<tr>
<td>2010-11</td>
<td>4,743</td>
<td>1,730</td>
<td>6,473</td>
<td>1,030</td>
<td>2,125</td>
<td>3,155</td>
<td>3,318</td>
<td>51</td>
</tr>
<tr>
<td>2011-12</td>
<td>3,318</td>
<td>1,828</td>
<td>5,146</td>
<td>2,741</td>
<td>1,146</td>
<td>3,887</td>
<td>1,259</td>
<td>24</td>
</tr>
<tr>
<td>Tax on works contracts</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2009-10</td>
<td>1,22,508</td>
<td>13,311</td>
<td>1,35,819</td>
<td>31,833</td>
<td>15,707</td>
<td>47,540</td>
<td>88,279</td>
<td>65</td>
</tr>
<tr>
<td>2010-11</td>
<td>88,279</td>
<td>10,424</td>
<td>98,703</td>
<td>41,568</td>
<td>21,238</td>
<td>62,806</td>
<td>35,897</td>
<td>36</td>
</tr>
<tr>
<td>2011-12</td>
<td>35,897</td>
<td>3,510</td>
<td>39,407</td>
<td>12,303</td>
<td>5,471</td>
<td>17,774</td>
<td>21,633</td>
<td>55</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2009-10</td>
<td>3,22,219</td>
<td>1,36,573</td>
<td>4,58,792</td>
<td>1,26,664</td>
<td>1,49,000</td>
<td>2,75,664</td>
<td>1,83,128</td>
<td>40</td>
</tr>
<tr>
<td>2010-11</td>
<td>1,83,128</td>
<td>58,700</td>
<td>2,41,828</td>
<td>71,060</td>
<td>1,05,411</td>
<td>1,76,471</td>
<td>65,357</td>
<td>27</td>
</tr>
<tr>
<td>2011-12</td>
<td>65,357</td>
<td>16,655</td>
<td>82,012</td>
<td>28,218</td>
<td>18,804</td>
<td>47,022</td>
<td>34,990</td>
<td>43</td>
</tr>
</tbody>
</table>

Though seven years have passed since the introduction of VAT, 34,990 assessments pertaining to erstwhile Bombay Sales Tax Act and allied Acts are still pending. Immediate steps may be taken to complete these assessments within a definite time frame so that the recovery of dues does not get difficult with the passage of time.

### 2.1.4.1 Returns filed under VAT

The 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. When the findings of the departmental audit are accepted by the dealer, the case is treated as closed after the dealer accepts the findings and pays up the dues, if any, arising out of such audit. This is in complete departure from the process under the erstwhile BST Act, where the assessments were mandatory. In the VAT regime, dealers having tax liability exceeding ₹ One crore are subject to departmental audit (business audit in case of tax liability and refund audit in case of refunds) on an annual basis by the Large Taxpayers Unit (LTU). A percentage of other dealers, selected at random by Maharashtra Vikrikar Automation System or MAHAVIKAS, is subjected to departmental audit by the Business Audit Branch in case of tax liability or the Refund and Refund Audit Branch in case of refunds.

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:

---

2 The figures are at variance with the figures of Audit Report (Revenue Receipts) 2010-11. The reasons for variations though called for have not been received (January 2013).
Large Taxpayers Unit

<table>
<thead>
<tr>
<th>Period</th>
<th>Cases selected</th>
<th>Cases closed</th>
<th>Cases pending</th>
<th>Percentage of column 4 to 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>2009-10</td>
<td>1,436</td>
<td>1,122</td>
<td>314</td>
<td>21.87</td>
</tr>
<tr>
<td>2010-11</td>
<td>1,345</td>
<td>948</td>
<td>397</td>
<td>29.52</td>
</tr>
<tr>
<td>2011-12</td>
<td>1,062</td>
<td>969</td>
<td>93</td>
<td>8.76</td>
</tr>
</tbody>
</table>

As seen from the above table the percentage of pending cases showed a sharp decline from 29 *per cent* in 2010-11 to 8 *per cent* in 2011-12.

Business Audit

<table>
<thead>
<tr>
<th>Period</th>
<th>Cases selected</th>
<th>Cases closed</th>
<th>Cases pending</th>
<th>Percentage of column 4 to 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>2009-10</td>
<td>38,059</td>
<td>13,774</td>
<td>24,285</td>
<td>63.81</td>
</tr>
<tr>
<td>2010-11</td>
<td>41,144</td>
<td>13,330</td>
<td>27,814</td>
<td>67.60</td>
</tr>
<tr>
<td>2011-12</td>
<td>36,782</td>
<td>7,593</td>
<td>29,189</td>
<td>79.35</td>
</tr>
</tbody>
</table>

As seen from the above table the percentage of pending cases allotted for business audit increased from 64 *per cent* in 2009-10 to 79 *per cent* in 2011-12. The Department attributed the pendency due to deployment of personnel for completion of Refund Audit cases and in the work of cross-checking of ITC claims.

Refund and Refund Audit (₹ in crore)

<table>
<thead>
<tr>
<th>Period</th>
<th>Cases selected</th>
<th>Cases closed</th>
<th>Cases pending</th>
<th>Amount</th>
<th>Percentage of column 4 to 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>2009-10</td>
<td>45,901</td>
<td>17,696</td>
<td>28,205</td>
<td>1,672.87</td>
<td>61.45</td>
</tr>
<tr>
<td>2010-11</td>
<td>57,868</td>
<td>26,839</td>
<td>31,029</td>
<td>2,261.48</td>
<td>53.62</td>
</tr>
<tr>
<td>2011-12</td>
<td>86,887</td>
<td>54,721</td>
<td>32,166</td>
<td>2,658.32</td>
<td>37.02</td>
</tr>
</tbody>
</table>

As seen from the above table the percentage of pending cases allotted for refund and refund audit decreased from 61 *per cent* in 2009-10 to 37 *per cent* in 2011-12. The Department may make more efforts to decrease the pendency further.

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

The position regarding number of dealers and the dealers who failed to file returns in time and action taken by the Department during the period from 2009-10 to 2011-12 is as follows:

<table>
<thead>
<tr>
<th>Year</th>
<th>No of dealers</th>
<th>No of defaulters percentage</th>
<th>Action Taken</th>
<th>Pending Action</th>
<th>No. of cases/ Penalty levied Amount (₹ in crore)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Show cause notice&lt;sup&gt;3&lt;/sup&gt; issued</td>
<td>Unilateral Assessment Order passed</td>
<td>Prosecution lodged</td>
</tr>
<tr>
<td>2009-10</td>
<td>5,74,375</td>
<td>30,485</td>
<td>58,995</td>
<td>5,243</td>
<td>98</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2010-11</td>
<td>5,67,061</td>
<td>93,344</td>
<td>45,289</td>
<td>10,178</td>
<td>21</td>
</tr>
<tr>
<td>2011-12</td>
<td>6,61,899</td>
<td>2,46,006</td>
<td>-&lt;sup&gt;5&lt;/sup&gt;</td>
<td>1,915</td>
<td>5</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

It is seen from the above table that the percentage of defaulters increased sharply from five per cent in 2009-10 to 37 per cent in 2011-12, whereas the number of prosecution cases lodged showed a marked decline from 98 to five during the said period. The Government may review the working of the returns branch with a view to ensure that the defaulter list is kept to the minimum.

2.1.6 Cost of collection

The gross collection in respect of Value Added Tax, the expenditure incurred on their collection and the percentage of such expenditure to the gross collection during the years 2009-10 to 2011-12 along with the relevant all India average percentage of expenditure on collection to gross collection for the year 2008-09 to 2010-11 are given in the following table:

<table>
<thead>
<tr>
<th>Sl. no.</th>
<th>Head of revenue</th>
<th>Year</th>
<th>Gross collection&lt;sup&gt;2&lt;/sup&gt;</th>
<th>Expenditure on collection</th>
<th>Percentage of expenditure to gross collection</th>
<th>All India average percentage for the year preceding the year shown in column 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Sales tax/ VAT</td>
<td>2009-10</td>
<td>32,676.02</td>
<td>283.65</td>
<td>0.87</td>
<td>0.88</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2010-11</td>
<td>42,482.72</td>
<td>298.08</td>
<td>0.70</td>
<td>0.96</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2011-12</td>
<td>50,596.36</td>
<td>346.02</td>
<td>0.68</td>
<td>0.75</td>
</tr>
</tbody>
</table>

<sup>3</sup>  Depending upon the periodicity of returns, namely: monthly, quarterly or six monthly.

<sup>4</sup>  Information not furnished by the Department.

<sup>5</sup>  Show cause notice not issued in view of imposition of penalty vide Section 29(8) of the MVAT Act 2002.

<sup>6</sup>  Figures as per the Finance Accounts.
As seen from the above, the cost of collection in the State of Maharashtra, during the periods 2009-10 to 2011-12 is less as compared to the all India average for the corresponding preceding years.

### 2.1.7 Analysis of collection

The break-up of the total collection at the pre-assessment stage and after regular assessments of Sales Tax, Entry Tax and Luxury Tax for the year 2011-12 and the corresponding figures for the preceding two years as furnished by the Department is as mentioned in the following table:

<table>
<thead>
<tr>
<th>Head of revenue</th>
<th>Year</th>
<th>Amount collected at pre-assessment stage</th>
<th>Amount collected after regular assessment (additional demand+ penalties)</th>
<th>Amount refunded</th>
<th>Net collection (col 3 + col 4 – col 6)</th>
<th>Percentage of column 3 to 7</th>
</tr>
</thead>
<tbody>
<tr>
<td>Finance Department</td>
<td>2009-10</td>
<td>34,438.67</td>
<td>660.30</td>
<td>2,616.14</td>
<td>32,482.83</td>
<td>106</td>
</tr>
<tr>
<td></td>
<td>2010-11</td>
<td>41,572.13</td>
<td>88.93</td>
<td>3,190.30</td>
<td>38,470.76</td>
<td>108</td>
</tr>
<tr>
<td></td>
<td>2011-12</td>
<td>50,157.59</td>
<td>429.98</td>
<td>4,217.73</td>
<td>46,369.84</td>
<td>108</td>
</tr>
<tr>
<td>Entry tax</td>
<td>2009-10</td>
<td>6.65</td>
<td>2.66</td>
<td>--</td>
<td>9.31</td>
<td>71</td>
</tr>
<tr>
<td></td>
<td>2010-11</td>
<td>12.77</td>
<td>0.44</td>
<td>--</td>
<td>13.21</td>
<td>97</td>
</tr>
<tr>
<td></td>
<td>2011-12</td>
<td>11.21</td>
<td>1.71</td>
<td>--</td>
<td>12.92</td>
<td>87</td>
</tr>
<tr>
<td>Luxury tax</td>
<td>2009-10</td>
<td>211.41</td>
<td>3.27</td>
<td>--</td>
<td>214.68</td>
<td>98</td>
</tr>
<tr>
<td></td>
<td>2010-11</td>
<td>267.86</td>
<td>1.07</td>
<td>--</td>
<td>268.93</td>
<td>100</td>
</tr>
<tr>
<td></td>
<td>2011-12</td>
<td>300.37</td>
<td>17.02</td>
<td>0.25</td>
<td>317.14</td>
<td>95</td>
</tr>
</tbody>
</table>

The above table shows that collection of revenue at the pre-assessment stage in respect of Sales Tax/VAT ranged between 106 and 108 per cent during 2009-10 to 2011-12. This indicates that the VAT collection is mainly through voluntary compliance. During the year 2009-10 to 2011-12, the amount collected at the pre-assessment stage was more than the amount due to the Government resulting in refunds aggregating ₹ 4,217.73 crore. The revenue collected after regular assessment was quite low.

### 2.1.8 Impact of Audit Reports

#### Revenue impact

During the last five years, i.e. 2006-07 to 2010-11, we had pointed out under-assessments/non/short levy/loss of revenue of Sales Tax, etc., interest and other irregularities with revenue implication of ₹ 1,879.59 crore in 1,217 cases. Of these, the Department had accepted audit observations in 344 cases involving ₹ 510.27 crore and had recovered ₹ 1.07 crore in 59 cases. The details are shown in the following table:
<table>
<thead>
<tr>
<th>Year</th>
<th>Amount objected</th>
<th>Amount accepted</th>
<th>Amount recovered</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No. of cases</td>
<td>No. of cases</td>
<td>No. of cases</td>
</tr>
<tr>
<td></td>
<td>Amount</td>
<td>Amount</td>
<td>Amount</td>
</tr>
<tr>
<td>2006-07</td>
<td>83</td>
<td>83</td>
<td>30</td>
</tr>
<tr>
<td>2007-08</td>
<td>187</td>
<td>167</td>
<td>27</td>
</tr>
<tr>
<td>2008-09</td>
<td>577</td>
<td>66</td>
<td>1</td>
</tr>
<tr>
<td>2009-10</td>
<td>10</td>
<td>10</td>
<td>1</td>
</tr>
<tr>
<td>2010-11</td>
<td>360</td>
<td>18</td>
<td>-</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>1,217</strong></td>
<td><strong>344</strong></td>
<td><strong>59</strong></td>
</tr>
</tbody>
</table>

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

### 2.1.9 Results of audit

We reported underassessment/short levy/loss of revenue and potential tax revenue, etc., amounting to ₹ 41.13 crore in 424 cases as shown below on the basis of test check of the records of the Sales Tax Department conducted during the year 2011-12:

<table>
<thead>
<tr>
<th>Sl. no.</th>
<th>Category</th>
<th>No. of cases</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>VAT on works Contract (A Performance Audit)</td>
<td>1</td>
<td>12.19</td>
</tr>
<tr>
<td>2.</td>
<td>Non/short levy of tax</td>
<td>243</td>
<td>15.79</td>
</tr>
<tr>
<td>3.</td>
<td>Incorrect grant/excess set off</td>
<td>74</td>
<td>5.31</td>
</tr>
<tr>
<td>4.</td>
<td>Non/short levy of interest/penalty</td>
<td>19</td>
<td>1.02</td>
</tr>
<tr>
<td>5.</td>
<td>Non-forfeiture of excess collection of tax</td>
<td>16</td>
<td>0.20</td>
</tr>
<tr>
<td>6.</td>
<td>Other irregularities</td>
<td>71</td>
<td>6.62</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>424</strong></td>
<td><strong>41.13</strong></td>
</tr>
</tbody>
</table>

In response to our observations made in the local audit reports during the year 2011-12 as well as during earlier years, the Department accepted underassessments/other deficiencies involving ₹ 1.66 crore in 140 cases. Out of this, 19 cases involving ₹ 11.14 lakh were pointed out during 2011-12 and the rest during earlier years. During the year 2011-12, the Department recovered ₹ 59.65 lakh in 34 cases out of which ₹ 7.77 lakh in 10 cases were pointed out during 2011-12 and the rest in earlier years.

A performance Audit on “VAT on Works Contract” with total financial effect of ₹ 12.19 crore and a few audit observations involving ₹ 2.04 crore are mentioned in the succeeding paragraphs.

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7 An amount of ₹ 84,071 was recovered. The amount cannot be rounded into crores of Rupees.

8 An amount of ₹ 40,000 was recovered. The amount cannot be rounded into crores of Rupees.
2.2 Performance Audit on “VAT on Works Contract”

Highlights

- Seventeen registered contractors had received payments of ₹ 509.98 crore from Konkan Irrigation Development Corporation (KIDC) but had disclosed turnover of sales of ₹ 187.11 crore only in their VAT returns. This resulted in short reflection of turnover of sales of ₹ 322.87 crore.
  
  Four contractors had received payments from KIDC for the work done but they were not found registered with the Sales Tax Department (STD). They were liable to pay tax of ₹ 66.50 lakh but tax of ₹ 33.02 lakh only was recovered. This resulted in short recovery of TDS of ₹ 33.48 lakh.

(Paragraph 2.2.8.1)

- Cross verification of data obtained from Nashik Irrigation Division with the data available with the STD revealed short disclosure of turnover of sales of ₹ 9.14 crore by two registered dealers.

(Paragraph 2.2.8.2)

- Seven contractor dealers received payments aggregating to ₹ 1.48 crore from Nashik Municipal Corporation (NMC) but these were not registered with the STD.

  Three registered contractor dealers of NMC had received payment aggregating to ₹ 6.21 crore but disclosed sales turnover of ₹ 5.68 crore in their returns. The tax payable on the differential turnover of sales of ₹ 53 lakh remained unrecovered.

(Paragraph 2.2.8.3)

- Sixty seven contractor dealers of Pimpri-Chinchwad Municipal Corporation (PCMC) were not found registered with the STD. TDS of ₹ 1.13 crore was recovered short in these cases.

(Paragraph 2.2.8.4)

- Short realisation of tax due to less reflection of turnover of ₹ 48.66 lakh was noticed in case of a contractor dealer paid for work done by Central Railway (Dadar Unit), Mumbai.

(Paragraph 2.2.8.5)

- 941 Builders and Developers (B&D) though liable for registration were not registered under MVAT Act. Further 66 registered B&Ds, did not pay tax on turnover of sales of ₹ 733.50 crore.

(Paragraph 2.2.10)

- Non-levy of interest on delayed payment of tax by six employers resulted in non-realisation of revenue of ₹ 17.68 lakh.

(Paragraph 2.2.11.3)

- Selection of dealers for business audit was very low, it was only 17 per cent of the total works contract, out of which, only 12 per cent was completed in departmental audit.

(Paragraph 2.2.13)
• In five divisions, deductions under composition scheme though inadmissible were allowed to 82 dealers. This resulted in grant of incorrect deductions aggregating ₹ 67.98 crore and consequential short levy of tax of ₹ 4.87 crore.

(Paragraph 2.2.14)

• Twenty four dealers in four divisions had not maintained accounts of the deductions allowed and were entitled to a deduction of ₹ 36.16 crore instead of ₹ 64.18 crore allowed to them. This resulted in excess deduction of taxable turnover of ₹ 28.02 crore with tax effect of ₹ 2.51 crore.

(Paragraph 2.2.15)

• Six dealers engaged in works contract, were allowed incorrect deductions of ₹ 4.58 crore resulting in short levy of tax of ₹ 40.52 lakh.

(Paragraph 2.2.16)

2.2.1 Introduction

The assessment and levy of tax on transactions of works contract was governed by the Maharashtra Sales Tax on the Transfer of Property in Goods involved in the Execution of Works Contract (Re-enacted) Act, 1989 up to 31 March 2005. Thereafter the Act stood repealed with introduction of Maharashtra Value Added Tax Act, 2002 (MVAT Act) with effect from 1 April 2005. All the intra-state sales relating to works contracts are taxable under the MVAT Act, rules made and notifications issued thereunder while inter-state sales are taxable under the Central Sales Tax Act, 1956 (CST Act) and rules made and notifications issued there under from time to time. Each dealer whose turnover of sales towards tax liability crosses the threshold limit of ₹ 5 lakh in a year is liable to get himself registered with the Sales Tax Department (STD) under the MVAT Act. As per Section 31 of the MVAT Act and Rule 40 of the MVAT Rules, State Government has notified classes of employers (i.e. those awarding contract) who are liable to deduct tax from the contractor. It is two per cent in case of registered dealers and four per cent in any other case, of the amount payable to the contractor, excluding the amount of tax, if any, separately charged by the contractor to whom a works contract has been awarded.

The STD has got developed and implemented e-governance project called “MAHAVIKAS” (Maharashtra Vikrikar Automation System) for the internal administration, speedy services to tax payers and to stop tax evasion.

2.2.2 Organisational set up

The STD functions under the administrative control of the Principal Secretary, Finance Department at Government level. The Commissioner of Sales Tax, Maharashtra State, Mumbai is the head of the STD and is assisted by four Additional Commissioners in charge of each zone at Mumbai, Nagpur, Nashik and Pune, 13 Joint Commissioners at the divisional level and Deputy Commissioners, Assistant Commissioners and Sales Tax Officers at different levels.
2.2.3 Scope, methodology and reasons for selection of performance audit

The performance audit on levy and collection of VAT on Works Contract transaction was conducted by us from January to May 2012 in respect of assessments completed by departmental audit between April 2006 and March 2011. We selected four out of thirteen divisions by adopting Simple Random Sampling without Replacement technique. Further, in order to have a proper geographical representation, two more divisions, were also selected for audit. Thus in all six out of the thirteen divisions, were selected for the audit. The STD had completed departmental audit in 799 assessment cases of the contract dealers in these six divisions. We checked all these cases in our audit scrutiny. We also obtained information from other Government Departments, Corporations, Local bodies, etc., awarding the contract and compared the same with the data maintained by the department on MAHAVIKAS.

An entry conference for the performance audit was held in January 2012 and the executive was informed about the selection of units and scope and methodology of audit. The departmental authorities explained the various provisions relating to VAT on Works Contract and the procedures adopted for its administration. The draft Performance Audit Report was forwarded to the Government and the Department in August 2012 and audit findings and recommendations were discussed in the exit conference held in November 2012. The Principal Secretary, Finance Department, Commissioner of Sales Tax and other senior officers from the STD attended the meeting. The replies given during the exit conference and at other points of time have been appropriately included in the relevant paragraphs.

Reasons for selection: We had during our local inspection found that STD was not paying enough attention towards the verification of the returns filed by the contract dealers. We felt it was appropriate to audit this area. It revealed a number of discrepancies which are discussed in the subsequent paragraphs.

2.2.4 Audit objectives

The Performance Audit was conducted to ascertain whether:

- enforcement of provisions under MVAT Act and the instructions issued from time to time at Commissionerate level was effective;
- internal control mechanism was in place and was adequate and effective;
- any gap exists between the provisions of the Act and its implementation which may give rise to any irregularity in relation to payment of tax; and
- proper mechanism exists in the Department to monitor the tax payable by builders and developers.

2.2.5 Audit Criteria

The audit criteria for the Performance Audit are derived from the provisions of the following Central and State laws.

---

9 Mumbai, Nashik, Pune and Thane,
10 Amravati and Nagpur.
Central Laws

- The Central Sales Tax Act, 1956;
- The Central Sales Tax Rules, 1972;

State Laws

- The Maharashtra Value Added Tax Act, 2002;
- The Maharashtra Value Added Tax Rules, 2005;

In addition to above notifications, circulars issued from time to time have also been taken into account while conducting the audit.

2.2.6 Acknowledgement

We acknowledge the co-operation of the STD in providing necessary information and records to audit.

2.2.7 Trend of Revenue

We called for the information regarding the year-wise works contract receipts under MVAT Act from the Sales Tax Department, however, it was stated that the separate tax receipts of works contract transactions were not available as the total VAT receipts were maintained which included the tax on works contract. As such contribution from contract dealers towards the VAT receipts could not be ascertained and analysed.

Audit findings

The system and compliance deficiencies are discussed in the succeeding paragraphs:

System deficiencies

2.2.8 Absence of co-ordination with other public utilities for registration of dealers

We found that there was no co-ordination between the STD and other public utilities to ascertain that the contractors whose turnover had exceeded the threshold limit were registered with the STD and had declared turnover of their sales turnovers correctly in their returns.

The STD had not put in place any mechanism\(^{11}\) for obtaining information from the “Employer” (institutions awarding the contract) and cross verify the same with the data available on MAHAVIKAS to ascertain its correctness. A few deficiencies noticed instances are discussed in the following paragraphs:

\(^{11}\) by way of returns or otherwise.
2.2.8.1 Cross verification of data obtained from Konkan Irrigation Development Corporation (KIDC)

Short reflection of turnover of sales: We obtained information from the payment bills of KIDC for the period from April 2005 to March 2011 and found that 17 registered contractors had received payments of ₹509.98 crore from KIDC. Cross verification of this data with the data available on MAHAVIKAS revealed that eight contractors had not filed their returns for different periods between April 2005 and March 2011 while the remaining had disclosed less turnovers in their returns.

These contractors had disclosed turnover of sales of ₹187.11 crore only in their returns available on MAHAVIKAS. This resulted in short reflection of turnover of sales of ₹322.87 crore. Besides, two contractors had claimed TDS credit of ₹16.79 lakh as against TDS of ₹13.71 lakh recovered from them, resulting in excess claim of ₹3.08 lakh.

Dealers not found registered under MVAT Act: - As per the information received from KIDC four contractors had received payments aggregating to ₹23.51 crore, during the years 2005-06 to 2010-11. On cross verification with MAHAVIKAS we found that these dealers were not found registered under MVAT Act. The dealers were liable to pay TDS at the rate of four per cent, however, TDS was incorrectly deducted at lesser rates (1 to 3 per cent) in these cases involving turnover of ₹16.62 crore. Thus, as against TDS of ₹66.50 lakh, ₹33.02 lakh only was recovered, resulting in short recovery of TDS of ₹33.48 lakh.

Excess credit of TDS: - Further cross verification of the information received from KIDC with MAHAVIKAS revealed that in case of another contractor, the KIDC had deducted TDS of ₹3.80 lakh from the turnover of sales of ₹1.90 crore for the month of May 2010. In the original return filed by the contractor in June 2010 with the Department, the contractor had claimed TDS credit at ₹3.80 lakh but in his revised return filed in January 2012, he had claimed TDS credit at ₹9.80 lakh resulting in excess credit of TDS of ₹6 lakh.

2.2.8.2 Cross verification of data obtained from Nashik Irrigation Division (NID)

Short disclosure of sales turnover: - As per MAHAVIKAS two registered contractor dealers had filed their returns for turnover of sales at ₹6.93 crore for different periods between 2005-06 and 2009-10. We obtained information
from NID and found the dealers had received payments aggregating to ₹ 16.07 crore. This resulted in short disclosure of turnover of sales of ₹ 9.14 crore.

**Excess claim of TDS**:- Further, a contractor dealer claimed TDS credit of ₹ 17.93 lakh in his returns during the year 2005-06 as against TDS of ₹ 16.27 lakh deducted by NID during this period. This resulted in excess claim of TDS of ₹ 1.66 lakh.

**Non-registration of dealers**:- Cross verification of data obtained from NID with the MAHAVIKAS revealed that a contractor dealer received payment of ₹ 2.15 crore, during the years 2009-10 and 2010-11, from which the TDS of ₹ 4.29 lakh was deducted. Further, another contractor had received payment of ₹ 1.08 crore during 2010-11, from which the TDS of ₹ 2.16 lakh was deducted. However, the TIN mentioned against the name of these contractors in the information furnished by NID was shown against the name of different contractors in MAHAVIKAS as shown below:

<table>
<thead>
<tr>
<th>Name of contractor</th>
<th>TIN</th>
<th>Name of contractor</th>
</tr>
</thead>
<tbody>
<tr>
<td>M/s Ask Infrastructure Pvt Ltd., Belapur</td>
<td>27330597820 V</td>
<td>M/s Khilari Infrastructures Pvt. Ltd., Belapur</td>
</tr>
<tr>
<td>M/s Enginova Computer, Aurangabad</td>
<td>27120376727 V</td>
<td>M/s Gunjal Babasaheb Maruti, Ahmednagar</td>
</tr>
</tbody>
</table>

Since M/s. Ask Infrastructure Pvt. Ltd., Belapur and M/s Enginova Computer, Aurangabad, did not appear on MAHAVIKAS as registered dealers, the possibility of the tax liability on their turnover not being discharged could not be ruled out and needs verification.

### 2.2.8.3 Cross verification of data obtained from Nashik Municipal Corporation (NMC)

**Dealers not found registered under MVAT Act**:- Cross verification of data obtained from NMC with MAHAVIKAS revealed that six contractor dealers received payments aggregating to ₹ 99.18 lakh from NMC during 2010-11, But these were not found registered with the STD. Further, one contractor had received payment of ₹ 48.62 lakh and had applied for registration under MVAT but the application was rejected by the Department as seen from a remark (reasons not given) made in the MAHAVIKAS.

Thus, tax payable on the turnover of sales totalling to ₹ 1.48 crore in respect of all these seven contractors could not be recovered due to non-registration.

**Short disclosure of turnover of sales** :- Three registered contractor dealers had received payment aggregating to ₹ 6.21 crore but disclosed sales turnover of ₹ 5.68 crore in their returns. The tax payable on the differential turnover of sales of ₹ 53 lakh needs to be recovered.

### 2.2.8.4 Cross verification of data obtained from Pimpri-Chinchwad Municipal Corporation (PCMC)

**Non-registration of dealers** :- Cross verification of data obtained from PCMC with MAHAVIKAS revealed that sixty seven contractors received payment aggregating to ₹ 55.24 crore from the PCMC (i.e. employer), during the years 2009-10 and 2010-11, but these were not found registered under
MVAT Act. Of these, in 66 cases involving turnover of ₹ 54.89 crore the TDS was deducted at lesser rates (1 to 3 per cent) instead of 4 per cent. Thus, ₹ 1.07 crore only was deducted as against TDS of ₹ 2.20 crore, resulting in short recovery of TDS of ₹ 1.13 crore.

2.2.8.5 Cross verification of data obtained from Central Railway (Dadar Unit), Mumbai

Short reflection of turnover :- As per the information obtained from Central Railway (Dadar Unit), Mumbai a contractor dealer was paid ₹ 91.79 lakh and TDS of ₹ 1.84 lakh was deducted in July 2010. However, as per the returns (July 2010) uploaded by the contractor on MAHAVIKAS, the turnover of sales was ₹ 43.13 lakh only. This resulted in short reflection of turnover of ₹ 48.66 lakh.

Thus it would be seen from the above that it is very important for the STD to conduct a cross verification of transactions with other departments. The Commissioner may call for details and particulars regarding the payments made and services provided by public utilities and financial institutions including companies and compare the same with the MAHAVIKAS to verify their correctness and non-registration of dealers. This will also be useful for the purposes of the survey.

In the exit conference, the Department stated that the observations made in the paragraph would get covered after introduction of e-tendering by the Government for the various types of employers who entrusted works to the contractors. As regards the cases referred to in the paragraphs, it was stated that same would be verified and corrective action taken, wherever necessary.

The Government may consider introducing a system of obtaining information relating to the payments made to the contractors periodically and cross checking the same with the data available in MAHAVIKAS for detecting unregistered dealers to prevent evasion of tax.

2.2.9 Absence of co-ordination within the STD

The Commissioner of Sales Tax had issued a Trade Circular in December 2008, designating Deputy Commissioner of Sales Tax (E-810), BA-II for Mumbai Division and Sales Tax Officer, Returns Branch of Maharashtra, as the officer for maintenance of data of unregistered contractors and acceptance of demand drafts, copy of challans relating to payment of TDS for proper accounting of TDS (henceforth called as TDS cell). A Survey Branch which was put in place in January 2008 to collect the list of unregistered dealers from the above designated officer for getting them registered.

We noticed that the data regarding unregistered (URD) contractor dealers was neither sent by the TDS cell to the Survey Branch nor was it collected by the Survey Branch in Nashik, Pune and Thane divisions.

However, the TDS cell had received the annual returns in Form 405, demand drafts and copies of challans relating to payment of TDS but no efforts were made to check the data for verifying the correctness of the TDS amount paid and bring the unregistered dealer into the tax net.
As per Section 31 of the MVAT Act and Rule 40 of the MVAT Rules, the Government was required to notify the class(es) of employers who are liable to deduct TDS from the amount payable to the contractors. These employers were required to file annual return in Form 405 (consisting the name and TIN of contractors) within three months from the end of the year to which the returns relate.

Test check of the annual returns in Form 405 in respect of 56 cases relating to nine employers revealed that the TDS was deducted at varying rates from one to four *per cent* from 44 contractors in Nashik division. In none of these cases TIN of the contractors were mentioned in Form 405. Further, our cross verification of this data with the information available on MAHAVIKAS revealed that 25 of these contractors having turnover of sales of ₹ 14.92 crore were not registered with STD as on June 2012. The employers had deducted TDS at lesser rate (1 to 3 *per cent*) instead of the applicable rate of four *per cent*. Due to this, TDS of ₹ 27 lakh was collected as against ₹ 54 lakh, on turnover of sales of ₹ 13.56 crore, resulting in short deduction of TDS of ₹ 27 lakh.

The facts indicate that the Department was not following its own instructions and there was no co-ordination within the Department to bring the unregistered dealers under the tax net.

In the exit conference, the Department stated that the matter would be examined and a special review would also be taken up in respect of Nashik, Pune and Thane divisions in order to ensure that the instructions issued by the CST are followed.

### 2.2.10 Non-registration of builders and developers

With effect 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 5 *per cent* under composition scheme. Further, as per notification issued by the Government in July 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 Commissioner of Sales Tax in a review meeting held in January 2010 had instructed the Survey Branch to obtain data regarding Builders & Developers (B&Ds) from the TDS Cell of BA and/or from Joint Commissioner (Economic and Intelligence Unit).

We called for the information regarding number of B&Ds registered/liable for registration during the year 2010-11 from the Joint Commissioner of Sales Tax, Business Audit-II, Mumbai, but the same was stated to be not available with him, however, a list of B&Ds who had paid tax during 2010-11 under the composition scheme was furnished.
Cross verification of the data\textsuperscript{12} relating to dealers\textsuperscript{13} who were involved in construction business during 2010-11 obtained from the offices of the Sub-Registrars of Stamp Duty and Registration at Amravati, Mumbai, Nagpur, Pune and Thane with the data available on MAHAVIKAS revealed that 941 Builders and Developers out of 1,219 whose turnover of sales was ₹ 2,301.12 crore, though liable for registration were not registered under MVAT Act. Further 66 out of 278 registered B&Ds, did not pay any tax on turnover of sales of ₹ 733.50 crore and nine had paid VAT on a part of their turnover i.e. ₹ 57.50 lakh only, as against ₹ 3.08 crore on turnover of sales of ₹ 307.85 crore.

In 2007, the levy of tax on B&Ds was challenged by the Maharashtra Chamber of Housing Industry (MCHI) in the Mumbai High Court by way of a writ petition. The Mumbai High Court in its judgement dated 10 April 2012 held that there is no merit in the challenge to the constitutional validity of the composition scheme introduced by the State Government. Against this judgement a Special Leave Petition was filed in the Supreme Court. In August 2012, the Apex Court gave a stay order towards the coercive process for recovery of tax, interest and penalty and also extended the time period for registration by the B&Ds up to 31 October 2012.

In the exit conference, the Department stated that in view of the interim order of the Supreme Court, 10,227 B&Ds have obtained registration under MVAT. Further information from the Inspector General of Registrations, Pune in respect of builders from 2006 onwards would be obtained and processed which would take some time.

However, whether all the B&Ds were registered by 31 October 2012, which was the cut off date prescribed by the Apex Court, has not so far been confirmed by the Department (January 2013).

**Deficiencies in the administration of TDS**

### 2.2.11 Tax Deduction at Source (TDS)

State Government is required to notify classes of employers who are liable to deduct tax at source from the contractors. The amount so deducted should be paid along with challan in Form 210 within 21 days from the end of month for which tax has been deducted, failing which employer would be liable for interest on late payment. Further, if the employer does not deduct or after deducting fails to pay the tax as required under the Act, the provisions relating to interest and penalty shall apply *mutatis mutandis* in respect of the unpaid tax. The employer shall issue a certificate in Form 402 to the dealer, who in turn will get credit of the Tax Deducted at Source (TDS) while computing his liability. Further, the employers were required to file annual return in Form 405 (consisting the name and TIN of contractors) within three months from

\textsuperscript{12} The data collected did not reflect the information regarding agreements entered into by the builders during the construction period and after completion of the flats, dwelling, etc., separately.

\textsuperscript{13} Cases of builders and developers wherein the agreements which are registered on or after 1 April 2010 have been taken into consideration.
the end of the year to which the returns relate and maintain an account of the TDS certificates issued to the dealers in Form 404.

2.2.11.1 Grant of TDS credit without verification

During test check of the records of the selected six divisions, for the transaction periods 2005-06 to 2010-11, we noticed that in 145 cases credits on account of TDS were allowed at ₹ 34.60 crore to the contractors merely on the basis of certificates issued to the dealer by the employers in Form 402. The form, however, did not provide for any details of challan, bank/treasury etc., as also the date on which the TDS was deducted by the employer. Copies of challan in proof of payment of TDS were also not found in the departmental records. There was nothing on record to indicate that the correctness of the credit allowed has been verified with respect to the treasury challans or bank remittances. As these details were not available, the correctness of TDS credit allowed during departmental audit could not be verified by us. Division-wise details are as under:

<table>
<thead>
<tr>
<th>Division</th>
<th>No. of cases</th>
<th>TDS credit allowed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amravati</td>
<td>2</td>
<td>0.10</td>
</tr>
<tr>
<td>Mumbai</td>
<td>51</td>
<td>23.44</td>
</tr>
<tr>
<td>Nagpur</td>
<td>4</td>
<td>0.15</td>
</tr>
<tr>
<td>Nashik</td>
<td>39</td>
<td>4.48</td>
</tr>
<tr>
<td>Pune</td>
<td>30</td>
<td>5.16</td>
</tr>
<tr>
<td>Thane</td>
<td>19</td>
<td>1.27</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>145</strong></td>
<td><strong>34.60</strong></td>
</tr>
</tbody>
</table>

2.2.11.2 Non-monitoring of TDS and returns of Employers

In respect of the notified class of employers who were required to deduct TDS from the payment made by them to the contractors towards works contract executed, the Department should have a database of such employers in a register which could have been used to detect non-payment of TDS into Government account, non-filing of return by the employers, referring cases to employers regarding short deduction of TDS, identification of unregistered dealers (URD), periodic follow ups, etc.

Information collected from the four test checked divisions revealed that the register were not maintained in Mumbai up to March 2008, in Nashik upto March 2007 and in respect of Pune and Thane Divisions up to January 2009. In absence of a database of notified class of employers we could not ascertain whether all the employers were filing the returns and detect non-payment/short deduction of TDS.

As employers are the primary source for the Department to detect URDs, it was necessary to maintain a database from April 2005 and update it periodically.

2.2.11.3 Non-levy of interest on delayed payment of TDS

As per Section 31(5) read with Section 30 (3) of the MVAT Act, interest on TDS is payable by the employer for delayed payment, non-deduction of TDS or for not crediting the amount into Government account after deduction.
No mechanism was put in place by STD to ascertain the date on which the employer had deducted TDS from the payment made to the contractor. This information was required to be filed in Form 405 by the employer with the Department but it was not done.

A test check of six employers (one in Mumbai, four in Nashik and one in Thane) revealed delayed payment of TDS into Government account. We noticed that in Form 405 the date of deduction of TDS was not mentioned by the employer. The delays\textsuperscript{14} ranged from 14 to 629 days on which interest of ₹ 17.68 lakh\textsuperscript{15} was leviable. No action was taken to levy the interest.

To sum up, there was no mechanism to identify the correct number of the employers who are liable to pay TDS, employers making the payments and the employers who failed to comply with the provisions of the Act. There is no system for cross-check of TDS receipts and claim of TDS credit in returns by the dealers with Form 404 and records available with TDS cell/treasury respectively.

In the absence of information regarding date on which the deduction was made by the employer in Form 405, the Department could not work out the interest in respect of delayed payments though provided for in the Act.

In the exit conference, the Department in respect of the observations made in paragraphs 2.2.11.1 to 2.2.11.3, stated that Department is taking measures to cross check TDS claims by TDS cell through the register maintained in Form 404 by the employers. Regarding maintenance of the database of all employers who deduct TDS, it is proposed to monitor it through e-tenders from the TDS cell and Economic Intelligence Unit to enhance compliance, as it is not practical to get all the employers/contractors registered. It was further stated that a new Form 435 for return cum challan is being developed wherein details of TDS i.e. Bank/Treasury/Account, etc. would be available. Regarding levy of interest pointed out by us in paragraph 2.2.11.3, reply of the Department is yet to be received (January 2013).

However, we pointed out in the exit conference that at present there is no cross linkage of information between the BA/R&RA branch and TDS cell which may lead to fraudulent/bogus claim of TDS.

The Government may consider developing a module with full details of TDS in MAHAVIKAS, for filing e-return (Form 405) and making e-payment compulsory in respect of TDS. TDS certificates may be generated online so that genuineness of the same can be ensured.

\textsuperscript{14} In the absence of this information the month of return mentioned in Form 405 and the date on which cheque was received as per the cheque register and date of remittance of tax as per challan was taken into consideration for working out the delay in crediting the amount into Government account.

\textsuperscript{15} The interest amount has been worked out by us determining the period of delay beyond 21 days subsequent to the month in which the employer had deducted the TDS to the date of credit of the amount into the Government treasury as per the cheque register.
2.2.12 Sub-contracts

2.2.12.1 Absence of mechanism for confirmation of tax liability in respect of sub-contracts

Section 45 of the MVAT Act provides that if the principal or agent (sub-contractor) shows to the satisfaction of the Commissioner that the tax has been paid by the agent or principal and produces a duly signed certificate in the prescribed form then the principal or the agent, as the case may be, shall not be liable to pay tax again in respect of the same transaction. Form 406 is to be issued by the principal contractor to the agent and Form 407 by the agent to the principal contractor. These forms inter-alia contain information regarding turnover of sales in respect of which VAT is paid and also details of payment.

In the six test checked divisions, our scrutiny of cases covered under departmental audit in respect of 46 dealers (74 periods), for the years 2005-06 to 2010-11, revealed non-availability of forms (406/407) in respect of the part or full value of the sub-contract claim, non-availability of challan number/date etc., in the relevant columns of the forms.

The certificate in Form 406 prescribed under MVAT Act did not provide for a separate identification of tax which is admitted and discharged by the contractors for one or more specific subcontract value. The Department had also not carried out the cross verification of records/returns relating to the principal and the sub-contractors in any of these test checked 46 dealers in which the deduction of subcontract value was claimed and allowed by the Department.

Our cross verification of the returns and the records of the principal contractor/sub-contractor revealed the following:

- In Mumbai division, M/s Gammon (India) Ltd., the principal contractor was allowed deductions of ₹147.47 crore and ₹202.06 crore by LTU branch during the periods 2006-07 and 2007-08 respectively, from the turnover of sales towards payments made to the sub-contractor, M/s. Sadbhav Engineering Ltd, Nashik for the above two periods. However, M/s. Sadbhav Engineering Ltd of Nashik division had shown receipts of ₹86.11 crore and ₹165.97 crore only in his returns during the above two periods. This resulted in escapement of turnover of ₹61.36 crore in 2006-07 and ₹36.09 crore in 2007-08 totalling to ₹97.45 crore, with tax implication of ₹7.80 crore.

- In Thane division, M/s M K Enterprises, a sub-contractor was allowed deduction of ₹18.06 lakh from his turnover, during the year 2007-08, as per Refund Order dated 12 December 2008, on the basis of Form 406 issued by M/s Rashid and Co. (principal contractor). The sub-contractor had also furnished a statement indicating payment of tax of ₹77,343 on sales of ₹18.06 lakh paid by the principal contractor. Our cross verification with the R&RA records of the principal contractor revealed that principal contractor had shown his tax liability for the year as ‘NIL’. Under the circumstances, the authenticity of Form 406 and payment of tax of ₹77,343 issued by M/s Rashid and Co. needs verification.

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16 Amravati, Mumbai, Nagpur, Nashik, Pune and Thane.
In Nashik division, M/s J C Shaikh (principal contractor) was allowed deduction of ₹ 1.10 crore from turnover of sales for payments made to M/s Nidhi Construction (sub-contractor) towards work done by him, during the year 2007-08 (as per the order passed under R&RA in June 2009). Our cross verification of the returns filed by M/s Nidhi Construction with MAHAVIKAS revealed that the turnover of sales of the sub-contractor was ₹ 96.80 lakh only. Thus the claim of payment of ₹ 1.10 crore shown by the principal contractor appears incorrect and needs to be investigated by the Department.

In another case of Nashik division, in the R&RA order dated 13 December 2010, M/s Balaji Construction Co, the principal contractor was allowed deduction of ₹ 17.97 lakh, for the period 2006-07, on the basis of Form 407 issued to him on 26 May 2008 by the sub-contractor, M/s B.T. Kodlag Construction Pvt. Ltd. However, the principal contractor had also issued Form 406 on 26 May 2008 (same day) for accepting the tax liability towards turnover of sales of ₹ 17.97 lakh. Obviously, both the principal as well as the sub-contractor had mutually absolved themselves from discharging the tax liability of ₹ 71,880 to the Government. Hence the records of the principal as well as the sub-contractor need verification.

These irregularities and any consequential tax evasion could have been avoided had the Department correlated the records of the principal with the sub-contractor or vice versa, which were available with the Department.

In the exit conference, the Department stated that additional annexure incorporating details and declarations in Form 406 and 407 will be incorporated in Form 704 prepared by the Chartered Accountants. Further, in respect of the observations made by us, it was stated that same would be verified and corrective action will be taken, if necessary.

The Government may consider introducing a mechanism for cross-linkage of records relating to the principal and the sub-contractors in order to detect cases of evasion of tax.

### 2.2.12.2 Deduction of sub-contract value in the absence of requisite certificate

Under Rule 58(1) of the MVAT Rules, the value of goods at the time of transfer of property in the goods involved in the execution of the works contract may be determined by effecting certain deductions from the value of the entire contract. Under the said Rule eight items (a to h) are provided which relate to amount on which deductions are admissible.

During test check of the records of Nashik division, we noticed that during the periods between 2005-06 and 2007-08, deductions claimed by three principal contractors in the returns, aggregating to ₹ 2.54 crore, for payments made by them to their sub-contractors were allowed in departmental audit (BA/R&RA) as per the provisions of Rule 58(1)(b). However, the certificates in Form 407 in support of the sub-contractor, having accepted the tax liability on the value of work executed by him, were not kept on record.

Further, the records of the principal contractor also did not confirm whether the deductions claimed were purely for labour and services. Due to this, the
correctness of these deductions and the tax liability worked out in the departmental audits could not be ascertained.

It is recommended that Government may issue directions to the STD for recording in the assessment orders the basis on which deductions were allowed and also provide documentary evidence whenever the demand arises.

**Internal control mechanism**

### 2.2.13 Low coverage in departmental audit

The White Paper on VAT envisaged initiation and completion of tax audit within the prescribed time limit for which audit of dealers shall be based on a scientific risk analysis. The MVAT Act does not prescribe any percentage or number of cases to be selected for BA. However, as per the departmental manual issued in October 2007, the dealers are to be selected for BA in such a way that each dealer gets selected for audit once in five years. As per the Manual of BA of the Department, BA shall be completed within three months from its commencement. The number of cases allotted for BA and number of cases assessed/completed as on 31 March 2011 in six test checked divisions are as under:

<table>
<thead>
<tr>
<th>Division</th>
<th>No. of dealers who filed return in Form 233</th>
<th>No. of Form 233 filers allotted for Business Audit</th>
<th>Audit/Assessment completed</th>
<th>Percentages</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Col. 3 to 2</td>
</tr>
<tr>
<td>1</td>
<td>2,032</td>
<td>522</td>
<td>36</td>
<td>26</td>
</tr>
<tr>
<td>Mumbai</td>
<td>10,131</td>
<td>1,682</td>
<td>239</td>
<td>17</td>
</tr>
<tr>
<td>Nagpur</td>
<td>4,302</td>
<td>204</td>
<td>93</td>
<td>5</td>
</tr>
<tr>
<td>Nashik</td>
<td>2,298</td>
<td>310</td>
<td>68</td>
<td>13</td>
</tr>
<tr>
<td>Pune</td>
<td>5,265</td>
<td>1,193</td>
<td>101</td>
<td>23</td>
</tr>
<tr>
<td>Thane</td>
<td>3,950</td>
<td>799</td>
<td>45</td>
<td>20</td>
</tr>
<tr>
<td>Total</td>
<td>27,978</td>
<td>4,710</td>
<td>582</td>
<td>17</td>
</tr>
</tbody>
</table>

As seen from the above, out of the total works contract dealers in the selected divisions, only 17 per cent were allotted for BA, out of which only 12 per cent were completed in the departmental audit.

In the exit conference, the Department stated that with the advent of electronic technology and availability of huge electronic data, each and every case is scrutinised on numerous parameters. Over and above, Economic Intelligence Unit (EIU) selects cases for Business Audit or Issue Based Audit for investigation. Thus the coverage of departmental audit/assessment under VAT has increased manifold as compared to earlier BST era.

The Principal Secretary stated that voluntary compliance to the Rules and Regulations of the system is required to be inculcated in the minds of the dealer rather than pursuing every dealer which will result in more productivity.
However the fact remains that though the main feature of the VAT regime was built on the premise of voluntary compliance by the dealers, the mechanism put in place to have an effective check on the dealers through departmental audit remained largely unfulfilled in view of the fact that 88 per cent of the dealers allotted for BA were pending for closure as on 31 March 2011. Further, against the works contract dealers of six test checked divisions, only two per cent were subjected to BA.

The Government may consider issuing necessary directions to the Department to draw up an action plan to complete the Business Audit cases as well as set a time frame for completion of the departmental audits so that under-declaration/short recovery of tax could be detected and recovered early.

**Compliance Deficiencies**

### 2.2.14 Inadmissible deductions under composition scheme

Under the provisions of Section 42(3) of the MVAT Act, composition tax on a contract is calculated at the total value of the works contract after allowing deduction, if any, of amounts payable towards sub-contract involving goods to a registered sub-contractor.

During test check of the records in five divisions, for the periods 2005-06 to 2009-10, we noticed that, in addition to the deductions for amounts payable to the sub-contractor, deductions such as “tax element as inclusive in sale price”, “unidentified items/labour receipts” and “service tax” though inadmissible were allowed in respect of 82 dealers (148 periods) who had paid composition tax. This resulted in incorrect deductions aggregating ₹ 67.98 crore and consequential short levy of tax of ₹ 4.87 crore as shown below:

<table>
<thead>
<tr>
<th>Type of deduction</th>
<th>Division</th>
<th>No. of Dealers</th>
<th>Deduction allowed</th>
<th>Short levy of tax</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tax element as inclusive in sale price</td>
<td>Mumbai</td>
<td>31</td>
<td>19.71</td>
<td>1.50</td>
</tr>
<tr>
<td></td>
<td>Nagpur</td>
<td>8</td>
<td>2.14</td>
<td>0.11</td>
</tr>
<tr>
<td></td>
<td>Nashik</td>
<td>3</td>
<td>14.13</td>
<td>0.74</td>
</tr>
<tr>
<td></td>
<td>Pune</td>
<td>13</td>
<td>2.07</td>
<td>0.14</td>
</tr>
<tr>
<td></td>
<td>Thane</td>
<td>8</td>
<td>2.86</td>
<td>0.19</td>
</tr>
<tr>
<td>Unidentified items/labour receipts, etc.</td>
<td>Mumbai</td>
<td>3</td>
<td>4.08</td>
<td>0.24</td>
</tr>
<tr>
<td></td>
<td>Nashik</td>
<td>3</td>
<td>0.62</td>
<td>0.03</td>
</tr>
<tr>
<td></td>
<td>Pune</td>
<td>2</td>
<td>9.79</td>
<td>0.74</td>
</tr>
<tr>
<td></td>
<td>Thane</td>
<td>1</td>
<td>0.21</td>
<td>0.02</td>
</tr>
<tr>
<td>Service tax</td>
<td>Mumbai</td>
<td>9</td>
<td>11.05</td>
<td>1.05</td>
</tr>
<tr>
<td></td>
<td>Thane</td>
<td>1</td>
<td>1.32</td>
<td>0.11</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td>82</td>
<td>67.98</td>
<td>4.87</td>
</tr>
</tbody>
</table>

---

17 Amount of tax=SP*[R/100−R] where R is the rate of tax while SP is the sale price.
In the exit conference, the Principal Secretary, Finance and the CST stated that in case of “tax element as inclusive in sale price” under Rule 57(1) does not provide for deduction of composition amount would be examined legally and if necessary a suitable amendment would be made. However, the reply was silent on the other deductions allowed.

2.2.15 Excess deduction from turnover of sales

Rule 58 of the MVAT Rules, lays down the procedure for determination of the sale price and purchase price in respect of sale by transfer of property in goods involved in execution of works contract. As per Rule 58(1), deductions such as labour and service charges, amount paid as price for sub-contract, charges for planning, designing and architect fees, cost of consumables, cost of establishment of contractor to the extent relatable to supply of labour, etc., are admissible. As per the proviso below the above rule, where the contractor has not maintained accounts which enable proper evaluation of different deductions or if the accounts are not clear or intelligible, lump sum deduction at the rates provided may be made for determining the sale price for levy of tax.

a) Test check of records of BA/R&RA in four divisions revealed that in respect of 24 dealers, who had undertaken construction contracts for the periods 2005-06 to 2007-08, sale price was determined after deducting expenditure on salary, fuel charges, transportation charges, insurance, labour charges, etc., as shown in the profit and loss account.

Separate statements identifying the expenses actually debitable to the works contract executed by them were not kept on record. In the absence of which, lump sum deductions of ₹ 36.16 crore at 30 per cent [column no.5 of table below Rule 58(1)] should have only been allowed from the turnover of contract of ₹ 109.54 crore. Instead deductions of ₹ 64.18 crore were incorrectly allowed. This resulted in excess deductions from the taxable turnover and consequential short levy of tax of ₹ 2.51 crore on the differential sale price of ₹ 28.02 crore as shown in the following table:-

<table>
<thead>
<tr>
<th>Division</th>
<th>No of Dealers</th>
<th>Turnover of W.C</th>
<th>Deduction allowed u/r 58(1)</th>
<th>Deduction allowable @ 30 per cent</th>
<th>Excess deduction allowed col 4 - 5</th>
<th>Short levy of tax as per ratio applicable on excess deduction in col 6</th>
<th>Total Short levy</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
<td>6</td>
<td>7</td>
<td>8</td>
</tr>
<tr>
<td>Amravati</td>
<td>6</td>
<td>9.12</td>
<td>5.44</td>
<td>2.74</td>
<td>2.70</td>
<td>1.62</td>
<td>0.06</td>
</tr>
<tr>
<td>Nagpur</td>
<td>2</td>
<td>2.51</td>
<td>2.48</td>
<td>0.84</td>
<td>1.64</td>
<td>0.42</td>
<td>0.02</td>
</tr>
<tr>
<td>Nashik</td>
<td>14</td>
<td>95.12</td>
<td>54.73</td>
<td>31.89</td>
<td>22.84</td>
<td>5.86</td>
<td>0.23</td>
</tr>
<tr>
<td>Thane</td>
<td>2</td>
<td>2.29</td>
<td>1.53</td>
<td>0.69</td>
<td>0.84</td>
<td>0.56</td>
<td>0.02</td>
</tr>
<tr>
<td>Total</td>
<td>24</td>
<td>109.54</td>
<td>64.18</td>
<td>36.16</td>
<td>28.02</td>
<td>8.46</td>
<td>0.33</td>
</tr>
</tbody>
</table>

Further, the orders passed by the departmental authorities were not ‘speaking orders’ to confirm whether deductions were allowed on the basis of verification of facts.
b) Scrutiny of business audit records of one dealer in Amravati Division in June 2012 revealed that the sale proceeds of capital assets were not excluded from the turnover in respect of works contract and the deductions claimed under Rule 58 from the sale price of the contract were neither supported by requisite documents nor the working thereof was available on record. Under such circumstances lump sum deduction was allowable. Further, the sale price was also not apportioned in accordance with the purchase price of the materials involved in the execution of the contract for levy of tax. This resulted in short levy of tax aggregating ₹ 57.42 lakh as shown in the following table:

<table>
<thead>
<tr>
<th>Particulars</th>
<th>2007-08 As per AA</th>
<th>2008-09 As per Audit</th>
<th>2007-08 As per AA</th>
<th>2008-09 As per audit</th>
</tr>
</thead>
<tbody>
<tr>
<td>GTO</td>
<td>1,134.69</td>
<td>1,134.69</td>
<td>746.63</td>
<td>747.01</td>
</tr>
<tr>
<td>Sale of assets</td>
<td>--</td>
<td>5.62</td>
<td>--</td>
<td>5.60</td>
</tr>
<tr>
<td>Balance</td>
<td>1,134.69</td>
<td>1,129.07</td>
<td>746.63</td>
<td>741.41</td>
</tr>
<tr>
<td>Deduction u/r 58</td>
<td>514.97</td>
<td>338.72</td>
<td>384.12</td>
<td>222.42</td>
</tr>
<tr>
<td>(per cent)</td>
<td>(30)</td>
<td>(30)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Balance</td>
<td>619.72</td>
<td>790.35</td>
<td>362.51</td>
<td>518.99</td>
</tr>
<tr>
<td>Tax Rate (per cent)</td>
<td>4</td>
<td>12.5</td>
<td>4</td>
<td>12.5</td>
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<td>12.5</td>
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<td>12.5</td>
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<tr>
<td>Apportion Ratio</td>
<td>60.45</td>
<td>39.55</td>
<td>38.90</td>
<td>61.10</td>
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<tr>
<td>(per cent)</td>
<td></td>
<td>38.90</td>
<td>61.10</td>
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<tr>
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<td>60.98</td>
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<tr>
<td>Taxable Turnover</td>
<td>360.19</td>
<td>217.88</td>
<td>307.45</td>
<td>482.90</td>
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<tr>
<td></td>
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<td>39.56</td>
</tr>
<tr>
<td>Tax on sale of asset</td>
<td>--</td>
<td>0.70</td>
<td>--</td>
<td>0.70</td>
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<tr>
<td>Total tax</td>
<td>41.64</td>
<td>73.36</td>
<td>22.66</td>
<td>48.36</td>
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<tr>
<td>Short levy</td>
<td>31.72</td>
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<td></td>
<td>25.70</td>
</tr>
<tr>
<td><strong>Total short levy</strong></td>
<td></td>
<td></td>
<td></td>
<td>57.42</td>
</tr>
</tbody>
</table>

In the exit conference, the Department stated that case wise compliance would be submitted and if necessary, corrective action would be taken.

### 2.2.16 Incorrect deduction of purchases from units covered by the Package Scheme of Incentive

As per Rule 57(2) of MVAT Act, a registered dealer, in respect of any resale of goods, which is originally manufactured by a unit covered by the exemption mode of any Package Scheme of Incentives (PSI), can deduct from the sale price of the resale of such goods, an amount calculated in accordance with the formula provided.

During test check of records in Amravati, Nagpur and Nashik divisions, we noticed that in respect of six dealers engaged only in works contract, deductions of amounts totalling to ₹ 4.58 crore towards purchases made from dealers covered under the exemption mode of PSI were allowed from turnover.
of sales, for various periods between 2005-06 and 2007-08, in the cases closed under BA/R&RA during 2008-09 to 2010-11. Since these purchases were not resold but utilised in works contract, deductions were not admissible under the said rule. This resulted in short levy of VAT of ₹ 40.52 lakh.

In the exit conference, the CST stated that legal opinion would be sought on the issue.

2.2.17 Excess allowance of set off

Under the provisions of Rule 52 of the MVAT Rules read with Section 48(5) of MVAT Act, set-off shall be allowed to the claimant dealer on taxes collected separately from him by the other registered dealer on purchases of capital assets and goods, which are debited to profit and loss account by the claimant dealer. However, in no case the amount of set-off on any purchases of goods shall exceed the amount of tax in respect of the same goods, actually paid, if any, under this Act or any earlier law, into the Government treasury.

(i) As per Rule 53(4) of the MVAT Rules, in respect of a construction contracts, if the dealer has opted for composition scheme, the set-off shall be allowed after reduction of four per cent of purchase price of goods other than capital goods with effect from 20 June 2006. In respect of other than construction contract, set-off was admissible at 64 per cent of the purchase tax prior to and after 20 June 2006.

- During test check of a case closed in BA of Mumbai division, in February 2010, for the period 2006-07, we noticed that a construction contract dealer opted for the composition scheme, set- off was reduced at three per cent instead of the applicable rate of four per cent of purchase price of ₹ 1.95 crore. This resulted in excess allowance of set-off of ₹ 1.95 lakh.

(ii) As per Section 42(3) of the MVAT Act, 2002, a dealer who pays composition tax, shall pay five per cent of the total contract value in the case of construction contracts and eight per cent of such value in any other case with effect from 20 June 2006.

Prior to this date, a works contractor dealing in all types of contracts (construction and other than construction), was liable to pay lump sum tax by way of composition equal to eight per cent of the total contract value.

- In one case of Mumbai division, closed (July 2009) in BA for the period 2006-07, we noticed that a contract dealer who had paid tax under the composition scheme had collected tax from the customer at eight per cent (₹ 32.15 lakh) on turnover of sales of ₹ 4.02 crore instead of the applicable rate of 5 per cent (₹ 20.09 lakh). This resulted in excess collection of tax of ₹ 12.06 lakh. This excess collection was required to be forfeited to Government account as per the provisions of Section 29(10)(b) of the MVAT Act, but this was not done.

- Further non-forfeiture of excess tax collected also had implications relating to grant of set-off to the dealer. In this case, set-off of ₹ 6.24

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18 Closed: means that assessment was finalised by the Department in business audit.
lakh was allowed to the dealer after reducing set-off of ₹ 9.78 lakh by 36 per cent. However, after 20 June 2006 set-off was required to be allowed after reduction of four per cent of the purchase price of ₹ 1.17 crore which worked out to ₹ 5.11 lakh. This resulted in excess grant of set-off of ₹ 1.13 lakh.

(iii) Under Rule 53(1) of the MVAT Rules, set-off on fuel is admissible after reduction of four per cent (three per cent with effect from 1 April 2007) of purchase price of taxable goods, however as per Rule 54(h), if the property of such goods is not transferred to any other person and is used in the erection of immovable property other than plant and machinery, no set-off is admissible.

- In Mumbai division, a building contractor was allowed set-off of ₹ 25.19 lakh, for the periods 2005-06, 2006-07 and 2008-09, on purchases of furnace oil at ₹ 2.85 crore in BA closed between May 2009 and January 2011. Since the property in furnace oil is not transferred in the works contract executed by him no set-off was admissible to him. This resulted in incorrect grant of set-off of ₹ 25.19 lakh.

(iv) Set-off on tax paid on purchases is admissible to a dealer who utilises the goods in manufacture for sale, works contract, etc. As per Section 48(2), the claimant dealer is required to produce a tax invoice containing a certificate that the registration certificate of the selling dealer was in force on the date of sale by him and the due tax has been paid. Further, in no case the amount of set-off or refund on any purchase of goods shall exceed the amount of tax in respect of same goods actually paid into the Government treasury.

- In Nashik division, M/s Sadbhav Engineering Ltd, a dealer engaged in road construction work was allowed set-off of ₹ 6.89 lakh on purchase of cement pipes valued at ₹ 83.07 lakh, for the periods 2005-06, 2006-07 and 2007-08, in R&RA. The set-off was allowed on the basis of the purchase statement wherein tax paid was shown at 12.5 per cent. However, cement pipe was taxable at four per cent as per schedule entry C-72 to the Act, in which case set-off of ₹ 89,306 only was admissible.

- Further scrutiny of records, revealed that neither the tax invoices nor verification regarding exchange of credit/debit notes towards excess tax collection by the vendors was kept on record. The records also did not confirm whether the vendors had actually credited the entire tax collected at higher rate into the Government treasury as required in the provisions of the Act. Hence the excess allowance of set-off of ₹ 6 lakh was irregular.

In the exit conference, the Government and the Department stated that the compliance in these cases would be submitted and corrective action would be taken, if necessary.

### 2.2.18 Misclassification of sale as works contract

Under the provisions of the MVAT Act, the rate of tax leviable on any commodity is determined with reference to the relevant entry in schedule (A to E) to the Act. In case of lifts if it is sold as a chattel, it is covered by the
residual schedule entry E taxable at 12.5 per cent. In case the transaction for commissioning of lifts, etc., is treated as works contract it would be taxed either under Rule 58 or under the composition scheme as per section 42(3) depending upon what the dealer has opted for.

Based on the Supreme Court judgment (140-STC-22) in case of M/s Kone Elevators (India) Ltd. the Commissioner of Sales Tax issued a Trade Circular in September 2006 and made this judgement applicable for transaction effective from 1st April 2006 wherein the major component of the end-product is the material consumed in producing the chattel to be delivered and skill and labour are employed for converting the main components into the end-products, the skill and labour are only incidentally used, the delivery of the end-product by the seller to the buyer would constitute a sale of chattel and not works contract.

During test check of records of three dealers of Mumbai Division whose cases were closed in BA during 2009-10 and 2010-11, we noticed that, for periods between 2006-07 and 2008-09, turnover of sales aggregating ₹ 14.10 crore were treated as activity falling under works contract and taxed accordingly. However, detailed scrutiny by us revealed that the agreements between the employers and the dealers were for supply, erection and commissioning of lifts only. Thus the activities of these dealers squarely fall under the Apex Court judgement in the case of M/s Kone Elevators (India) Ltd, and the turnover of sales of ₹ 14.10 crore were liable to tax at 12.5 per cent as per Schedule E of the MVAT Act. Treating the transaction as covered by works contract resulted in short realisation of revenue of ₹ 60 lakh.

In the exit conference, the CST stated that the individual contracts would be verified in the light of decision of the Supreme Court judgement.

2.2.19 Incorrect grant of exemption from tax

(A) Works contract commenced prior to 01 April 2005

Under the provisions of Section 96(g) of MVAT Act, contracts awarded under the erstwhile Maharashtra Sales Tax on Transfer of Property in Goods involved in the Execution of Works Contract (Re-enacted) Act 1989, but are continued after 1 April 2005 are liable to tax as per the provisions of the repealed Act. In such circumstances, the notification issued by the Government in March 2000 under the repealed Act, exempting works contracts awarded only by the State Government with effect from 1 April 2000 was applicable, hence would not cover works contracts awarded by Central Government, Government institutions, autonomous bodies and statutory corporations.

Scrutiny of R&RA records in Nagpur Division in May 2012 revealed that a dealer was allowed exemption from payment of tax on receipts amounting to ₹ 21.13 crore in respect of two works contracts allotted by the Vidarbha Irrigation Development Corporation (VIDC) prior to 1 April 2005 for the period from 2005-06 to 2007-08.

Similarly, scrutiny of records in Amravati Division in June 2012 revealed that a dealer was allowed exemption from payment of tax on works contract
receipts amounting to ₹ 5.35 crore during 2005-06 on works allotted by VIDC prior to 1 April 2005.

As VIDC is a statutory corporation, exemption of composition tax on the above receipts was irregular in view of the Government notification of March 2000. Non-levy of tax at four per cent on the receipts of ₹ 26.48 crore worked out to ₹ 1.06 crore.

In respect of the case relating to Nagpur Division, the Department accepted (September 2012) the audit observation and stated that a notice has been served on the dealer for assessment of the case. Reply in the case of Amravati Division is awaited (January 2013).

(B) Works contracts commenced after 1 April 2005

The Government of Maharashtra exempted tax in excess of four per cent on sales to Central/State Governments made on or after 1 August 2006 vide notification dated 28 July 2006. As per explanation (i) of the notification, this exemption is not available to sales made to the local bodies, Government undertaking and statutory corporations.

Scrutiny of R&RA records of one dealer in Nagpur Division in May 2012 revealed that the dealer was allowed exemption of tax in excess of four per cent on his contract receipts from VIDC of ₹ 3.05 crore for the period 2006-07. Since VIDC is a statutory corporation, the exemption was not admissible in view of explanation (i) of the notification. The short levy on account of the exemption worked out to ₹ 7.65 lakh.

After we pointed out the case, the Department accepted the observation (May 2012). A report on recovery has not been received (January 2013).

2.2.20 Conclusion

The internal control system to bring unregistered contractor dealers into the tax net by cross linkage of data with the employers, such as other Government Departments/Corporations/Local Bodies was weak. Further, the Departmental instructions for co-ordination between the TDS cell and Survey branch to detect and bring unregistered contractors into the tax net were either non-existent or ineffective. There were deficiencies in administration of MVAT Act, for deduction of tax at source. A number of contractors either remained outside the tax net, or disclosed their turnover of sales short, short recovery of TDS/excess claim of TDS credit and non-filing of returns. Deductions of sub-contract value were allowed by the Department merely on the basis of Form 406/407 without confirming actual payment of tax by the principal or the sub-contractor.

2.2.21 Summary of recommendations

The Government may consider:

- developing a module with full details of TDS in MAHAVIKAS for filing e-return (Form 405) and for making e-payment compulsory in respect of TDS. TDS certificates may be generated online so that genuineness of the same can be ensured;
• introducing a system of obtaining information relating to the payments made to the contractors periodically and cross checking the same with the data available in MAHAVIKAS for detecting unregistered dealers to prevent evasion of tax;

• introducing a mechanism for cross-linkage of records relating to the principal and the sub-contractors in order to detect cases of evasion of tax; and

• issuing necessary directions to the Department to draw up an action plan to complete the Business Audit cases as well as set a time frame for completion of the departmental audits so that under-declaration/short recovery of tax could be detected and recovered early.
2.3 Other audit observations

Our scrutiny of the assessment records of eight offices finalised under Bombay Sales Tax Act, 1959 (BST Act), Maharashtra Value Added Tax, 2002 (MVAT Act) and Central Sales Tax Act, 1956 (CST Act) in the Sales Tax Department revealed cases of non-observance of provisions of Acts/Rules, non/short levy of tax, irregular grant of exemptions and other cases as mentioned in the succeeding paragraphs in this Chapter. These cases are illustrative and are based on a test check carried out by us. Such omissions on the part of Assessing Authorities (AAs) are pointed out in audit each year, but not only do the irregularities persist; these remain undetected till we conduct audit. There is need for the Government to improve the internal control system including strengthening of internal audit.

2.4 Non-observance of the provisions of Acts/Rules

The BST/MVAT/CST Acts and Rules empower/provide for:

(i) levy of tax/interest/penalty at the rates prescribed in the Acts;

(ii) adjustment of refunds under MVAT Act against dues under CST Act.

We noticed that the AAs, while finalising the assessments, did not observe some of the provisions of the Act/Rules and notification issued thereunder in cases mentioned in the paragraphs 2.4.1 to 2.4.6.

Maharashtra Value Added Tax Act, 2002

2.4.1 Non-levy of tax

Assistant Commissioner, Large Tax Payers Unit (ACLU) D-002, Nashik Division

As per the provisions of the MVAT Act, all the goods which are not covered by Schedules A, B, C and D to the Act shall be covered by entry 1 of Schedule E and shall be taxable at the rate of 12.5 per cent.

Tobacco is a tax free goods covered by Schedule Entry A-45 of the MVAT Act. However, the explanation given under the entry specifically excludes pan masala i.e. any preparation containing betelnuts, tobacco, lime, catechu, etc. from the scope of the said entry.

During test check of the assessment and other relevant records of ACLU in December 2010, we noticed in the case of business audit (closed in August 2008) of a reseller and commission agent in tobacco items, that sales of ‘Gutkha’ (pan masala containing tobacco etc.) amounting to ₹ 7.56 crore during 2006-07, was allowed as tax-free, treating the goods as covered under schedule entry A-45. In view of the explanation below the said entry, the commodity ‘Gutkha’ was liable to be covered by schedule entry E-1 instead of A-45, and hence taxable at the rate of 12.5 per cent. Misclassification of the commodity resulted in underassessment of tax at ₹ 114.53 lakh including interest of ₹ 20.07 lakh.
After we pointed out the case, the Department did not accept the audit observation stating that ‘Gutkha’ is a product covered under schedule entry A-45 of MVAT Act as tobacco and it also appears in 1st Schedule to the Additional Duties of Excise (Goods of Special Importance) Act, 1957, hence the sale was correctly allowed as tax-free.

The reply of the Department is not tenable as the dealer has purchased and sold *pan masala* containing tobacco under the brand name ‘RMD Gutkha’ which is evident from purchase bills as well as sale bills and which is taxable in view of the explanation given under schedule entry A-45.

We reported the matter to the Government in April 2012; their reply has not been received (January 2013).

### 2.4.2 Short levy of Central Sales Tax

**Deputy Commissioner of Sales Tax, E-001, Refund and Refund Audit, Pune Division**

Under the provisions of Section 8 of the CST Act and rules made thereunder, with effect from 1 June 2008, tax is leviable at the rate of two *per cent* on sales made in the course of inter-state trade and supported by valid declarations in Form ‘C’. Otherwise, tax is leviable at the rate applicable on sales inside the State. Besides, interest and penalty is also leviable as per the provisions of the MVAT Act. As per the circular issued by the Commissioner of Sales Tax in January 2006 a single declaration form covering all transactions in a period of three months is to be issued.

During test check of the Refund and Refund Audit files in September 2011, we noticed that a dealer had claimed concessional rate of tax on inter-state sales valued at ₹ 84.66 lakh in his return for the quarter ending December 2009. Detailed scrutiny by us revealed that the ‘C’ form furnished by the dealer related to the inter-state transactions for the period May 2009 to September 2009. Thus the ‘C’ forms furnished by the dealer did not pertain to the relevant period for which refund audit was conducted and closed by the Department, and therefore, the concessional rate of tax was not admissible. Allowance of sale at concessional rate resulted in underassessment of Central Sales Tax of ₹ 8.89 lakh.

We pointed out the case in December 2011. The Department has not furnished any reply till date.

We reported the matter to the Government in April 2012; their reply has not been received (January 2013).
2.4.3 Non-levy of penalty

Deputy Commissioner, Refund and Refund Audit (DCRRA), E-705, Mumbai Division, Mumbai

Under the provisions of the MVAT Act, while or after passing any order under this Act, in respect of any person or dealer, the Commissioner, on noticing or being brought to his notice, that such person or dealer has concealed the particulars or has knowingly furnished inaccurate particulars of any transaction liable to tax or has concealed or has knowingly misclassified any transaction liable to tax or has knowingly claimed set-off in excess of what is due to him, the Commissioner may, after giving the person or dealer a reasonable opportunity of being heard, by order in writing, impose upon him, in addition to any tax due from him, a penalty equal to the amount of tax found due as a result of any of the aforesaid acts of commission or omission.

During test check of the assessment records of DCRRA in April 2010, we noticed that, while accepting the returns filed (August 2009) by the dealer, who is a trader in paintings and sculpture, for the period 2007-08, claim of refund of ₹ 1.68 crore was admitted. Scrutiny of records revealed that the dealer had evaded tax on sales of ₹ 78.44 lakh on which tax of ₹ 9.28 lakh was levied by the Enforcement branch. This fact was also brought to the notice of Refund and Refund Audit branch by the Enforcement branch. Our scrutiny revealed that neither the Enforcement branch nor the Refund Audit branch levied the penalty equal to the amount of tax evaded which was at ₹ 9.28 lakh. This resulted in non-levy of penalty of ₹ 9.28 lakh.

After we pointed out the case, in April 2010, the Department accepted the audit observation and rectified the mistake by passing order in June 2011 for levy of penalty at ₹ 9.28 lakh against which the dealer has preferred an appeal. The report on the outcome of the appeal is awaited.

We reported the matter to the Government in March 2012; their reply has not been received (January 2013).
2.4.4 Incorrect adjustment of MVAT refund against CST dues

**Deputy Commissioner of Sales Tax (DCST), E-023, Business Audit, Pune Division**

Every dealer is required to furnish separate returns in respect of the local sales under MVAT Act and interstate transactions under the CST Act. Further, a dealer whose turnover of sales or purchases exceeds ₹ 40 lakh in a year is required to submit an audit report in form 704 prepared by a chartered accountant.

As per rule 55 of the MVAT Rules, 2005, if the dealer has claimed refund under MVAT in the returns and dues in respect of interstate transactions in the CST returns then the refund under MVAT can be adjusted against the dues under CST provided a refund adjustment order for the amount adjustable is issued in respect of that period.

During test check of the business audit files of DCST in November 2011, we noticed that, for the periods 2005-06, 2006-07 and 2008-09, forms in 704 prepared by the chartered accountant indicated refunds of ₹ 48.15 lakh in respect of 14 dealers under MVAT. In all these cases the dealers concerned had shown dues in the CST returns for the corresponding periods. While passing the assessment orders under the CST Act, between March 2009 and March 2011 in respect of these 14 dealers the Department had adjusted amounts aggregating ₹ 48.15 lakh against the corresponding dues under CST, however, in none of these cases the business audit had been completed or refund adjustment order had been passed as prescribed in the rules. This resulted in incorrect adjustment of refunds aggregating ₹ 48.15 lakh under MVAT Act against the tax payable under the CST Act.

After we pointed out the case, the DCST stated that necessary action would be taken.

We reported the matter to the Government in April 2012; their reply has not been received (January 2013).
Bombay Sales Tax Act, 1959

2.4.5 Non-levy of purchase tax

Deputy Commissioner of Sales Tax (DCST), B-155, Borivali Division

Under the provisions of BST Act, Rules and notifications issued thereunder, certain class of purchases was exempt from payment of tax, subject to conditions prescribed therein. If the conditions were not complied with, purchase tax was leviable on the purchase price of such goods at the rate specified in the schedule to the Act. The amount of tax paid on such purchases was to be set-off against the purchase tax so leviable. Besides, surcharge and interest at the prescribed rates were also leviable under the provisions of the Act.

During test check of the assessment and other records of DCST in June 2008, we noticed in the assessment of a dealer, who was manufacturer-exporter of pharmaceutical goods, for the period 2004-05, (assessed in June 2007), that purchase of packing material valued at ₹ 1.69 crore was exempted from tax on declarations in Form G-1. However, as per notification entry G-5 under which the Form G-1 was issued, the packing material so purchased was required to be used for packing of goods to be exported to a place outside India and the goods packed are purchased for the purpose of complying with the agreement or order for or in relation to such export. Our scrutiny revealed that even though the above condition was not complied with by the dealer, purchase tax was not levied during assessment which resulted in under assessment of tax of ₹ 7.42 lakh. Besides, interest was also leviable as per the provisions of the Act.

After we pointed out the case, in July 2008, the Department accepted the observation and revised the assessment in May 2011 raising additional demands of tax of ₹ 7.42 lakh along with interest of ₹ 2.61 lakh against which the dealer has preferred an appeal which is still pending. A report on recovery is awaited.

We reported the matter to the Government in March 2012; their reply has not been received (January 2013).
2.4.6 Short levy of interest

Deputy Commissioner of Sales Tax (DCST), B-115, Worli Division

2.4.6.1 During test check of the assessment and other relevant records of DCST in May 2011, we noticed that a dealer trading in used assets, bullion and gold coins was assessed ex-parte, for the period 2003-04 in February 2009. This ex-parte assessment order was cancelled in March 2009 on the basis of application received from the dealer. The dealer was assessed afresh in September 2010. Our scrutiny revealed that the Assessing Authority (AA) had levied interest on the dues of ₹ 1.07 crore arising out of the fresh assessment order till the date of the ex-parte order and not till the date of the fresh assessment order. As the ex-parte order was annulled, the levy of interest till the annulled assessment order instead of the fresh assessment order was not in order. This resulted in short levy of ₹ 25.47 lakh.

After we pointed out the case in June 2011, the Department stated (January 2012) that the dealer had preferred an appeal against the assessment order and the audit point has been communicated to the appellate authority for consideration while deciding the appeal. A report on recovery is awaited.

2.4.6.2 We made a similar observation in February 2012 during the audit of the Sr. DCST, A-05, Worli Division wherein, a dealer in organic pigments chemicals etc. was assessed ex-parte for tax under the BST and CST Acts, for the period 2002-03 in March 2009. These orders were subsequently cancelled in April 2009 on the basis of application received from the dealer. The case was assessed afresh in September 2010 wherein the AA had levied interest on the dues of ₹ 1.19 crore under BST Act and ₹ 39.94 lakh under CST Act arising out of the fresh assessment order, till the date of the ex-parte order and not till the date of the fresh assessment order. Thus there was a short levy of interest of ₹ 26.68 lakh under BST Act and ₹ 8.99 lakh under CST Act.
After we pointed out the case, the Department did not accept the observation stating that as per various judgments, interest should be levied till the date of original assessment order hence the interest levied by AA till the date of *ex-parte* assessment order is correct.

The reply of the department is not correct as the fresh assessment order was also passed under the provisions of section 33, under which the original assessment order was passed hence interest should have been levied up to the date of fresh assessment order.

We reported the matter to the Government in March 2012 and May 2012; their reply has not been received (January 2013).