Preface

This Report for the year ended 31 March 2011 has been prepared for submission to the Governor under Article 151 (2) of the Constitution.

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

The cases mentioned in this Report are among those which came to notice in the course of test audit of records during the year 2010-11 and subsequently as well as those which came to notice in earlier years but could not be included in previous Reports.

Overview

This Report contains 47 paragraphs including four reviews on Compounding Schemes in Commercial Taxes Department, Utilisation of declaration forms in interstate trade, Levy and Collection of Stamp Duty and Registration Fee and Computerisation of Motor Vehicle Department and paragraphs relating to non/short levy/loss of tax involving ₹ 1,622.36 crore. Some of the major findings are mentioned below:

I. General

- Total revenue receipts of the State Government for the year 2010-11 amounted to ₹ 30,990.95 crore against ₹ 26,109.40 crore for the previous year. 76 *per cent* of this was raised by the State through tax revenue (₹ 21,721.69 crore) and non-tax revenue (₹ 1,930.79 crore). The balance 24 *per cent* was receipt from the Government of India as State's share of divisible Union taxes (₹ 5,141.85 crore) and grants-in-aid (₹ 2,196.62 crore).

(Paragraph 1.1.1)

- As on 30 June 2011, 2581 Inspection Reports (IRs) in respect of various departments containing 18,604 observations involving money value of ₹ 1522.81 crore were outstanding. The number of outstanding audit observations increased by 24 *per cent* compared to the previous year.

(Paragraph 1.3.1)

II. Tax on sales, trade etc.

A review on **"Compounding Schemes in Commercial Taxes Department"** revealed the following:

- Incorrect grant of permission to pay compounded tax to works contractors resulted in loss of revenue of ₹ 6.92 crore.

(Paragraph 2.11.7.1)

- Application of incorrect rate led to short levy of ₹ 7.14 crore.

(Paragraph 2.11.7.2)

- Non-forfeiture of illegal collection of tax by work contractors resulted in loss of revenue of ₹ 15.60 crore.

(Paragraph 2.11.7.5)

A review on **"Utilisation of declaration forms in inter-state trade"** revealed the following:

- Cross verification of C Form declarations revealed purchase effected through bogus forms, understatement of purchase etc. amounting to ₹ 1.25 crore with tax effect of ₹ 43.41 lakh.

(Paragraph 2.12.10)

- Concessional rate was allowed for Inter-state sale without production of C forms, tax effect of which worked out to ₹ 92.91 crore.

(Paragraph 2.12.11)

- Exemption was allowed for Inter-state transfer without production of F forms which resulted in short levy of ₹ 123.38 crore.

(Paragraph 2.12.12)

- Concession was allowed on defective C forms which resulted in short levy of ₹ 109.55 crore.

(Paragraph 2.12.13)

- Exemption was allowed on defective F forms involving tax effect of ₹ 15.13 crore.

(Paragraph 2.12.14)

Value Added Tax

- Allowance of incorrect concession to a joint sector undertaking resulted in short remittance of tax and interest of ₹ 7.78 crore.

(Paragraph 2.14.1)

- Short levy due to incorrect allowance of IPT/Special rebate on stock transfer worked out to ₹ 6.52 crore.

(Paragraph 2.14.2.1)

Sales Tax

- Incorrect allowance of concessional rate of tax led to short levy of tax and interest of ₹ 45.30 crore.

(Paragraph 2.14.16)

- Illegal collection of tax amounting to ₹ 1.89 crore was not forfeited from an oil company.

(Paragraph 2.14.17)

- Short/non-levy of tax on turnover that escaped assessment worked out to ₹ 2.38 crore.

(Paragraph 2.14.18 & 2.14.19)

III. Taxes on Agricultural Income

- Short/non-levy of tax and interest on income that escaped assessment was ₹ 7.04 crore.

(Paragraph 3.8.1)

- Irregular adjustment of loss resulted in escapement of income having potential tax effect of ₹ 36.40 lakh.

(Paragraph 3.8.2)

IV. Stamp Duty and Registration Fees

A review on **"Levy and collection of Stamp Duty and Registration Fees"** revealed the following:

- Revenue realisable in 12.03 lakh pending undervaluation cases was ₹ 286.32 crore.

(Paragraph 4.6.10.3)

- Lack of a mechanism to enforce the provisions of the Kerala Stamp Act resulted in revenue loss of stamp duty and registration fee of ₹ 23.46 crore.

(Paragraph 4.6.11.1)

- Undervaluation of documents executed by builders led to short levy of stamp duty and registration fee of ₹ 21.69 crore.

(Paragraph 4.6.12)

- Short/non-remittance of stamp duty on bonds was ₹ 19.62 crore.

(Paragraph 4.6.13)

Defalcation of receipts led to non-remittance of revenue of ₹ 33,929.

(Paragraph 4.8.1)

Undervaluation of properties in four cases led to short levy of Stamp duty and registration fee of ₹ 24.81 lakh.

(Paragraph 4.8.2)

V. Taxes on Vehicles

A review on **"Computerisation in the Motor Vehicles Department"** revealed the following:

- Creation of multiple records for vehicles and licences in the data base has resulted in redundancy of data which adversely affected the reliability of information.

(Paragraph 5.6.14)

- Vehicle particulars and driving licence particulars were not captured correctly in the National Register.

(Paragraph 5.6.15)

- The online services envisaged in the computer project to reduce the rush in the offices were not made fully operational.

(Paragraph 5.6.17)

- Smart card prescribed by the Government of India for the issue of registration certificate and driving licences was not implemented.

(Paragraph 5.6.22)

Short levy of one time tax while reclassifying 258 transport vehicles as non-transport vehicles worked out to ₹ 45.14 lakh.

(Paragraph 5.8.1)

Permit fee for educational institution buses was short levied by ₹ 42.43 lakh.

(Paragraph 5.8.2)

VI. Land Revenue and Building Tax

- Luxury tax of ₹ 1.69 crore was not levied on 2975 residential buildings.

(Paragraph 6.7.1)

- Non assessment of building tax on 295 buildings resulted in non-levy of tax of ₹ 93.88 lakh.

(Paragraph 6.7.2)

- A building under the possession of a contractor who built it on BOT basis was exempted from building tax of ₹ 42.01 lakh treating it as a building owned by the Municipality.

(Paragraph 6.7.4)

VII. Other Tax Receipts

A – Electricity Duty

- Electricity duty and other levies amounting to ₹ 938.14 crore collected by KSEB was not remitted to Government. KSEB was liable to pay interest of ₹ 168.91 crore.

(Paragraph 7.5)

- Thrissur Municipal Corporation paid only ₹ 2.84 crore as duty against ₹ 4.15 crore. Interest payable on delayed payment worked out to ₹ 19.28 lakh.

(Paragraph 7.7)

B – Luxury Tax

- Application of incorrect rate of tax resulted in short levy of tax of ₹ 5.11 lakh.

(Paragraph 7.8)

VIII. Non-Tax Receipts

A – Police Department

- Belated submission of police verification reports in passport applications resulted in loss of incentive of ₹ 6.63 crore.

(Paragraph 8.5)

B – Forest Receipts

- Interest of ₹ 3.07 crore was not levied on belated payment of lease rent.

(Paragraph 8.6)

EXECUTIVE SUMMARY

Healthy growth rate in revenue receipts of the State	Total revenue receipts of the State during 2010-11 was ₹ 30,990.95 crore which represented a healthy growth rate of 18.69 *per cent* over the earlier year. Out of this ₹ 21,721.69 crore was from tax revenue and ₹ 1,930.79 crore from non-tax revenue. The State received ₹ 2,196.62 crore as Grants-in-aid and ₹ 5,141.85 crore as share of net proceeds of divisible Union Taxes.
Arrears of revenue	The arrears of tax revenue of Commercial Taxes Department, Forest Department, Local Fund Audit Department, Stationery Department and Factories and Boilers Department was ₹ 5,276.13 crore. Motor Vehicles Department and Electrical Inspectorate did not furnish details of arrears of their Department.
Poor response of the Department/Government towards audit	We have not received even first replies to 230 IRs issued by us upto December 2010. There has been a 24 *per cent* increase in the number of outstanding paragraphs at the end of June 2011 compared to the earlier year.
Non-production of records to audit	The Commercial Taxes Department did not furnish 2392 KGST assessment files and 438 VAT files to audit. Assessment files of some dealers were not furnished for upto five years.
Limited impact of Departmental audit committee meetings	Only 11 departmental audit committee meetings were held during the year and 4.16 *per cent* of outstanding paragraphs were settled during such meetings.
Impact of earlier Audit Reports	During the period from 2005-06 and 2009-10, Government accepted audit paras with money value of ₹ 516.47 crore out of which ₹ 67.87 crore was realised.
Results of audit	We test checked 581 units of various Departments during 2010-11 and noticed short levy of ₹ 4,786.23 crore in 3913 cases. Out of this 125 paragraphs (clubbed into 47 paragraphs) including four reviews involving financial effect of ₹ 1,622.36 crore are included in this report.
Our conclusion	We are glad to note that the State had achieved a healthy growth rate of 18.69 *per cent* in revenue collection. The Government accepted audit observations worth ₹ 516.47 crore out of which they had collected ₹ 67.87 crore. The Departments need to initiate immediate action to recover the arrears of tax revenue of Commercial Taxes Department, Forest Department, Local Fund Audit Department, Stationery Department and Factories and Boilers Department pointed out by us, more so in those cases where it has accepted our contention.

CHAPTER-I: GENERAL

1.1 Trend of revenue receipts

1.1.1 The tax and non-tax revenue raised by the Government of Kerala during the year 2010-11, the State's share of net proceeds of divisible Union taxes and duties assigned to States and grants-in-aid received from the Government of India during the year and the corresponding figures for the preceding four years are mentioned below:

(₹ in crore)

Sl. No.	Particulars	2006-07	2007-08	2008-09	2009-10	2010-11
1.	**Revenue raised by the State Government**					
	• Tax revenue	11,941.82	13,668.95	15,990.18	17,625.02	21,721.69
	• Non-tax revenue[1]	937.57 (844.51)	1,209.55 (1,078.00)	1,559.29 (1,390.00)	1,852.22 (1,633.22)	1,930.79 (1,739.58)
	Total	12,879.39 (12,786.33)	14,878.50 (14,746.95)	17,549.47 (17,380.18)	19,477.24 (19,258.24)	23,652.48 (23,461.27)
2.	**Receipts from the Government of India**					
	• Share of net proceeds of divisible Union taxes and duties	3,212.04	4,051.70	4,275.52	4,398.78	5,141.85
	• Grants-in-aid	2,095.19	2,176.59	2,687.19	2,233.38	2,196.62
	Total	**5,307.23**	**6,228.29**	**6,962.71**	**6,632.16**	**7,338.47**
3.	Total revenue receipts of the State Government (1 and 2)	18,186.62 (18,093.56)	21,106.79 (20,975.24)	24,512.18 (24,342.89)	26,109.40 (25,890.40)	30,990.95[2] (30,799.74)
4.	Percentage of 1 to 3	**71**	**70**	**72**	**75**	**76**

The above table indicates that during the year 2010-11, the revenue raised by the State Government (₹ 23,652.48 crore) was 76 *per cent* of the total revenue receipts against 75 *per cent* in the preceding year. The balance 24 *per cent* of receipts during 2010-11 was from the Government of India.

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[1] The difference between the figures shown in the column and brackets represent expenditure on prize winning tickets of lotteries conducted by the Government.

[2] For details please see Statement No. 11 – Detailed accounts of revenue by minor heads in the Finance Accounts of Kerala for the year 2010-11. Figures under the major heads 0020 – Corporation tax, 0021 – Taxes on income other than corporation tax, 0028 – Other taxes on income and expenditure, 0032 –Taxes on wealth, 0037 – Customs, 0038 – Union excise duties, 0044 – Service tax and 0045 –Other taxes and duties on commodities and services –Share of net proceeds assigned to states booked in the Finance Accounts under A – Tax revenue have been excluded from revenue raised by the State and included in the State's share of divisible Union taxes in this statement.

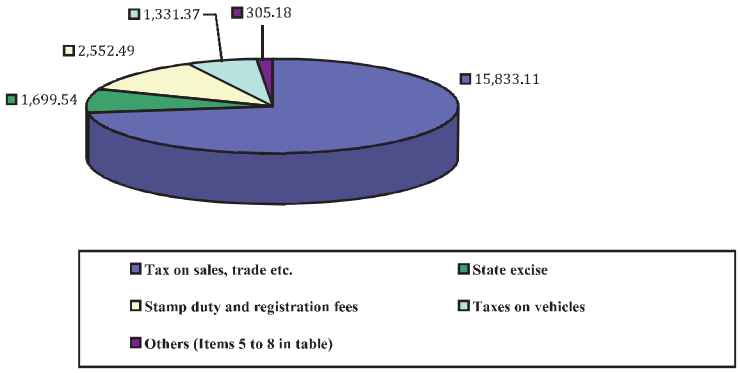
1.1.2 The following table presents the details of tax revenue raised during the period 2006-07 to 2010-11:

(₹ in crore)

Sl. No.	Head of revenue	2006-07	2007-08	2008-09	2009-10	2010-11	Percentage[3]
1.	Tax on sales, trade etc.	8,563.31	9,371.76	11,377.13	12,770.89	15,833.11	(+) 23.98
2.	State excise	953.07	1,169.25	1,397.64	1,514.81	1,699.54	(+) 12.19
3.	Stamp duty and Registration fees						
	• Stamps - judicial	49.20	81.89	71.25	83.52	75.30	(-) 9.84
	• Stamps – non-judicial	1,213.36	1,607.85	1,580.94	1,495.26	1,884.01	(+) 26.00
	• Registra-tion fees	257.37	338.23	350.81	317.63	593.18	(+) 86.75
4.	Taxes on vehicles	707.74	853.17	937.45	1,131.10	1,331.37	(+) 17.71
5.	Taxes and duties on electricity	31.78	39.04	56.00	24.78	20.71	(-) 16.42
6.	Taxes on agricultural income	9.63	22.05	11.97	27.73	46.97	(+) 69.38
7.	Land revenue	47.00	47.21	47.56	53.93	55.97	(+) 3.78
8.	Others	109.36	138.50	159.43	205.37	181.53	(-) 11.61
Total		**11,941.82**	**13,668.95**	**15,990.18**	**17,625.02**	**21,721.69**	**(+) 23.24**

Tax Revenue 2010-11

Rupees in crore



[3] Percentage of increase (+)/decrease (-) in 2010-11 over 2009-10

The following reasons for variations were reported by the concerned Departments:

Tax on sales, trade etc.: The increase was due to hike in price of petrol and diesel.

State Excise.: The variation was due to increase in sale of Indian Made Foreign Liquor (IMFL) and Beer.

Stamps and registration fees: The increase was due to introduction of fair value of land and increase in number of documents registered.

Land Revenue : The increase was due to intensive collection through special squads and also due to increase in Basic Tax.

The other Departments did not inform (December 2011) the reasons for variation, despite being requested (April 2011).

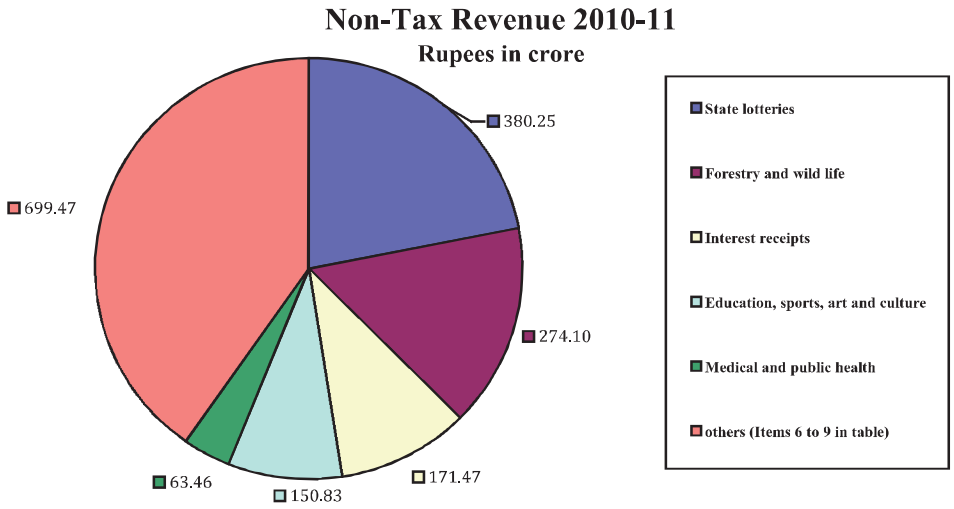
1.1.3 The following table presents the details of the non-tax revenue raised during the period 2006-07 to 2010-11:

(₹ in crore)

Sl. No.	Head of revenue	2006-07	2007-08	2008-09	2009-10	2010-11	Percentage [4]
1.	State lotteries[5]	142.93	193.70	312.10	405.07	380.25	(-) 6.13
2.	Forestry and wild life	174.56	154.45	223.71	272.80	274.10	(+) 0.48
3.	Interest receipts	44.63	69.65	83.69	152.50	171.47	(+) 12.44
4.	Education, sports, art and culture	99.91	100.89	130.24	130.62	150.83	(+) 15.47
5.	Medical and public health	32.99	20.02	38.58	34.43	63.46	(+) 84.31
6.	Crop husbandry	12.33	10.91	15.04	7.88	10.03	(+) 27.28
7.	Animal husbandry	6.43	5.26	2.96	3.11	3.97	(+) 27.65
8.	Public works	2.56	3.28	3.80	6.54	6.59	(+) 0.76
9.	Others	328.17	519.84	579.88	620.27	678.88	(+) 9.45
Total		**844.51**	**1,078.00**	**1,390.00**	**1,633.22**	**1,739.58**	**(+) 6.51**

[4] Percentage of increase(+)/decrease (-) in 2010-11 over 2009-10

[5] From gross receipts, expenditure on prize winning tickets has been deducted, but expenditure on commission to agents and establishment expenses have not been deducted. For 2010-11, from gross receipts of ₹ 571.46 crore, expenditure of ₹ 191.21 crore on prize winning tickets has been deducted, but expenditure of ₹ 216.53 crore on commission to agents and establishment expenses of ₹ 48.78 crore have not been deducted.



The following reasons for variations were reported by the concerned Departments:

State lotteries : The decrease was due to cancellation of weekly lotteries on the basis of court order.

Medical and Public health : The increase was due to enhancement of number of seats of degree courses and PG courses in Medical colleges and also due to hike in tuition fee for these courses.

Public works : The variation was due to increase in cost of tender forms. Besides, several lapsed deposits were credited to revenue.

The other Departments did not inform (December 2011) the reasons for variation, despite being requested (April 2011).

1.2 Analysis of arrears of revenue

The arrears of revenue as on 31 March 2011 in respect of some principal heads of revenue amounted to ₹ 5,358.55 crore of which ₹ 1,678.98 crore were outstanding for more than five years as mentioned below:

(₹ in crore)

Sl. No.	Department	Amount of arrears as on 31 March 2011	Arrears outstanding for more than 5 years
1.	Commercial taxes Department	4,962.05	1,552.46
	Significant arrears include an amount of ₹ 3,184.95 crore due from individuals, private firms and private companies, ₹ 1,344.52 crore due from PSUs of Government of India and ₹ 410.30 crore due from PSUs of Government of Kerala.		
2.	Forest	185.04	86.02
	Significant arrears include an amount of ₹ 163.87 crore due from PSUs of Government of Kerala and ₹ 11.91 crore was due from individuals, private companies etc.		
3.	Local Fund Audit	115.15	
	The arrear represents audit charge due from various local bodies.		

Sl. No.	Department	Amount of arrears as on 31 March 2011	Arrears outstanding for more than 5 years
4.	Police	82.42	30.49
	Significant arrears include an amount of ₹ 55.82 crore and ₹ 22.34 crore due from Central and State PSUs respectively. ₹ 2.31 crore was due from Government of India and ₹ 1.21 crore from other State Governments.		
5.	Stationery	12.83	9.92
	Significant arrears include an amount of ₹ 2.79 crore due from Education Department (Pareeksha Bhavan), ₹ 1.22 crore was due from Director of Civil Supplies and ₹ 1.14 crore from Election Department.		
6.	Factories & Boilers	1.06	0.09
	The Department stated that an amount of ₹ 92.47 lakh is due from individuals, private firms and private companies. An amount of ₹ 12.65 lakh is likely to be written off.		
Total		**5,358.55**	**1,678.98**

The other departments did not furnish the details of arrears, despite being requested (December 2011).

1.3 Response of the departments/Government towards audit

1.3.1 Failure of senior officials to enforce accountability and protect the interest of the State Government

We conduct periodical inspection of the Government departments to test check the transactions and verify the maintenance of important accounts and other records as prescribed in the rules and procedures. Our inspections are followed up with inspection reports (IRs) incorporating irregularities detected during the inspection and not settled on the spot. Our inspection reports are issued to the head of the offices inspected with copies to the next higher authorities for taking prompt corrective action. The head of the offices/Government are required to promptly comply with the observations contained in the IRs, rectify the defects and omissions and report compliance through initial reply to us within one month from the date of issue of the IRs. We report serious financial irregularities to the head of the departments and the Government.

We noticed that out of the inspection reports issued upto December 2010, 18,604 paragraphs involving ₹ 1,522.81 crore relating to 2,581 IRs remained outstanding at the end of June 2011. A table containing figures for the current year and preceding two years are given below:

	June 2009	June 2010	June 2011
Number of outstanding IRs	2,897	2,581	2,581
Number of outstanding audit observations	15,284	15,052	18,604
Amount involved (Rupees in crore)	1,133.31	1,426.98	1,522.81

While the number of outstanding IRs has remained static, we are concerned about the 24 *per cent* increase in outstanding audit observations at the end of June 2011 compared to last year.

The department-wise details of the IRs and audit observations outstanding as on 30 June 2011 and the amounts involved are mentioned below:

(₹ in crore)

Sl. No.	Name of the Departments	Nature of receipts	Number of outstanding IRs	Number of outstanding audit observations	Money value involved
1.	Taxes	Taxes on sales, trade etc	1,213	13,769	1,324.03
		Taxes on agricultural income	146	705	52.89
2.	Revenue	Land revenue	295	1,223	44.76
3.	Transport	Taxes on vehicles	267	1,304	19.47
4.	Stamps and registration	Stamps and registration fees	413	953	11.89
5.	Forest and environment	Forestry and wild life	203	540	35.13
6.	Power	Taxes and duties on electricity	28	86	31.13
7	Lotteries	Lotteries	16	24	3.51
Total			**2,581**	**18,604**	**1,522.81**

We have not even received first replies from the heads of offices for 230 IRs issued by us upto December 2010.

Non-receipt of first replies and increase in the number of outstanding audit observations indicates that the head of offices and head of departments failed to initiate timely action to rectify the omissions pointed out by us in our IRs.

We recommend that the Government take suitable steps to design effective procedures to ensure prompt and appropriate response to audit observations. Government may also institute systems for taking action against officials/officers who fail to send replies to the IRs/paragraphs as per the prescribed time schedules and who do not take action to recover loss/outstanding demand in a time bound manner.

1.3.2 Departmental audit committee meetings

The Government set up audit committees to monitor and expedite the progress of the settlement of IRs and paragraphs in the IRs. The details of the audit committee meetings held during the year 2010-11 and the paragraphs settled are mentioned in the following table:-

(₹ in crore)

Head of revenue	Number of meetings held	Number of paragraphs settled		Amount of settled paras	Number of audit paragraphs outstanding and percentage of settlement
Tax on sales, trade etc.	4	2000-01	27	25.44	11445 2.97
		2001-02	63		
		2002-03	17		
		2003-04	81		
		2004-05	22		
		2005-06 to 2009-10	130		
		Total	**340**		
Agricultural income tax	1	2001-02	22	7.85	754 8.48
		2003-04	10		
		2004-05	08		
		2005-06	03		
		2006-07	01		
		2007-08	06		
		2008-09	13		
		2009-10	01		
		Total	**64**		
Stamp duty and registration fees	4	2006-07	04	0.34	1053 5.41
		2007-08	05		
		2008-09	14		
		2009-10	27		
		2010-11	07		
		Total	**57**		
Forest	2	2001-02	03	3.59	706 17.13
		2002-03	03		
		2003-04	19		
		2004-05	10		
		2005-06	14		
		2006-07	13		
		2007-08	20		
		2008-09	30		
		2009-10	07		
		2010-11	02		
		Total	**121**		
Grand Total	**11**		**582**	**37.22**	**13,958** **4.16**

We recommend that the Departments to convene more number of audit committee meetings so as to clear all IRs prior to 2005-06.

1.3.3 Non-production of records to Audit for scrutiny

Mention was made in para 1.2.3 of the Report of the Comptroller and Auditor General of India (Revenue Receipts) for the year ended 31 March 2010 about non-production of 14,003 tax assessment records of 122 commercial tax offices for audit. Some of these files were audited during regular audit and separate teams were also arranged for audit of these assessment records. 1,779 files in 36 assessment circles were scrutinised and objections involving short levy of ₹ 5.86 crore was pointed out in 82 cases in 16 offices. However, majority of the assessment files covered in the Audit Report of 2009-10 are yet to be produced for audit scrutiny. At the end of 2010-11, 13,789 assessment files were pending scrutiny in 117 offices of which 2,830 files were from 13 Special Circles.

Our analysis of the list of files not produced in seven Special circles revealed that in 39 cases more than two assessment files of the same assessee pertaining to the period 1974-75 to 2004-05 were not produced to audit. In Special circle (Produce) Mattancherry and Special circle III, Ernakulam assessment files of two dealers pertaining to five years and in Special circle, Kollam assessment files of two dealers (KGST and CST) for three years were not produced.

(₹ in crore)

Name of Office	Year in which it was to be audited	KGST	VAT
Spl. Circle, (Produce), Mattancherry	Upto 2010-11	274	0
Spl. Circle, II Ernakulam	,,	212	0
Spl. Circle, I Ernakulam	,,	25	0
Spl. Circle, Mattancherry	,,	132	15
Spl. Circle, III Ernakulam	,,	179	34
Spl.Circle, Kannur	,,	311	11
Spl.Circle, Kozhikode	,,	196	22
Spl. Circle, II Kozhikode	,,	138	26
Spl.Circle, Malappuram	,,	158	89
Spl. Circle, Kottayam	,,	81	88
Spl. Circle, Palakkad	,,	55	57
Spl. Circle, Kollam	,,	363	55
Spl. Circle, Thrissur	,,	268	41
Total		**2392**	**438**

1.3.4 Position of Inspection Reports

The summarised position of inspection reports issued on revenue receipts relating to various departments during the last five years, paragraphs included in these reports and their status as on 31 March 2011 are tabulated in the following table:-

(₹ in crore)

Year	Opening balance		Addition during the year		Clearance during the year		Closing balance during the year	
	IRs/ Paragraphs	Money value	IRs/ Paragraphs	Money value	IRs/ Paragraphs	Money value	IRs/ Paragraphs	Money value
2006-07	2,607 13,487	534.62	751 3,988	318.54	621 3,061	160.98	2,737 14,414	692.18
2007-08	2,737 14,414	692.18	673 3,697	700.88	358 2,319	273.57	3,052 15,792	1,119.49
2008-09	3,052 15,792	1,119.49	692 5,133	199.98	485 2,967	133.84	3,259 17,958	1,185.63
2009-10	3,259 17,958	1,185.63	779 7,205	688.97	1,187 7,996	346.94	2,851 17,167	1,527.66
2010-11	2,851 17,167	1,527.66	636 6,482	4,317.31	451 2,895	194.08	3,036 20,754	5,650.89

During the five year period, the departments concerned conducted 93 audit committee meetings and cleared 5,413 paras.

1.3.5 Response of the departments to the draft audit paragraphs

We forward draft paragraphs/reviews proposed for inclusion in the Audit Report to the Secretaries of the concerned departments through demi-official letters. All departments are required to furnish their remarks on the draft paragraphs/reviews within six weeks of their receipt as per the instructions issued in 1965 by the Government. We had indicated the fact of non-receipt of replies from the Government at the end of each such paragraph included in the Audit Report.

We had forwarded 125 draft paragraphs (clubbed into 47 paragraphs including four reviews) proposed for inclusion in the Report of the Comptroller and Auditor General of India (Revenue Receipts) for the year ended 31 March 2011 to the concerned Secretaries to the Government and copies were endorsed to the concerned head of the departments. But we have not received replies/response to 73 draft paragraphs (out of 125 draft paragraphs) (December 2011).

1.3.6 Follow up on Audit Reports – summarised position

The Government had issued instructions from time to time for timely follow-up action on the Audit Reports. The Committee on Public Accounts stipulates submission of action taken notes (ATNs) on paragraphs and reviews included in the Audit Report indicating the remedial action taken or proposed to be taken, within two months from the date of presentation of the Audit Report to the legislature without waiting for any notice or call from the Committee on Public Accounts.

Our review of the outstanding ATNs on 578 paragraphs included in 15 Reports of the Comptroller and Auditor General of India (Revenue Receipts) for the years ended 31 March 1995 to 31 March 2009 disclosed that the departments had not submitted remedial ATNs on all paragraphs.

Out of 578 paragraphs included in the above 15 Audit Reports, the departments submitted ATNs on 557 paragraphs. However, none of the ATNs was furnished within the prescribed time of two months.

The Audit Report for the year ended 31 March 2010 was laid on the table of the legislature on 28 June 2011. The departments had not submitted ATNs on 53 paragraphs included in the above Audit Report (September 2011) although the prescribed time period was over in August 2011. This indicates that the executive did not take prompt action on the important issues highlighted in the Audit Reports that involved unrealised revenue.

1.3.7 Compliance with the earlier Audit Reports

During the years between 2005-06 and 2009-10, the Departments/ Government accepted audit observations involving revenue of ₹ 516.47 crore out of which an amount of ₹ 67.87 crore was recovered till July 2011 as mentioned below:

(₹ in crore)

Sl No.	Year	Total money value	Money value of accepted cases	Amount recovered
1	2005-06	29.23	4.75	1.08
2	2006-07	279.90	26.34	3.29
3	2007-08	276.21	250.11	7.39
4	2008-09	675.44	106.57	56.04
5	2008-09 Vol.II	295.24	116.93	0
6	2009-10	1048.55	321.03	3.37
Total		**2604.57**	**516.47**	**67.87**

The departments had recovered 82 *per cent* of the accepted cases upto 2008-09. We urge the departments to keep up the same tempo of recovery for the subsequent years' reports also.

1.4 Status of assurances by the Department/Government on the issues highlighted in the Audit Reports

Land Revenue and Building Tax

In the succeeding paragraphs we have analysed the response of the **Revenue Department** to the cases pointed out by us in the course of local audit during the last 10 years and cases included in the Audit Reports for the year 2000-01 to 2009-10.

1.4.1 Inspection Reports

The summarised position of IRs issued during the last 10 years and their status as on 31 March 2011 are tabulated in the following table :

(₹ in crore)

Year	Opening Balance		Additions		Clearance		Closing Balance	
	IRs/ Paras	Money value	IRs/ Paras	Money value	IRs/ Paras	Money value	IRs/ Paras	Money value
2001-02	323 1,168	16.84	42 237	1.35	29 298	7.71	336 1,107	10.48
2002-03	336 1,107	10.48	82 478	2.93	177 531	8.85	241 1,054	4.55
2003-04	241 1,054	4.55	43 260	1.68	70 401	2.71	214 913	3.52
2004-05	214 913	3.52	66 400	5.16	75 329	1.08	205 984	7.61
2005-06	205 984	7.61	63 354	1.46	31 327	2.76	237 1,011	6.30
2006-07	237 1,011	6.30	50 309	3.18	29 370	1.84	258 950	7.64
2007-08	258 950	7.64	66 415	3.58	39 308	0.42	285 1,057	10.80
2008-09	285 1,057	10.80	52 306	8.47	34 177	0.57	303 1,186	18.71
2009-10	303 1,186	18.71	54 386	17.79	90 393	7.48	267 1,179	29.01
2010-11	267 1,179	29.01	72 425	19.33	25 261	2.88	314 1,343	45.46
Total	**2,669 10,609**	**115.46**	**590 3,570**	**64.93**	**599 3,395**	**36.30**	**2,660 10,784**	**144.08**

During the period, we issued 590 IRs containing 3,570 paragraphs with money value of ₹ 64.93 crore. At the same time we cleared 599 IRs involving 3,395 paras with monetary value of ₹ 36.30 crore. Out of the above clearance, 463 paras involving money value of ₹ 4.9 crore were cleared by conducting 17 audit committee meetings with the Departments and the rest by persistently interacting with the Departments.

1.4.2 Important issues raised through IRs

The main issues highlighted in the IRs related to non/short realisation of collection charges in revenue recovery cases, non/short assessment of building tax, non-assessment of luxury tax, non-assessment of irrigation cess and non-collection of lease rent. We observed that though the Department accepted all these cases, they could not evolve a system to avoid such lapses in future years as similar lapses recurred in subsequent years.

1.4.3 Audit Reports

During the period we issued 35 paras (including three reviews) involving money value of ₹ 345.06 crore.

1.4.4 Reviews included in the Audit Report

During the period we conducted three reviews/long paras on 'Assessment and collection of building tax', 'Lease of land by Land Revenue Department' and 'Recovery of arrears of revenue under the Revenue Recovery Act'.

1.4.4.1 The review on 'Assessment and collection of building tax' included in the Audit Report 2004 highlighted drawbacks in the assessment and collection of building tax. The report was examined by the Public Accounts Committee in December 2008 and the Committee directed the Department to ensure timely assessment of buildings and collect building tax promptly. The Committee recommended amendment to the Kerala Building Tax (KBT) Act to make owners of the building liable for self assessment of tax. We find that the Department, however, did not rectify the system as we came across similar cases in succeeding years.

1.4.4.2 In the AR 2006, a review on lease of land by Land Revenue Department was included wherein we recommended that:

- Lease on Government land may be renewed timely and lease rent demanded and realised promptly.
- Stringent penal provisions may be included and land resumed from the lessees violating terms and conditions of lease.
- Lease rent may be revised periodically.

The review was examined by PAC in November 2007. The PAC recommended timely revision of lease rent on Government lands and to promptly realise it from the lessees.

However, the Department did not implement these recommendations and the same issues are still continuing.

1.4.4.3 Another review on Recovery of arrears of revenue under the Revenue Recovery Act (RR) was included in the Audit Report 2009. We recommended:

- prescribing time limit/procedure to be followed by RR officers for follow-up action.
- requisitioning Departments are to be directed to resort to RR action only after the appeal period.
- dispensing the system of direct collection by the requisitioning departments after commencement of RR action.
- serving a copy of the notice to the concerned sub registrar so as to comply with the provisions of the Transfer of Registry Rules, 1966.
- evolving a rational/scientific method in fixing targets.

The Department did not respond to these recommendations.

1.4.5 Impact of Audit

The Department accepted 511 paras with money value of ₹ 9.02 crore out of which ₹ 2.93 crore in 381 cases was collected during the period.

Further the Department accepted paras included in the Audit Report involving money value of ₹ 40.68 crore of which they had collected ₹ 5.83 crore.

Conclusion

We find that the Department was not able to solve the problem of non/short levy of building tax/luxury tax by collecting data regarding newly constructed buildings from *Panchayats*/Municipalities/Corporations. The Government has not effectively responded to the recommendations made by us. Lapses in renewal and realisation of lease rent and irrigation cess pointed out by us are yet to be solved. However, we are happy to note that the clearance of IRs/Paras more or less equals the additions made during the period.

1.5 Planning for audit during 2010-11

We categorised unit offices under various departments into high, medium and low risk units according to their revenue position, past trends of audit observations and other parameters. We prepared the annual audit plan on the basis of risk analysis conducted using data on Government revenues and tax administration i.e. budget speech, reports of the finance commission (State and Central), recommendation of the taxation reforms committee; statistical analysis of the revenue earnings during the past 5 years, features of the tax administration, audit coverage and its impact during past 5 years etc.

During 2010-11, the audit universe comprised of 898 units of which 639 were planned for audit. We decided to conduct a thematic review on the working of the State Excise Department which would feature as a separate report. Hence 60 excise units were excluded for local audit and 578 units were audited. We audited 99.8 *per cent* of the units planned for audit during the year.

We also conducted four performance reviews besides the compliance audit mentioned above to examine the efficacy of tax administration of these receipts.

1.6 Results of audit

1.6.1 Position of local audit conducted during the year

We test checked the records of 581[6] units of commercial tax, motor vehicles, forest and other departmental offices during the year 2010-11. We noticed underassessments/short levy/loss of revenue aggregating ₹ 4,786.23 crore in 3,913 cases. During the course of the year the departments concerned accepted underassessments and other deficiencies of ₹ 76.24 crore involved in 1,060 cases of which 379 cases involving ₹ 52.59 crore were pointed out in audit during 2010-11 and the rest in the earlier years. The departments collected ₹ 17.63 crore in 796 cases during 2010-11.

1.6.2 Material included in this report

This Report contains 47 paragraphs (selected from the audit observations made during the local audit referred to above and during earlier years which could not be included in earlier reports) including four performance reviews on 'Compounding Schemes in Commercial Taxes Department', 'Utilisation of declaration forms in inter-state trade', 'Levy and collection of Stamp Duty and

[6] Excluding 40 units of excise and including 43 units of forest.

Registration fees' and 'Computerisation in the Motor Vehicles Department' involving financial effect of ₹ 1,622.36 crore. The departments/Government have accepted audit observations involving ₹ 234.37 crore. The replies in the remaining cases have not been received (December 2011). These are discussed in the succeeding chapters II to VIII.

EXECUTIVE SUMMARY

Appreciable increase in tax collection	During 2010-11, tax collection increased by 23.97 *per cent* as against 12.25 *per cent* during the previous year. The State could achieve this due to increase in sales tax collection by 41.99 *per cent* caused by increase in the price of petroleum products.
Internal Audit was weak	Internal Audit Wing (IAW) was able to audit only 22 out of the 132 units planned for audit during the year. Further, none of the outstanding audit observations of IAW was cleared during 2009-10 and 2010-11.
Ineffective follow up of audit observations	The Department accepted ₹ 66.22 crore in 750 cases pointed out by us but only 23.70 *per cent* of the amount accepted was recovered.
Results of audit	In 2010-11 we test checked records of 205 units relating to KGST and VAT And pointed out 3,152 observations involving ₹ 944.66 crore, out of which 332 cases involving ₹ 50.94 crore were accepted. Apart from this we conducted two reviews also.
What we have highlighted in this Chapter	In our review on Compounding Schemes in the Commercial Taxes Department we have pointed out cases involving money value of ₹ 38.35 crore. The review on Utilisation of declaration forms in inter-state trade contains cases of short/non-levy of tax of ₹ 326.27 crore. We have also presented 19 paragraphs involving money value of ₹ 85.03 crore in this Chapter. We are concerned that most of the omissions highlighted in this Chapter had been pointed out by us repeatedly in the past audit reports, but such irregularities still persist and remain undetected till they are pointed out by us.
Our conclusion	The Department needs to improve the internal control system including strengthening of internal audit so that weaknesses in the system are addressed and omissions pointed out by us are prevented or detected and remedied in a timely manner. We also urge the Department to initiate immediate action to recover the underassessment of tax and other irregularities pointed out by us, more so in those cases where it has accepted our observations.

CHAPTER-II: TAX ON SALES, TRADE ETC.

2.1 Tax administration

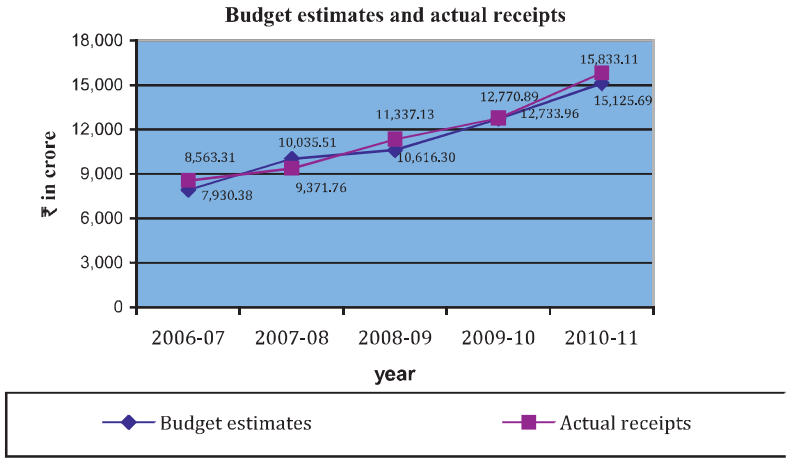
The Commercial Taxes Department contributes a major part of the revenue of the State. The revenue is derived from the assessment and collection of different taxes like sales tax, value added tax and central sales tax which are regulated by the Kerala General Sales Tax Act, 1963, the Kerala Value Added Tax Act, 2003, the Central Sales Tax Act, 1956 and notifications issued by the Department from time to time. The Department is under the administrative control of the Secretary to Government, Taxes. The Commissioner of Commercial Taxes administers the Acts and Rules. He is assisted by Joint Commissioners, Dy. Commissioners, Asst. Commissioners and Commercial Tax Officers. The assessment, levy and collection of tax is done by Assistant Commissioners and Commercial Tax Officers.

2.2 Trend of receipts

Actual receipts from VAT/tax on sales, trade etc. during the last five years (2006-07 to 2010-11) along with the budget estimates during the same period is exhibited in the following table and graph.

(₹ in crore)

Year	Budget estimates	Actual receipts	Variation	Percentage of variation	Total tax receipts of the State	Percentage of actual receipts vis-à-vis total tax receipts	Percentage of growth rate
2006-07	7,930.38	8,563.31	(+) 633.93	(+) 7.98	11,941.82	71.71	21.67
2007-08	10,035.51	9,371.76	(-) 663.75	(-) 6.61	13,668.95	68.56	9.44
2008-09	10,616.39	11,377.13	(+) 760.74	(+) 7.17	15,990.18	71.15	21.39
2009-10	12,733.94	12,770.89	(+) 36.95	(+) 0.29	17,625.02	72.46	12.25
2010-11	15,125.69	15,833.11	(+) 707.42	(+) 4.67	21,721.69	72.89	23.97



We noticed that the Department was able to achieve a healthy growth rate of 23.97 *per cent,* the highest in the last five years, during 2010-11.

2.3 Assessee profile

The number of dealers registered at the end of 2008-09, 2009-10 and 2010-11 is shown below:

2008-09	1,59,207
2009-10	1,59,665
2010-11	1,69,298

We noticed significant increase (9,633) in the number of dealers during 2010-11. The VAT collection from the top 50 dealers in the State was ₹ 4,610.75 crore which was 29.12 *per cent* of the total collection. Out of the total dealers, 24,712 dealers constituting 14.60 *per cent* were paying tax at 0.5 *per cent* under the category of presumptive tax payers.

Tax collection from KGST during 2010-11 was ₹ 7,402.07 crore as per the Finance Accounts prepared by Accountant General(A&E). However, our analysis revealed that tax as per the returns filed by five major dealers alone was ₹ 7,368.45 crore and the month wise collection under the KGST recorded by the Department was ₹ 7,243.64 crore. Hence, the Department may reconcile the figures and rectify the difference.

2.4 Receipt of VAT per assessee

The receipt of VAT/sales tax per assessee during 2010-11 was ₹ 9.15 lakh, which was higher than the previous year's receipt of ₹ 7.79 lakh by ₹ 1.36 lakh.

2.5 Arrears in sales tax assessment

The Department furnished the position of arrears of assessment under sales tax which is as shown below :

Opening balance	9,267
Addition during 2010-11 including remanded cases	3,826
Total	**13,093**
No. of assessments completed	6,947
Arrear cases – 6,155	
Current cases – 512	
Remanded cases – 280	
Closing balance	**6,146**

The Department completed 6,947 assessments under the KGST which was 53.05 *per cent* of the assessments due for finalisation.

We recommend the Government to complete assessments of the remaining cases in a time bound manner.

2.6 Cost of collection

The gross collection of revenue receipts under the head, tax on sales, trade etc., expenditure incurred on collection and the percentage of expenditure to gross collection during 2006-07 to 2010-11 along with the all India average percentage of expenditure on collection to gross collection for relevant years are mentioned below:

Year	Collection	Expenditure on collection of revenue	Percentage of expenditure to gross collection	All India average percentage over the previous year
	(₹ in crore)			
2006-07	8,563.31	78.21	0.91	0.91
2007-08	9,371.76	89.75	0.96	0.82
2008-09	11,377.13	102.59	0.90	0.83
2009-10	12,770.89	126.01	0.99	0.88
2010-11	15,833.11	115.61	0.73	0.96

Source: Finance Accounts and Departmental figures.

We are glad to note that the Department had reduced the cost of collection by 8.25 *per cent* during 2010-11.

2.7 Analysis of collection

Tax revenue collected on tax on sales, trade etc. during the last two years as recorded in the books of the Accountant General (A&E) Kerala is given below:

(₹ in crore)

Revenue head	2008-09	2009-10	2010-11
Sales Tax	5,881.97	5,212.92	7,402.07
VAT	5,035.19	7,235.26	8,097.15
CST	425.38	292.94	310.42

The above table indicates that during 2010-11 collection of sales tax increased by ₹ 2,189.15 crore and VAT collection by ₹ 861.89 crore. We observed that the significant increase of 41.99 *per cent* under Sales tax was due to steady increase in the price of petroleum products during 2010-11.

2.8 Impact of audit

Revenue impact

During the last four years, we pointed out non/short levy, underassessment/loss of revenue, incorrect exemption, application of incorrect rate of tax etc., with revenue implication of ₹ 2,520.43 crore in 8,692 paragraphs. Of these, the Department/Government accepted audit observations involving ₹ 1,200.30 crore and had since recovered ₹ 20.06 crore. The details are shown in the following table:

(₹ in crore)

Year of Audit Report	Paragraphs included		Paragraphs accepted		Amount recovered	
	No.	Amount	No.	Amount	No.	Amount
2006-07	1,004	309.17	179	250.50	108	3.18
2007-08	1,055	334.37	299	241.50	181	2.46
2008-09 Vol. I	2,181	459.11	341	32.77	203	9.40
2008-09 Vol. II	1	295.24	1	116.93	--	--
2009-10	4,451	1,122.54	657	558.60	588	5.02
Total	**8,692**	**2,520.43**	**1,477**	**1200.30**	**1,080**	**20.06**

The recovery position as compared to the accepted cases during the last four years was very low being only 1.67 *per cent*. The insignificant recovery of ₹ 20.06 crore against the money value of ₹ 1,200.30 crore relating to the accepted cases during the period 2006-07 to 2009-10 highlights the failure of the Department in recovering the Government dues promptly even in respect of cases accepted by them.

2.9 Working of internal audit wing

The internal audit wing (IAW) in the Commercial Taxes Department commenced functioning from 1 June 2009. The wing is headed by a Deputy Commissioner, three Assistant Commissioners and six Commercial Tax Officers. During the year 2010-11, against the target of 132 units 22 units were audited leaving 110 units in arrears. The Department attributed the arrears to the ceiling fixed on Travelling Allowance to Audit Officers. There were 53 IRs with 755 observations involving ₹ 80.94 crore outstanding(October 2011). Further, during 2009-10 and 2010-11, there was no clearance of observations by settlement which indicated poor response to the observations of IAW. The Department has not prepared a separate internal audit manual.

2.10 Results of audit

In 2010-11, we test checked the records of 205 units relating to KGST and VAT. We detected underassessment of tax and other irregularities involving ₹ 944.66 crore in 3,152 cases which fall under the following categories :

(₹ in crore)

Sl. No.	Categories	No. of cases	Amount
1.	**Compounding Scheme in Commercial Taxes Department (A review)**	1	38.35
2.	**Utilisation of declaration forms in inter-state trade (A review)**	1	326.27
Value Added Tax			
3	Turnover escaping assessment	878	156.51
4	Grant of irregular exemption	392	46.32
5	Application of incorrect rate of tax	258	71.44
6	Grant of excess input tax credit	550	20.74
7	Incorrect grant of concessional rate of tax	23	0.51
8	Non/short levy of Interest	16	0.20
9	Other lapses	1,033	284.32
Total		**3,152**	**944.66**

The Department accepted underassessment and other deficiencies of ₹ 66.22 crore in 750 cases, of which 332 cases involving ₹ 50.94 crore were pointed out in audit during the year 2010-11 and the rest in earlier years. An amount of ₹ 15.70 crore was realised in 522 cases of which 216 cases involving ₹ 2.44 crore were pointed out during the year 2010-11.

Two reviews on **"Compounding Scheme in Commercial Taxes Department"** and **"Utilisation of declaration forms in inter-state trade"** with financial impacts of ₹ 38.35 crore and ₹ 326.27 crore and a few illustrative audit observations involving ₹ 85.03 crore are mentioned in the following paragraphs.

2.11 Compounding Schemes in Commercial Taxes Department

2.11.1 Highlights

- Loss of revenue due to permission granted incorrectly to work contractors – ₹ 6.92 crore.

(Paragraph 2.11.7.1)

- Short levy due to application of incorrect rate of tax – ₹ 7.14 crore.

(Paragraph 2.11.7.2)

- Short levy due to short accountal of works contract turnover – ₹ 4.76 crore.

(Paragraph 2.11.7.4)

- Omission to forfeit illegal collection by works contractors by way of tax – ₹ 15.60 crore.

(Paragraph 2.11.7.5)

- Incorrect computation resulted in short levy of compounded tax of ₹ 2.37 crore realisable from dealers in IMFL.

(Paragraph 2.11.10.1)

2.11.1 Introduction

The Kerala Value Added Tax Act, 2003 (KVAT), Kerala General Sales Tax Act 1963 (KGST), Central Sales Tax Act,1956 (CST) and the rules made thereunder govern the levy and collection of tax on sale or purchase of goods in the State.

During the KGST period, dealers in certain evasion prone commodities like jewellery, work contract, cooked food etc. were permitted to pay tax at compounded rates. This was a simplified procedure under which tax was not related to the turnover of the dealer for the assessment year. The tax payable under the compounding scheme was less than the tax payable under the regular scheme and was attractive to the dealers and hassle free. The Government's intention was to attract more dealers into the tax net.

While introducing the KVAT Act in 2005, a scheme was included under Section 8 for dealers in works contract, metal crusher units, cooked food, video cassette, medicine and jewellery. Similarly, dealers liable to pay turnover tax on sale of IMFL under Section 5(2C) of the KGST Act were given an option to pay tax at compounded rates based on the purchase value of liquor from 1 April 2005. This was called the Compounding Scheme.

2.11.2 Organisational setup

The Principal Secretary to Government (Taxes) heads the Department at the Government level and Commissioner is in charge of the Department at the Department level. The levy and collection of tax under the KVAT Act, 2003, the KGST Act 1963 and CST Act, 1956 is administered by the Commissioner of Commercial Taxes with the assistance of Joint Commissioners, Deputy Commissioners and Inspecting Assistant Commissioners. Assistant Commissioners (Assessment) and Commercial Tax Officers are delegated with powers for assessment, levy and collection.

2.11.3 Audit objectives

We conducted the review to:

- examine efficiency and effectiveness of the compounding scheme in achieving the intention of its introduction,
- see the extent of compliance with the prescribed rules and procedures, and
- identify potential risk areas leading to leakage of revenue.

2.11.4 Scope and methodology of audit

We conducted the review during the period from December 2010 to May 2011 and test checked the assessment records for the years 2005-06 to 2009-10 of dealers who had opted for compounding in 32 assessment circles out of 102

assessment circles spread over nine[1] revenue districts. We selected the samples by simple random number sampling method and collected details of import of gold from Customs house, Air cargo complex, Cochin International Airport at Nedumbassery and cross verified it with the assessment records of the respective importers.

We also test checked the registers and records maintained in Commissionerate of Commercial Taxes as well as in selected Commercial Taxes assessment circles in the selected districts pertaining to dealers paying tax under the compounding scheme and also cross checked the data gathered from other sources ie. Customs house, KVATIS and TINXYS.

2.11.5 Acknowledgment

We acknowledge the co-operation extended by the Commercial Taxes Department, Customs house and Air Cargo complex. We conducted an entry meeting on 24 January 2011 with the Secretary to the Government and explained the modalities of audit. The views expressed by the Secretary and the Commissioner of Commercial Taxes were taken care of. We conducted an exit conference on 13 June 2011 with the Secretary (Taxes) and explained the important audit findings. The views of the Department at the time of exit conference and their responses to our queries/observations have been incorporated in the report.

Audit findings

2.11.6 Trend of revenue

The following are the details of budget estimate and actual receipt of the Commercial Taxes Department during the period 2005-06 to 2009-10.

(₹ in crore)

Year	Budget estimates	Actual receipt	Percentage of actual collection to budget estimates.
2005-06	8,200.01	7,037.97	85.83
2006-07	7,930.38	8,563.31	107.98
2007-08	10,035.51	9,371.76	93.39
2008-09	10,616.39	11,377.13	107.17
2009-10	12,733.96	12,770.89	100.29

The following are the details of revenue realised under the compounding scheme:

[1] Ernakulam, Kollam, Kottayam, Kozhikode, Malappuram, Palakkad, Pathanamthitta, Thiruvananthapuram and Thrissur.

(₹ in crore)

Commodity	2005-06	2006-07	2007-08	2008-09	2009-10
Gold	NA	47.24	60.83	83.94	112.21
Metal Crusher	#	#	13.45	20.19	21.98
IMFL	#	48.26	66.03	96.44	120.51

details, though called for, were not furnished by the Department.

The Commissioner of Commercial Taxes stated that details of works contract, medicine, video cassette and cooked food are not readily available.

The intention behind the introduction of Compounding Scheme was to bring more dealers under the tax net and thereby enhance revenue collection. But we found that the Department did not maintain a data base of dealers who had opted for compounding. Hence, the Department was unable to evaluate whether they were able to attract more dealers into the tax net. Further, targets were not fixed for enlisting dealers and collection of tax. Due to these reasons the Department was unable to clearly assess the impact of the scheme and modify it for further improvement.

We recommend that the Government may develop a database of dealers who opt for compounding, to fix a target for collection of tax under the scheme and analyse the data in a scientific manner to refine the scheme.

2.11.7 Works Contract

2.11.7.1 Incorrect grant of permission to pay compounded tax

- Section 8(a) of the KVAT Act, 2003, gives an option to a works contractor to pay tax at the rate prescribed thereunder on the whole contract receipt instead of paying tax in accordance with the provisions of section 6 of the Act. Under Rule 11 of the KVAT Rule 2005, the contractor is required to file an application in Form I DA along with a copy of the agreement executed with the awarder of the contract and the work schedule for availing the benefit of the scheme. Further, Rule 24B stipulates that contractors who undertake construction or development of flats etc. should file a declaration in Form 49 containing the details of ongoing projects, transfer of apartment etc.

We test checked the assessment records of 51 contractors in three[2] assessment circles, and noticed that in 16 cases the applications filed were not accompanied by the documents required under Rule 11. However, the AA accepted the applications and accorded permission for payment of compounded tax instead of rejecting the same and levying tax under section 6 of the Act. This resulted in short collection of tax of ₹ 6.80 crore.

We pointed out the matter and the Commissioner opined that permission granted was conditional and the copies of agreements would be insisted upon at the time of submission of final return. The reply is not acceptable as Rule 11(1) read with

[2] CTO(WC) Kottayam, Mattancherry and Thrissur

(1A) stipulates that application for exercising option for compounded tax under Section 8 shall be filed within 30 days from the date on which the contract in respect of which such option filed is concluded. Along with the application the dealer shall furnish a copy of the agreement executed by the contractor with the awarder and work schedule.

- Section 8(a) of the KVAT Act 2003, envisages that the benefit of payment of tax under the said section should not be applied to any work contract where the transfer is in the form of goods. The Supreme Court of India had ruled[3] that the work of supply and installation of elevator is not a work contract and hence not entitled for compounding.

We noticed that M/s Infosoft Digital Designing Services (P) Ltd., an assessee on the rolls of CTO, third circle, Thiruvananthapuram undertook a contract work which was in the nature of transfer of goods i.e "Supply and installation of flight information display system" and received ₹ 1.17 crore during the year 2008-09. The AA, however, permitted the contractor to pay compounded tax of ₹ 3.51 lakh.

Since the contractor transferred materials in the form of goods and the instant case is similar to the Supreme Court judgment cited above, he was not eligible to opt for the compounding scheme. The incorrect grant of permission resulted in short levy of tax of ₹ 12.27 lakh (including interest).

We pointed out the matter and the AA stated that the work forms a part of a composite contract which includes floor/ceiling/wall mounts as per site requirement and hence that will not fall under the category of transfer in the form of goods. The reply is not acceptable since out of the total contract amount of ₹ 1.76 crore, ₹ 1.63 crore (nearly 90 *per cent*) related to cost of equipment and only the balance of ₹ 0.13 crore related to installation charges, which was incidental to the main contract.

2.11.7.2 Application of incorrect rate of compounded tax

Section 8(a) of the KVAT Act 2003, as amended by the Kerala Finance Act 2008, specifies the rate of compounded tax payable by contractors having registration under the CST Act, 1956 as eight *per cent* of the whole contract receipt. It has further been provided under the said Section that in the case of any work covered under the above provisos which remains unexecuted fully or partly at the end of the year, the contractor shall continue to pay tax in respect of such works in accordance with the provisions of this clause.

By the Kerala Finance Act 2009, further provision has been inserted under Section 8(a) of the Act to the effect that in respect of works which commenced prior to 1 April 2008 and which remains partly unexecuted as on 1 April 2008, the contractor shall pay tax at the rates as it existed prior to 1 April 2008 till the completion of work, or upto 31 March 2009, whichever is earlier.

[3] Kone Elevator (India) Ltd. V/s State of Andhra Pradesh [140 STC 22(SC)]

This provision came into effect from 1 April 2009 and is not applicable for 2008-09.

- We found from the assessment records of four assessees in four works contract circles that the amount of compounded tax remitted for the year 2008-09 by these four works contractors was not at the rate prescribed, resulting in short remittance of tax and interest amounting to ₹ 6.64 crore as detailed below:

Name of Office	Name of Assessee	Amount of contract receipt	Tax remitted	Tax due @8%	Short remittance (including cess)	Interest due
		₹ in lakh				
CTO (WC), Palakkad	Oceanus Dwelling (P) Ltd.	1,786.53	71.46	142.92	72.18	14.44
CTO (WC), Mattancherry	Sargam Builders	139.73	4.19	11.18	7.06	1.48
CTO (WC), Ernakulam	Asset Homes (P) Ltd.	8,125.50	194.99	650.04	459.61	96.52
CTO (WC) Pathanamthitta	BTech Builders	199.02	5.97	16.08	10.21	2.53
Total					**549.06**	**114.97**

- M/s Vellappally Construction, an assessee on the rolls of CTO(WC), Kottayam having registration under the CST Act, opted for payment of tax under the compounded scheme and the AA permitted to pay compounded tax vide orders issued during October 2009. The assessee filed annual return for the year 2008-09 in form 10B disclosing a total contract receipt of ₹ 5.02 crore. Out of the total contract receipt, ₹ 4.96 crore was taxed at the rate of four *per cent* on the ground that it related to ongoing projects and the balance of ₹ 5.53 lakh at the rate of eight *per cent*. Our scrutiny of the accounts of the dealer filed with the Department revealed that during the year the assessee received ₹ 7.58 crore which related to new contract entered during the year 2008-09 attracting tax at the rate of eight *per cent*. Thus the AA did not notice the turnover that escaped assessment as well as application of incorrect rate of tax, which resulted in short remittance of tax of ₹ 50.15 lakh (including cess and interest).

2.11.7.3 Irregular grant of exemption

- Section 8(a)(ii) of the KVAT Act inserted by Finance Act 2009, provides that any works contractor having registration under the CST Act or an importer as defined under the Act, opting for payment of tax under the compounding scheme should pay tax at the rate of three *per cent* of the contract receipt after deducting the purchase value of goods effected by way of interstate purchase and for the purchase value of goods so deducted should pay tax at the schedule rate applicable to such goods.

We noticed that M/s KMC Construction Ltd. an assesee on the rolls of CTO (WC), Mattanchery who opted for payment of tax under the compounding scheme

did not remit the tax due on goods valued ₹ 6.41 crore purchased interstate and transferred through works contract during the year 2009-10. This resulted in non remittance of tax of ₹ 60.57 lakh (including interest). However, we noticed that the assessee had disclosed ₹ 31.58 lakh as output tax due on "others" details of which are not ascertainable.

- We observed that in the following cases, tax was computed on the contract receipt after deducting labour charges thereon instead of on the whole contract receipt. This resulted in short computation of tax of ₹ 25.99 lakh (including interest) as detailed below:

Name of office	Name of assessee/ Year	Contract receipt	Amount deducted towards labour	Tax due (including Cess@ one *per cent* for 08-09 and 09-10)/ Interest	Total
		(₹ in lakh)			
CTO, WC, Thrissur	Swaraj Builders				
	2006-07	110.49	102.65	2.05 0.92	2.97
	2007-08	119.54	96.65	1.93 0.64	2.57
	2008-09	124.39	37.75	1.14 0.24	1.38
	2009-10	84.95	73.18	2.22 0.20	2.42
CTO, WC, Palakkad	Geogy George 2008-09	531.71	54.47	1.63 0.33	1.96
CTO, WC, Kottayam	SOJ Associates 2008-09	76.66	69.77	2.11 0.36	2.47
	Sanoj Mathew 2008-09	770.89	101.50	3.08 0.49	3.57
	South India Foundation 2008-09	192.32	111.86	3.39 0.54	3.93
Works Contract, Ernakulam	RDS Project Ltd 2007-08	6,158.60	97.50	3.90 0.82	4.72
Total					**25.99**

We verified the cases locally and found that exemption claimed as labour in these cases were not for separate labour contract, but were part of composite contract under compounding scheme. The exemption allowed from the turnover was not correct.

Since the Department is fully computerised and returns are filed online, Government may consider building a validation in the software to ensure that the works contractors opting for compounding are not permitted to claim any deduction other than for payment to sub contractors.

2.11.7.4 Turnover escaped assessment

- From the annual returns filed we noticed in the case of twelve contractors opting for payment of tax under the compounding scheme that the contract receipts returned was much lesser than that accounted for resulting in short remittance of tax of ₹ 4.65 crore (including interest) as detailed in the following table:

Name of Office	Name of Contractor	Year/ Contract receipt returned	Contract receipt as per A/cs	Turnover escaped	Tax due/ Interest due	Total
			(₹ in lakh)			
CTO, Works Contract, Ernakulam	M/s Jayakrishnan & Co	2005-06 161.12	184.65	23.53	0.47 0.26	0.73
		2006-07 190.94	260.17	69.23	1.38 0.61	1.99
		2008-09 475.68	604.08	128.40	3.89 0.78	4.67
	NJK Builders (P) Ltd	2006-07 471.31	621.21	149.87	3.00 1.32	4.32
		2007-08 397.80	682.59	284.79	5.70 1.82	7.52
	Asset Homes (P) Ltd.	2006-07 68.14	1,443.88	1,375.74	27.51 12.66	40.17
CTO, Works Contract, Malappuram	K Mosakutty	2007-08 140.53	210.36	69.83	2.10 0.31	2.41
CTO, Works Contract, Kottayam	Thalapala Engineering company	2008-09 72.61	644.64	572.03	23.11 0.39	23.50
	Wexco Homes (P) Ltd.	2008-09 987.06	1,837.39	850.33	68.71 11.68	80.39
		2007-08 1,113.77	1,849.33	735.57	29.42 8.53	37.95
	Home Basics	2008-09 117.06	344.57	227.51	6.89 1.17	8.06
	Shaji Mathew	2007-08 1,117.55	1,232.15	114.60	2.29 0.73	3.02
CTO, Works Contract, Kozhikode	Hilite builders	2008-09 2,458.13	4,912.15	2,454.02	198.28 25.78	224.06
CTO, Works Contract, Mattanchery	JVN Properites	2008-09 96.87	158.42	61.55	1.86 0.37	2.23
CTO, Works Contract, Thrissur	Pentark Builders and developers	2008-09 388.36	576.49	188.13	15.20 2.89	18.09
	Trichur builders	2008-09 1,853.09	2,014.48	161.39	4.81 1.00	5.81
		Total				**464.92**

- Shri. Mohan Mathew, Neelettu construction, a works contractor on the rolls of CTO(WC), Kottayam opted for payment of tax under the compounding

scheme for the year 2009-10 and filed return in form 10B disclosing contract receipt of ₹ 4.05 crore. Scrutiny of the assessment records revealed that the contractor was issued certificate in form 20E for receiving contract amount of ₹ 4.24 crore without TDS from three awarders. However, contract amount returned as received from the said three awarders was ₹ 47.90 lakh only. Thereby contract amount of ₹ 3.76 crore had escaped assessment. This resulted in short remittance of tax of ₹ 11.38 lakh (at the rate three *per cent* + cess).

The Government may consider prescribing minimum percentage of the certificates filed by works contractors along with returns to be checked/cross verified by AA for exemption from TDS etc.

2.11.7.5 Omission to forfeit the illegal tax collection

Section 30(2) of KVAT Act 2003 restricts works contractors paying tax under Section 8(a) of the Act from collecting tax up to 31 March 2008. Section 72(1) of the Act provides to forfeit to Government any sum collected by dealers by way of tax in contravention of section 30(2).

We noticed that the following works contractors, who opted for payment of tax under the scheme, collected tax as evidenced from accounts as well as from the agreement entered into with the awarders. The AA did not forfeit the amount collected by way of tax of ₹ 15.60 crore to the Government as detailed below:

(₹ in lakh)

Name of Office	Name of assessee	Year	Contract receipt	Tax collected	Interest	Total
CTO (WC), Ernakulam	Mather Projects	2005-06	2,687.50	94.91	56.00	150.91
		2006-07	5,359.99	182.83	85.93	268.76
		2007-08	8,469.67	338.79	118.58	457.37
	Novel Villas	2005-06	839.51	16.79	9.91	26.70
		2006-07	1,497.97	29.96	14.08	44.04
		2007-08	1,721.64	34.43	12.05	46.48
	Korath Gulf Links	2006-07		3.04	1.43	4.47
		2007-08		14.51	5.08	19.59
	Kent Construction	2006-07	285.58	6.57	3.09	9.66
		2007-08	845.68	33.83	11.84	45.67
	Desai Homes	2005-06	4,421.77	88.44	52.18	140.62
		2006-07	5,747.48	114.95	54.03	168.98
		2007-08	5,893.76	117.88	41.26	159.14
CTO (WC), Pathanamthitta	Tropicana Reality Developers	2007-08	380.03	7.61	2.82	10.43
	B Tech Builders	2007-08	262.94	5.28	1.95	7.23
Total						**1,560.05**

We pointed out the matter and the AA replied that agreement contains a clause for payment of tax including sales tax, but the clause by itself is not the basis to conclude that the dealer has collected tax from the customers. The reply is not acceptable as the contract agreement clearly specifies the payment of tax to be paid along with each installment. Further, while applying for compounding the dealer had filed the copy of the agreements which clearly indicated the element of tax payable to the dealer by the purchasers.

2.11.8 Mechanised metal crusher units [Sn 8(b)]



2.11.8.1 Incorrect computation of compounded tax

The KVAT Act allows dealers producing granite metal with the aid of mechanised crushing unit to pay tax at the rates specified under Section 8(b) on the basis of the jaw size of the crushers used by them. The Act, as it stood up to 31 March 2008, provided for levy of tax on primary crushers[4] at the rate of 50 *per cent* of the rates specified in accordance with jaw size, thereby assessing each and every primary crushing unit. The Act was amended with effect from April 2009. The Minister for Finance in the budget speech clarified: "the amendment was made to clear doubt regarding tax on primary crushers and made primary crushers as a whole for the purpose of computation of compounded tax, at the rate of 50 *per cent* of the aggregate of the tax payable on secondary crushers[5]".

- M/s KK Rocks and Granites India, Pvt. Limited, a mechanised metal crusher unit on the rolls of CTO, third circle, Thiruvananthapuram had opted for payment of tax under section 8(b) of the Act for the year 2007-08. The unit possessed a cone crusher of jaw size 36" x 8" which is classified separately from 2007-08 onwards as it is neither a primary nor a secondary crusher on which tax

[4] Primary crushers are crushers in which rocks upto 5 ft by 4 ft by 4 ft in size were crushed to size of 12 inches or smaller.

[5] At secondary crusher, the crushed stone passes over a screen and the metal is again crushed into smaller size.

was paid at the rate of ₹ 3.60 lakh (secondary crusher) instead of at the correct rate of ₹ 7.50 lakh resulting in short remittance of tax of ₹ 3.90 lakh.

- We found from the inspection report dated 4 July 2008 available in the records of CTO, Thiruvalla that M/s Panachayil Industries was in possession of 14 metal crusher units, which they opted for compounding in 2008-09. However, in 2009-10, they opted for compounding of nine crusher units only. The AA had no details regarding disposal of plant and machinery by the dealer and hence the matter needs to be investigated as to whether there was short levy of compounding tax during 2009-10.

2.11.8.2 Non-consideration of addition made in fixed assets (Plant and machinery)

We test checked the accounts of metal crusher units, and noticed that in the following cases, considerable addition to fixed asset (Plant and machinery) was accounted for during the years. The assessing authorities did not ascertain whether the addition was due to purchase of crusher units. Considering the huge amount of addition made in the fixed asset, the possibility of undisclosed crusher unit in these cases cannot be ruled out. This requires detailed enquiry by the AA.

Sl No	Name of office	Name of the assesee	Year	Addition made to fixed asset during the year (₹ in lakh)
1.	CTO, 3rd Circle, Thiruvananthapuram	KK Rocks and Granites India (P) Ltd.	2007-08	41.50
			2008-09	174.02
2.	Special Circle, Thrissur	M/s Thomson Granite (P) Ltd.	2009-10	23.46
3.	CTO, Angamaly	M/s Poabs Granite Products (P) Ltd.	2008-09	1,466.59
4.	CTO, Tiruvalla	M/s Panachayil Industries	2006-07	135.43
			2007-08	300.54
			2008-09	309.84

We recommend that the Government may consider issuing instructions for periodical inspection of metal crusher units so as to ascertain the number of units in the possession of the assessee.

2.11.9 Dealers in ornaments of gold etc.



2.11.9.1 Loss of revenue due to the introduction of compounding scheme

The Hon'ble Minister for Finance in his revised budget speech for the year 2006-07, observed that the rate of tax on jewellery was four *per cent* under the KGST Act, 1963 and on introduction of KVAT Act, 2003 with effect from April 2005, the rate of tax was reduced to one *per cent*. Further, the Minister noticed that the trade did not reciprocate the reduction in tax rate by showing sufficient growth in turnover which resulted in shortfall in revenue during 2005-06 compared with that of 2004-05. Considering the fact that the jewellery market is a vibrant sector in Kerala with gold prices reaching record highs and in order to share the prosperity of the dealers, the Minister proposed to introduce a compounding scheme for jewellers. The proposal so made was implemented by the Kerala Finance Act 2006, whereby the normal rate of tax was increased to four *per cent* with effect from July 2006. According to the new scheme, dealers in jewellery were permitted to pay tax at the rate of 200 *per cent* of the maximum amount of tax paid for any of the previous consecutive three years. It was further provided that where a dealer had paid tax under the scheme during a year, compounded tax payable for the succeeding year should be 115 *per cent* of the tax paid under the scheme during the previous year. Thus by availing the proviso, if a dealer had paid tax under the compounding scheme for a year, for the subsequent year, additional tax burden would only be 15 *per cent* more than that during the previous year. Again, by the Finance Act 2008, the rate of compounded tax was reduced to 150 *per cent* from 200 *per cent* with effect from April 2008. The price of gold had substantially appreciated during the period from 2005-06 to 2009-10 at the compounded rate of 21.97 *per cent*.

From the above details, it could be seen that the additional tax burden of 15 *per cent* for the succeeding year was not even capable of covering the tax due to the increase in price.

Further, trade in gold jewellery increased substantially during the period. However, we noticed that the dealers limited their additional tax burden to 15 *per cent* by availing the scheme which could cover turnover much less than the actual, defeating the spirit behind implementation of the scheme, i.e. sharing the

prosperity of the dealers. Rather, the scheme became a tax saving one to the assessees, as detailed below:

(₹ in lakh)

Sl. No	Name of Assesee	Year	Sales t/o as returned (percentage of increase)	115 *per cent* of the previous year t/o actually covered under the scheme	Turnover escaped due to the compounding scheme [(4)-(5)]
(1)	(2)	(3)	(4)	(5)	(6)
1	Malabar business centre (P) Ltd., Palakkad	2006-07	1,645.32		
		2007-08	4,184.22 (154)	1,892.12	2,292.10
		2008-09	13,972.22 (234)	2,175.92	11,796.30
		2009-10	18,981.82 (36)	2,502.31	16,479.51
2	Al Ahali business trade links, Thrissur	2006-07	1,539.32		
		2007-08	3,008.85 (96)	1,770.22	1,238.63
		2008-09	6,641.13 (121)	2,035.75	4,605.38
		2009-10	8,794.57 (32)	2,341.11	6,435.46
3	Bhima Jewellery, Thiruvananthapuram	2007-08	21,485.26		
		2008-09	24,605.66 (14.52)	24,708.04	(-) 102.39
		2009-10	50,507.15 (105.27)	28,414.25	22,092.90
4	Sunny Diamonds Thiruvananthapuram	2008-09	113.60		
		2009-10	786.70 (592.51)	130.64	656.06
5	Bhima Jewels, Ernakulam	2007-08	12,756.65		
		2008-09	20,805.56 (63)	14,670.15	6,135.41
		2009-10	30,361.21 (46)	16,870.67	13,490.54
6	Malabar Kochi Arcade (P) Ltd Ernakulam	2007-08	1,567.36		
		2008-09	8,108.88 (417.90)	1,802.46	6,306.42
		2009-10	22,307.29 (175.90)	2,072.83	20,234.46
7	Malabar Dazzle India (P) Ltd. Malappuram	2007-08	410.48		
		2008-09	1,707.32 (316)	472.05	1,235.27
		2009-10	11,365.65 (565.56)	542.86	10,822.79

Thus, it is clear from the above table that the scheme did not cover the actual turnover of the dealers who opted for the same.

We recommend that the Government may adopt a pragmatic basis for fixing the rate of compounding tax so as to absorb price escalation as well as the growth in the trade.

2.11.9.2 Omission to reverse the input tax credit availed

Section 11(7) of KVAT Act, 2003, provides that goods in respect of which input tax credit (ITC) was availed and which are subsequently used for purposes for

which ITC is not allowable should be reversed. Section 11(4) of the Act restricts the dealers opting for compounding scheme from availing input tax credit.

We observed that in two cases, ITC availed by dealers who opted for payment of tax under the scheme, on the purchases effected during the previous years and held in stock and used for sale in subsequent years on which tax was paid under section 8(f), was omitted to be reversed. This resulted in revenue loss of ₹ 54.03 lakh as detailed in the following table:

Sl. No.	Name of office	Name of dealer	Year	ITC availed during previous years on opening stock
		(₹ in lakh)		
1.	Special circle I, Ernakulam	A Geeri Pai Gold and Diamond	2008-09	37.06
2.	Special circle II, Ernakulam	Malabar Cochin Arcade	2008-09	16.97
Total				**54.03**

The Commissioner, however, was of the view that this aspect was factored in while fixing the initial rate of 200 *per cent* and as such there is no loss. The reply is not acceptable as the initial rate had been reduced to 150 *per cent* from April 2008, applicable in the cases pointed out above.

The CCT may issue instructions for levy and collection of reverse tax on account of ITC availed on closing stock held in the preceding year before granting permission for compounding for the next year.

2.11.9.3 Incorrect compounding

- M/s Bhima Jewels, a dealer in gold and diamond jewellery and an assessee on the rolls of CTO, Special circle II Ernakulam, opted for payment of tax under section 8(f) of the Act for the year 2009-10. It filed annual return disclosing total turnover of ₹ 392.90 crore and remitted tax of ₹ 7.57 crore stated to be due under section 8 (f). The sales turnover returned included bullion also, which would not fall under the purview of Section 8(f). However, the AA did not initiate action to assess the turnover of bullion under Section 6(1) of the Act resulting in short levy of ₹ 76.50 lakh (including interest).

After we pointed out (January 2011) the matter, the AA replied (February 2011) that bullion was also covered under compounding scheme under the circular of CCT. During the exit conference, the CCT upheld the view stating that the intention of the Government was explained in his clarification. However, we found that the CCT had exceeded the powers while issuing the circular as the powers are limited only for issuing clarifications where there is ambiguity regarding classification of goods or rate of tax. By this clarification, the Commissioner brought bullion also under the compounding scheme which was beyond the scope of compounding and was against the provisions of the Act which allowed only dealers in ornaments or wares of gold to opt for it. If the

intention of the Government was to include bullion also under the compounding scheme, the Act should have been amended as was done in 2011. Moreover, the Act when amended during 2011 did not give retrospective effect and we noticed that dealers who opted for compounding scheme for jewellery were paying tax under Section 6(1) for semi finished gold bar as could be seen from the point discussed in the last bullet. Hence the case requires further examination.

- M/s Edimannikal Fashion Jewellery, an assesee on the rolls of CTO, Pathanamthitta had opted for payment of tax at the compounded rate for the year 2008-09. The AA fixed the compounded tax for the year as ₹ 8.97 lakh including cess. Against this, the assesee remitted ₹ 6.87 lakh only. However, the AA did not initiate action to collect the balance unpaid tax due of ₹ 2.10 lakh.

Further, for the year 2009-10, the AA erroneously fixed the compounded tax due as ₹ 7.90 lakh being 115 *per cent* of tax paid for 2008-09 instead of ₹ 10.31 lakh being tax payable for the year 2008-09 resulting in short levy of ₹ 2.41 lakh. Total short remittance for the two years comes to ₹ 4.51 lakh.

- M/s Alukkas Jewellery, Thrissur and M/s Peeyar Exporters are dealers in jewellery on the rolls of CTO, Special Circle, Thrissur. They opted for payment of tax under the compounded scheme for the year 2008-09 and paid tax at the rate prescribed under Section 8(f) of the KVAT Act for the turnover of jewellery. The dealers were also dealings in semi manufactured gold bar with HSN code 7108.13.00 falling under entry 4(4) of the Third schedule to the KVAT Act. The turnover of semi manufactured gold bar was assessed to tax at the rate of one *per cent* instead of at the rate of four *per cent* resulting in short levy of tax (including cess and interest) of ₹ 17.46 lakh as detailed below:

Name of assessee	Turnover of semi finished gold bar	Short levy at the differential rate of 3 *per cent* + cess	Interest	Total
		(₹ in lakh)		
Alukkas Jewellery	425.47	12.89	2.71	15.60
Peeyar Exporters	50.68	1.54	0.32	1.86
Total				**17.46**

2.11.10 Foreign liquor

2.11.10.1 Incorrect computation of tax

Section 7 of the KGST Act, 1963, as substituted by the Kerala Finance Act 2006, provides that any bar attached hotel, not being a star hotel of and above three star hotel/heritage hotel etc., may at its option, instead of paying turnover tax on foreign liquor in accordance with the provisions of section 5(2), pay turnover tax calculated:

- at 10 *per cent* of 140 *per cent* of the purchase value of such liquor in the case of those hotels situated in municipality, corporation etc. and 135 *per cent* of the purchase value in other places; or
- 115 *per cent* of the highest turnover tax payable by it as conceded in the return or accounts or the turnover tax paid for any of the consecutive three years, whichever is higher.

We test checked the assessment records of dealers in foreign liquor who opted for payment of tax under Section 7 for the years between 2006-07 and 2009-10 and noticed that the amount of compounded tax worked out and remitted was not in accordance with the provision of the Act. The incorrect computation resulted in short levy of turnover tax of ₹ 2.37 crore in 44 cases in 10 CTOs[6].

We observed that the short remittance was due to the omission on the part of the assessing authorities in computing the amount of tax due.

The Government may amend the KVATIS software so that IMFL dealers file the returns along with purchase statements electronically and the Department may issue necessary instructions to the AAs to complete the assessments promptly at the end of each year.

2.11.11 Internal control

Internal control is an integral process by which an organization governs its activities effectively to achieve its objectives. Internal control is effected mainly through internal audit and proper maintenance of registers. Previously, there was a separate audit wing in the Department. But, consequent to the introduction of KVAT Act 2003 with effect from 1 April 2005, the internal audit wing was not functioning. Maintenance of registers is an essential factor to have an internal control on the functioning of an office. However, no separate registers were prescribed/maintained to watch the details of dealers who had opted for payment of tax under the compounding scheme.

2.11.12 Conclusion

- The omission/defects pointed out were mainly due to the non-adherence of the provisions of the Act and Rules.
- As far as jewellery is concerned, the loss sustained was due to the lack of scientific norm in fixing the compounded rate that factors hike in gold price and increase in volume.

2.11.13 General Recommendations

We recommend that the Government may consider implementing the following recommendation for rectifying the system and compliance deficiencies:

- review of works contract compounding by a senior/supervisory officer;

[6] Special circle I & III Ernakulam, Special circles Kollam, Kottayam, Malappuram, CTOs Angamaly, Chalakuddy, Changanassery, Nedumangad and CTO II circle Mattancherry.

- prescribe proper registers or implement IT systems to watch the details of dealers who have opted for payment of tax under the compounding scheme to have an effective internal control; and
- conduct periodic inspection of metal crusher units to ascertain the number of units in the possession of the assessee from time to time.

2.12 "Utilisation of declaration forms in inter-state trade"

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

We conducted a review on Utilisation of declaration forms in inter-state trade to check the genuineness of the claims for exemptions/concessions based on these forms. We found various irregularities as mentioned below:

2.12.1 Highlights

- Cross verification of C Form declarations revealed purchase effected through bogus forms, understatement of purchase etc. amounting to ₹ 1.25 crore with a tax effect of ₹ 43.41 lakh.

(Paragraph 2.12.10)

- Concessional rate was allowed for Inter State sale without production of C forms, tax effect of which worked out to ₹ 92.91 crore.

(Paragraph 2.12.11)

- Exemption was allowed for Inter State transfer without production of F forms which resulted in short levy of tax of ₹ 123.38 crore.

(Paragraph 2.12.12)

- Concession was allowed on defective C forms which resulted in short levy of tax of ₹ 109.55 crore.

(Paragraph 2.12.13)

- Exemption was allowed on defective F forms involving tax effect of ₹ 15.13 crore.

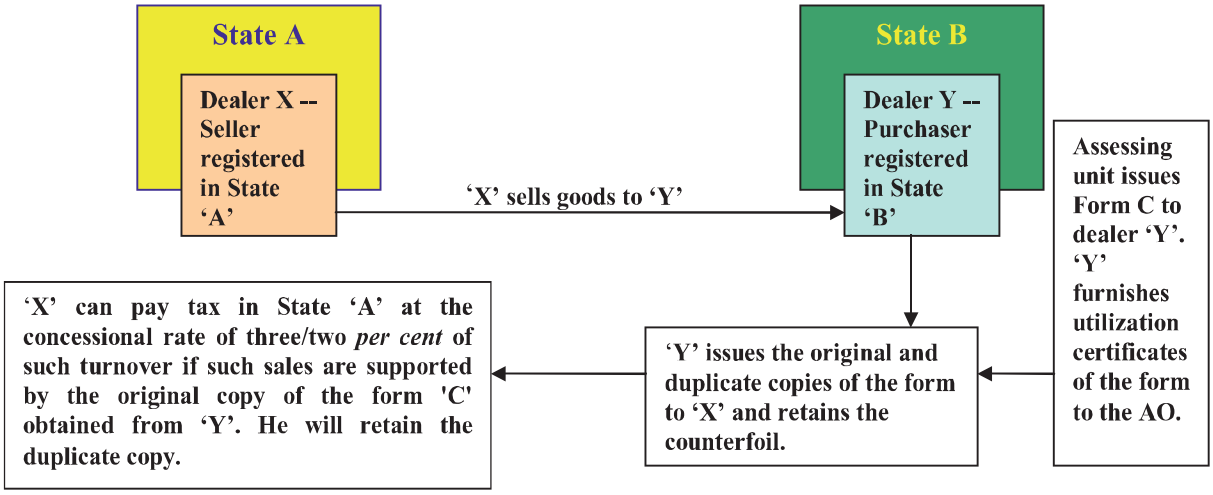
(Paragraph 2.12.14)

2.12.2 Introduction

The Central Sales Tax Act, 1956, (CST Act) governs the levy and collection of tax on inter-state transactions. Section 8 and Section 6A of the Act provide for certain concessions/exemptions to promote trade through registered dealers and to avoid cost escalation of goods to the ultimate purchaser. It is the responsibility of the Commercial Tax Department to ensure that the concession/exemption is not misutilised by fraudulent transactions.

Under the provisions of the CST Act, every dealer, who in the course of inter State trade or commerce, sells to a registered dealer, goods of the classes, specified in the certificate of registration of the purchasing dealer, shall be liable to pay tax at the concessional rate of three *per cent* from 1 April 2007 and two *per cent* with effect from 1 June 2008 of such turnover provided such sales are supported by declarations in form 'C'.

The steps involved in the process are illustrated below:



Under Section 6A of CST (Amendment) Act 1972, transfer of goods not by reason of sales by a registered dealer to any other place of his business outside the State or to his agent or principal in other States is exempt from tax on production of declaration in form 'F', duly filled in and signed by the principal officer of the other place of business or his agent or principal as the case may be, along with evidence of despatch of such goods.

The Empowered Committee of State Finance Ministers (EC) has introduced a web site called Tax Information Exchange System (TINXSYS) which acts as a repository of interstate transactions taking place between various States and Union Territories. TINXSYS is a centralised exchange of data related to transactions in respect of all interstate dealers spread across the various States and Union territories of India. The website was designed to help the Commercial Tax Departments of various States and Union Territories to effectively monitor the interstate trade.

The State of Kerala had evolved a new system, Kerala Value Added Tax Information System (KVATIS) which is a full fledged information system software that enables the automation of various functions of the Department. KVATIS has introduced downloading of statutory forms including C/F forms from January 2010 and dealers are not permitted to use manual declaration forms from that date. The introduction of e-forms has practically eliminated all the drawbacks in the manual system where the dealers had to obtain blank forms in advance from the Department and furnish utilisation certificate for the used form.

We appreciate the introduction of e-form which is simple, transparent and managed without human intervention. Further the downloaded declarations are uploaded automatically to TINXSYS on a daily basis. The genuineness of the e-forms can be checked through the commercial taxes website and TINXSYS.

2.12.3 Organisational setup

The Department of Commercial Taxes which administers the levy and collection of tax under the KVAT Act 2003, the KGST Act 1963 and CST Act, 1956 is headed by the Commissioner of Commercial Taxes who functions with the assistance of Joint Commissioners, Deputy Commissioners and Inspecting Assistant Commissioners. Assessment, levy and collection of tax is done by Assistant Commissioners (Assessment) and Commercial Tax Officers.

2.12.4 Audit objectives

The review aims to ascertain whether:

- There exists a fool proof system for custody and issue of the declaration forms;
- Exemption/concession of tax granted by the assessing authorities was supported by the original declaration forms;
- There is a system for ascertaining genuineness of the forms for preventing evasion of tax;
- There is a system of uploading the particulars in the TINXSYS website and the data available there is utilised for verifying the correctness of the forms;
- Appropriate steps are taken on receipt and detection of fake, invalid and defective (without proper or insufficient details) forms; and
- There exists an effective and adequate internal control mechanism.

2.12.5 Scope and methodology of audit

- The review covered all the commercial tax units audited between November 2010 and January 2011, covering assessments completed during the period from 2007-08 to 2009-10, where exemptions/concessions were granted under the CST Act. Cases noticed during regular audit of other units during the current audit cycle were also included.
- The details of C/F forms issued by the dealers in the State in favour of dealers outside the State for effecting inter-state purchases were collected from the selling State by the concerned Accountant General's office and those details were cross verified by us with respect to the counter foils and utilisation registers of the respective assessees in the State.

2.12.6 Acknowledgment

We acknowledge the co-operation extended by the Commercial Taxes Department for providing necessary information and records for review. We held an entry conference on 24 January 2011 with the Secretary to the Government and Commissioner of Commercial Taxes where in the scope and methodology of audit was explained. We held an exit conference on 31 October 2011 with the Additional Secretary to the Government and have included their responses given during the Conference and on other occasions.

2.12.7 Trend of revenue under CST

The budget estimates and actual realisation of revenue under Central Sales Tax for the period from 2006-07 to 2007-11 are mentioned below:

(₹ in crore)

Year	Budget estimates	Actual receipts	Variation excess (+)/shortfall (-)	Percentage of variation
2006-07	443.00	339.66	(-) 103.34	(-) 23.33
2007-08	569.25	1016.21	(+) 446.96	(+) 78.52
2008-09	353.22	425.38	(+) 72.16	(+) 20.43
2009-10	174.60	292.94	(+) 118.34	(+) 67.78
2010-11	164.00	310.42	(+) 146.42	(+) 89.28

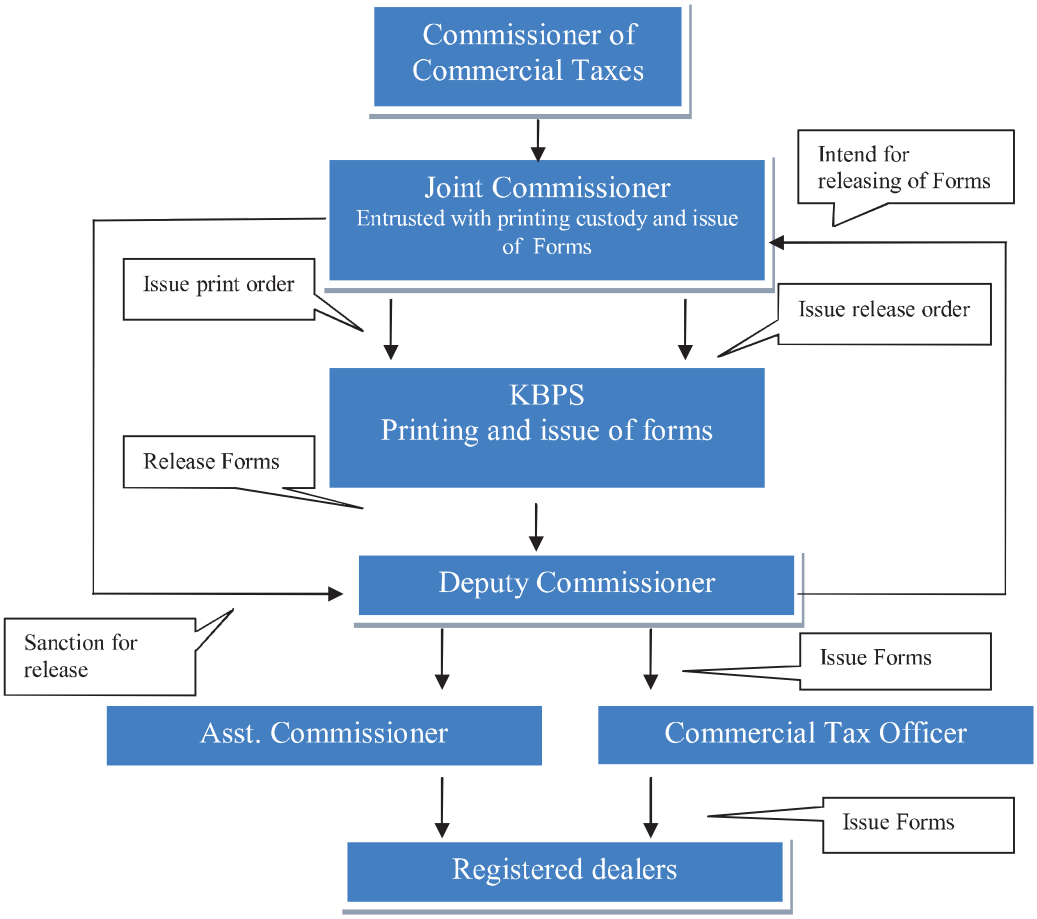
It may be seen from the above table that the actual realisation of revenue was more than the budget estimates except in 2006-07. Further, the percentage of excess was more than two-thirds (67 *per cent*) of the budget estimates in three out of the five years, the reasons for which were not furnished by the Department.

Audit findings

System deficiencies

2.12.8 Printing and issue of declaration forms

For interstate transactions up to December 2009 printed declaration forms were issued to dealers and for transactions thereafter electronic forms are issued. Even after December 2009, printed forms were issued for transactions pertaining to earlier periods. The Joint Commissioner, under the supervision of the Commissioner of Commercial Taxes, was responsible for distribution of manual forms which was printed at the Kerala Books and Publication Society (KBPS) (A Government Autonomous Body) as per order and kept at their custody. The required number of forms were allotted to the Deputy Commissioners at the district level based on their requisition who in turn were required to collect it from KBPS and distribute them to the Assistant Commissioners as per their indent.



Cross check of records relating to printing and issue of declaration forms available at the Commissionerate and KBPS for the period from April 2005 to June 2011 revealed the following discrepancies which proves that the printing and issue of declaration forms was not properly monitored at the Commissionerate level.

- The closing balance of C Form books available as per the stock register maintained in KBPS as on 18 June 2011 was 6,870. The balance as per the register maintained in the Commissionerate on the above date was 13,950. The excess of 7,080 books at the Commissionerate occurred due to the following reasons.
- Issue of 11,130 C form books as per 21 sanctions granted between August 2007 and June 2011 were not entered in the stock register maintained at Commissionerate. On two occasions, the entry in the registers at the Commissionerate and KBPS differed by 200 and 100 books. Between October 2008 and February 2011 three DCs did not lift the allotted C form books aggregating 2,100 from KBPS and four DCs lifted lesser number of books (aggregate 2,250) than that allotted. No reconciliation/physical verification was seen to have been conducted. If (proper) reconciliation/

physical verification was conducted, the above defects could have been detected.

2.12.9 Utilisation of declaration forms

Consequent to introduction of VAT, the Central Sales Tax (Registration and Turnover) Rules, 1957 was amended to fix a time limit of three months (after the end of the period to which the declaration or the certificate relates) for furnishing the declarations in Forms C and F along with the returns. Under the KVAT Rules, as amended from 24 April 2007, dealers are required to furnish along with the annual return, a statement on details of statutory forms issued during the return period.

We observed the following deficiencies in enforcing the above provisions and in confirming the genuiness of the transactions covered by these forms:

- Though assessing authorities have been directed to assess the turnover in cases of non-submission of declaration forms, cases of non submission of forms even after one to three years and allowing of exemptions/concessions without their production was noticed in most cases. Some high value cases noticed are featured in the compliance deficiencies portion of the review.
- Utilisation statements of the declaration forms were not found in the files produced to us, though audit was conducted one to two years, after the end of the assessment year. This indicated that there was no system to promptly verify utilisation certificate at the time of scrutiny of returns/conducting tax audits
- The Department has not issued guidelines prescribing a check list of points to be scrutinised (such as whether the date from which the registration entered is valid, date of issue, name and address of the seller with the name of State, purchase order number and date, purpose of goods purchased etc are mentioned) prior to acceptance of the declaration forms;
- Grant of exemption based on incomplete forms was noticed and a few high value cases are incorporated in the review.
- The Department has not implemented a system to verify declaration forms submitted by the dealers with the database available in the TINXSYS website before allowing exemption/concession of tax;
- The Department has not installed a regular system of picking up a sample of declaration forms and taking them up for further verification with the concerned states; and
- No regular mechanism has been prescribed for monitoring forms sent to other states and forms received from other states for verification.

2.12.9.1 Enforcement measures

Branch of the Enforcement Wing of the Department deals with investigation of interstate transactions.

We noticed the following deficiencies in the enforcement mechanism:-

- There was no mechanism to report to the concerned authority, details of declaration in forms 'C' and 'F' found lost, destroyed, stolen etc. or defective forms noticed and to take necessary action to declare such forms as invalid by giving wide publicity through issue of notification or circulars to all divisions etc.
- There was no mechanism to notify cases of bogus or non-existent dealers detected by the Department and to intimate it to other State Governments for publication in their gazettes.
- There was no system of blacklisting dealers who have been found utilising invalid/fake declaration forms in the past and to circulate their names among various units and to alert other States. There was no system to monitor such dealers regularly to watch further mischief and to levy maximum penalty in case of repeated default.
- The Department did not maintain a data bank on forms declared invalid or dealers found to be fictitious or whose registration certificates were cancelled within and outside the State.
- The Department did not maintain a sample of the colour, design and format of the forms prevailing in different States for comparison in order to identify the fake or forged declaration forms.

Compliance deficiencies

2.12.10 Results of cross verification of declaration forms

Results of verification received from other states

We collected and forwarded details of 436 C forms and 229 F forms and we received result of verification of 264 C forms from 13 states and 111 F forms from five states. From cross verification results we received confirmation that three C forms issued from Maharashtra were fake. The turnover covered by the above forms was ₹ 32.57 lakh. Similarly inter state sale value of two C form received from two states[7] were understated by ₹ 92.58 lakh. When we pointed out this, ₹ 13.14 lakh was realised at Special Circle, Trivandrum in respect of an assessee. We also observed that sales effected under the cover of three C forms from a dealer from Tamilnadu amounting to ₹ 53.64 lakh was not accounted by the purchasing dealer. Short levy of tax on the above account worked out to ₹ 43.41 lakh including interest and penalty.

[7] Gujarat and Jammu Kashmir

2.12.11 Concession allowed without production of C forms

The CST Act stipulates that every dealer, who in the course of inter State trade or commerce, sells to a registered dealer, goods of the classes, specified in the certificate of registration of the purchasing dealer, shall be liable to pay tax at the concessional rate of three *per cent* for the period 2007-08 and two *per cent* for the period 2008-09 onwards of such turnover provided such sales are supported by declarations in form 'C'. As per Rule 12(7) of CST (R&T) Rules (Amended), C/F forms shall be produced before the AA in the quarter following the quarter in which the transaction has occurred.

We verified CST assessment files in the State, and observed that concessional rate for inter state sale was allowed without production of C Forms. In respect of 17 offices[8] inspected, we observed that in case of 80 assessees, interstate sales turnover amounting to ₹ 545.82 crore was assessed at concessional rate of tax without production of C forms. Short levy of tax in this regard worked out to ₹ 92.91 crore including interest and penalty.

When we pointed this out, the assessment in respect of 18 assessees in seven[9] assessment circles were revised and an additional demand of ₹ 13.69 crore created. Reply in balance cases has not been received.

2.12.12 Exemption allowed without production of F forms

Section 6A of the CST (Amendment) Act, 1972, provides that transfer of goods not by reason of sales by a registered dealer to any other place of his business outside the State or to his agent or principal in other States is exempt from tax on production of declaration in form 'F', duly filled in and signed by the principal officer of the other place of business or his agent or principal as the case may be, along with evidence of despatch of such goods which shall be produced before the AA.

We verified CST assessment files in respect of 15 offices[10] in the State, and observed that in case of 53 assessees, interstate transfer of goods amounting to ₹ 799 crore was exempted without production of F forms. Short levy in this regard worked out to ₹ 123.38 crore including interest and penalty.

[8] Special Circles Alappuzha, Aluva, Ernakulam I, Kasargod, Kollam, Kottayam, Kozhikode II, Mattanchery, Thrissur, CTO I Circle Palakkad, Perumbavoor, CTO II Circles, Palakkad, Kalamassery, Kottayam, CTO IV Circle Ernakulam, CTO V Circle Kozhikode, CTO Attingal

[9] Special Circle Ernakulam III, Kollam, Kottayam, Palakkad, Thrissur, CTO II Circle Palakkad, Kottayam

[10] Special Circle Aluva, Ernakulam I & III, Mattanchery, Kottayam, Kollam, Thrissur, CTO II Circles, Ernakulam, Kalamassery, Palakkad, Kottayam, CTO III Circle Ernakulam, Thrissur, Kollam, CTO IV Circle Ernakulam.

When we pointed this out, the assessments in respect of three assessees in three[11] assessment circles were revised and an additional demand of ₹ 10.56 lakh created. Reply in balance cases has not been received.

2.12.13 Concession allowed on defective C forms

Section 8(1) (b) of the CST Act, 1956 as it stood during the relevant period stipulates that turnover of interstate sale of goods to registered dealers other than Government where the rate of which under the State Act is more than four *per cent* would attract tax at the rate of four *per cent* only. Section 8(4) (a) of the Act read with Rule 12(1) of the CST (R&T) Rules 1957 states that in order to prove that the transaction would fall under Section 8(1) (b) the dealer is required to file declarations in Form C duly filled and signed by the authorised officer of the Government/ registered dealer. Declarations not duly filled and signed and not containing the particulars are required to be treated as defective. The Hon'ble High Court of Kerala[12] had ruled that in order to avail the reduced rate of tax under Section (8) (1) (a)/(b) the declaration produced should be in original.

We verified the CST assessments completed between February and December 2010 in respect of three assesses in Special Circle II Ernakulam and observed that the AA accepted C Forms in which figures were erased and rewritten without authorisation; bills covered were not authenticated, and purchases effected before the date of registration etc. were covered. Total interstate sale of goods amounting to ₹ 160.62 crore was allowed concession on such defective declaration. The short levy of tax in this regard worked out to ₹ 109.55 crore including interest and penalty.

[11] Special Circle Kollam, Palakkad, Thrissur.
[12] 18 KTR 138

2.12.14 Exemption allowed on defective F forms

Section 6A of CST (Amendment) Act 1972, provides that transfer of goods not by reason of sales by a registered dealer to any other place of his business outside the State or to his agent or principal in other States is exempt from tax on production of declaration in Form 'F', duly filled in and signed by the principal officer of the other place of business or his agent or principal as the case may be, along with evidence of dispatch of such goods. Declarations not duly filled and signed and not containing the particulars are required to be treated as defective.

We verified the CST assessment files of three offices[13] and observed that in case of three assessees, interstate transfer of goods was exempted on defective F forms in which transfer relating to more than one month was covered; corrections were made on invoices without authentication; transactions covering period beyond the validity of declaration etc. Total interstate transfer amounting to ₹ 107.19 crore was exempted on such defective forms. The short levy of tax in this regard worked out to ₹ 15.13 crore including interest and penalty.

2.12.15 Absence of systems to verify resale

Section 8(3) read with Section 8(1) (b) of the CST Act 1956, provides that a Registered dealer is entitled to effect interstate purchase of goods of the class or classes specified on the Certificate of Registration which are intended for resale by him by paying tax at four *per cent* subject to submission of declaration in Form C. Section 10A read with Section 10 of the Act stipulated that if any persons after purchasing any goods for any of the purpose specified in Section 8(3) fails to make use of the goods for any such purpose, such persons were liable to pay a sum not exceeding one and half times of the tax which would have been levied under Section 8(2) of the Act by way of penalty

We observed in Special Circle II, Ernakulam that an assessee, had effected inter-state stock transfer of HSD valued ₹ 58.48 crore and ₹ 18.96 crore respectively for the years 2004-05 and 2005-06 out of the interstate purchase made by issuing declarations in Form C.

As per the Act, goods purchased against 'C' forms are meant for resale. In this case however, the goods were stock transferred to other States and the AA did not have systems in place to verify that the goods were resold.

We recommend that the Department may put in place

[13] Special Circles Aluva, Ernakulam I and Kollam

a system to verify that resale had taken place where goods purchased against Form C are disposed outside the State.

2.12.16 Internal Control Mechanism

Due to the changed procedure in assessment as a result of switchover from KGST to KVAT Rules the system of filing details of utilisation in form No.VI under CST assessment was dispensed with during the KVAT period. Though a provision to file the utilisation certificate along with annual return in KVAT Rules has been restored with effect from April 2007, the assessees are not submitting the same and there was no system in the Department to ensure that the copy of Form No.VI was filed along with the annual return.

Even though instructions were issued by the Department to allow concessions/exemptions only on production of valid declarations in form C/F, the assessing officers were allowing concessions/exemptions without production of C/F forms.

The Department has not issued any instructions regarding the checks to be carried out to spot bogus/obsolete/invalid declarations before accepting declarations for allowing concession/exemption.

2.12.17 Conclusion

We found that

- The system of e-issue of declaration forms has been introduced which is a welcome step.
- Departmental instructions were not complied with by the assessment circles.

2.12.18 Recommendations

We recommend that the Government may consider implementing the following steps for rectifying the defects pointed out in the review.

- Issue instructions regarding the checks to be carried out before accepting declarations for allowing concession/exemption.
- Strengthen the internal control mechanism for the strict compliance of Departmental instructions.

2.13 Other audit observations

We scrutinised assessment records of sales tax/value added tax (VAT) in Commercial Taxes Department and found several cases of non-observance of provisions of the Acts/Rules, non/short levy of tax/penalty/interest, incorrect determination/classification of turnover and other cases as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on a test check carried out in audit. Such omissions on the part of assessing authorities (AA) are pointed out in audit each year, but not only the irregularities persist; these remain undetected till an audit is conducted. There is need for the Government to improve the internal control system including strengthening of the internal audit to ensure that such ommissions are detected and rectified.

2.14 Non-observance of provisions of Acts/Rules

The Kerala General Sales Tax/Kerala Value Added Tax/Central Sales Tax Acts and Rules made thereunder provide for:

(i) levy of tax/interest/penalty at the prescribed rate;

(ii) allowing exemption of turnover subject to fulfilment of the prescribed conditions; and

(iii) allowance of input tax credit as admissible.

We noticed that the AAs while finalising the assessment did not observe some of the provisions which resulted in non/short levy/non-realisation of tax/interest/ penalty of ₹85.03 crore as mentioned in the paragraphs 2.14.1 to 2.14.25.

Value Added Tax

2.14.1 Allowance of incorrect concession

(CTO, special circle II, Ernakulam; November 2010)

Serial No. 98 of Schedule III to the KVAT Act provides for levy of tax at four *per cent* on sale of petroleum products covered under the Act to KSEB, NTPC and other power generating undertakings in the joint sector. The Government of India issued Guidelines (February 1973) stipulating conditions to be fulfilled to qualify as a joint sector undertaking. These included minimum 26 *per cent* equity ownership by the State Industrial Development Corporation (SIDC) and holding of not more than 25 *per cent* share by private partner without prior approval of the Central Government. Further, naptha, a petroleum product, was taxable at 12.5 *per cent* till June 2006.

We noticed from the assessment records that Indian Oil Corporation assessed tax on sale of naptha for ₹ 18.84 crore during 2005-06 and ₹ 43.64 crore during 2006-07 (upto June) to BSES Kerala Power Ltd. at concessional rate of four *per cent* applicable to undertakings in joint sector. However, in the case of BSES Kerala Power Ltd. SIDC was holding 13.68 *per cent* equity shares and hence does not qualify as a Joint Sector undertaking as it did not meet the criteria specified by the Government of India. The application of incorrect rate of tax resulted in short remittance of tax and interest of ₹ 7.78 crore (at differential rate of 8.5 *per cent* on ₹ 18.84 crore + ₹ 43.64 crore).

When we pointed out the case to the Department (November 2010) and to the Government (April 2011), the Government replied (September 2011) that assessment under section 25(1) of the Act has been completed (April 2011) and short levy pointed out by the audit made good. We have not received further information regarding collection (December 2011).

2.14.2 Short levy due to non disallowance of IPT/Special rebate on stock transfer

2.14.2.1 (CTO, special circles, Mattancherry, Malappuram and Special circle I Ernakulam; September 2010)

Proviso (3) to Section 11(3) of KVAT Act provides that if goods purchased in the State are used in the manufacture of goods and the same are sent outside the State otherwise than by way of sale, input tax credit shall be limited to tax paid in excess of four *per cent*. Further Rule 12 A of the KVAT Rules 2005 provides that where taxable goods are used during a return period partly in relation to taxable transaction and partly in relation to exempted or non-taxable transaction, the input tax paid or special rebate to which the dealer has become entitled shall be apportioned between the taxable and exempted or non-taxable transaction on the basis of the ratio of taxable and exempted turnover and input tax credit allocable to exempted transaction shall be disallowed. Section 6(1) of the Kerala Finance Act 2008 provides that there shall be levied and collected from dealers a cess at the rate of 1 *per cent* on the tax payable by them under Section 6 and 8 of the KVAT, Act 2003. Section 31(5) of KVAT Act provides that if tax or any other amount due under the Act is not paid by any dealer, such dealer shall pay simple interest at the rate of 12 *per cent* per annum on such amount defaulted.

We noticed from the assessment records that the AA either assessed reverse tax less than that required as per statute or not assessed such tax resulting in short levy of tax of ₹ 6.52 crore as detailed below:

(₹ in lakh)

Sl. No.	Assessment Circle	Commodity Assessment year	IPT to be disallowed on various grounds	IPT disallowed/ tax assessed by AA	Excess IPT/short levy of tax, cess and interest
1.	CTO, Spl.Circle I, Ernakulam	Gold Jewellery 2008-09	439.02	Nil	540.96
2.	CTO,Spl.Circle, Mattancherry	Zinc Ingots 2007-08	113.79	37.94	97.85
3.	CTO,Spl.Circle, Malappuram	Ayurvedic Medicine 2007-08	18.19	14.51	4.57
4.	CTO,Spl.Circle, Malappuram	Ayurvedic Medicine 2008-09	24.62	21.79	3.17
5.	CTO,Spl.Circle, Mattancherry	Pipes and fittings 2008-09	5.67	Nil	5.67
	Total				**652.22**

We pointed out the cases to the Department between April and September 2010 and to the Government between April and May 2011. We have not received further information (December 2011).

2.14.2.2 (CTO, special circle, Kottarakkara; August 2010)

Government by a notification[14] had exempted tax on interstate sale of rubber with effect from August 2008 on the condition that the rubber involved, had suffered tax under the KVAT Act 2003. When sale in the course of interstate trade is exempted from tax, ITC should be limited to tax paid in excess of four *per cent.*

We observed from the assessment records that a dealer purchasing rubber latex from unregistered dealers sold 29.46 *per cent* of his turnover interstate during 2008-09. However, the AA did not limit input tax credit availed in excess of four *per cent* on purchases corresponding to such sales. This resulted in short levy of tax and interest of ₹ 6.24 lakh.

We pointed out the matter to the Department in August 2010 and to the Government (April 2011). We have not received further information (December 2011).

- (CTO, Manjeri; August 2010)

We noticed from the assessment records that a dealer in tread rubber sold 57.64 *per cent* of his total turnover interstate during 2008-09 but input tax credit was not limited to tax paid in excess of four *per cent* on such sales. This resulted in excess availment of input tax and interest of ₹ 3.11 lakh.

We pointed out the matter to the Department (October 2010) and to the Government (May 2011). The Government replied (September 2011) that the assessment was completed (November 2010) with an additional demand of ₹ 2.65 lakh. We have not received further information (December 2011).

2.14.2.3 (CTO, special circle, Malappuram; April 2010)

Section 31(6) of the KVAT Act provides that if the tax due is not paid by the assessee within the prescribed time, interest will become due with effect from the date on which the tax would have fallen due for payment. Further, Section 91 of the Act stipulates that where any tax due or demanded under the Act is paid by any dealer, the payments so made shall be appropriated first towards interest accrued on such tax or other amount under Section 31(5) and the balance shall be appropriated towards principal outstanding.

We noticed from the assessment records that an assessee remitted (March 2010) input tax credit of ₹ 14.51 lakh and ₹ 21.79 lakh availed in excess during 2007-08 and 2008-09 respectively, without remitting the interest due. Further, the

[14] SRO 804/2008 dated 31.07.2008

Department did not assess interest and appropriate the remittances first towards interest, which resulted in short levy of tax of ₹ 5.73 lakh.

We pointed out the matter to the Department (April 2010) and to the Government (March 2011). The Government stated (July 2011) that the AA issued notice to the dealer to remit the amount. We have not received further information (December 2011).

2.14.3 Application of incorrect rate of tax

2.14.3.1 (CTO, Special circle II & III, Ernakulam; January 2011)

Under the KVAT Act 2003, gold coins attract tax at the rate of four *per cent* as per entry 4(4) of III[rd] Schedule. The Commissioner of Commercial Taxes had clarified[15] that gold rectangular bars being semi-manufactured will fall under HSN Code 7108.13.00 and will be taxable at the rate of four *per cent*.

We cross verified the import details in respect of a Bank and a public limited company gathered from Customs House, Air Cargo Complex, Nedumbasserry, with their assessment records and noticed that the assessees imported semi finished gold bar with HSN Code 7108.13.00 during 2008-09. The sale value of import worked out to ₹ 175.40 crore and the same was assessed to tax at the rate of one *per cent* instead of at the correct rate of four *per cent* resulting in short levy of tax, cess and interest of ₹ 6.48 crore.

The Bank and the public limited company conceded sales turnover of bullion of ₹ 683.16 crore & ₹ 677.77 crore respectively for the year. As gold imported by them was semi finished, the entire turnover was likely to be related to such semi-finished gold, liable to tax at the rate of four *per cent*.

We pointed this out to the Department (January 2011) and to the Government (June 2011). We have not received further information (December 2011)

- (CTO, special circle I, Ernakulam; January 2011)

We noticed from the assessment records that a bank assessed tax on sales turnover of gold bar with HSN code 7108.13.00 amounting to ₹ 35.64 crore and ₹ 72.95 crore for the years 2007-08 and 2008-09 respectively at one *per cent* instead of at the correct rate of four *per cent*. Application of incorrect rate of tax resulted in short levy of tax, cess and interest of ₹ 4.10 crore.

We pointed out the matter to the Department in March 2011 and to the Government (May 2011). The Department stated that they cannot complete an assessment under VAT simply on the basis of HSN code. Mere change of HSN code from 7108.12.00 cannot change the nature of bullion. The reply is not accepted as HSN recorded by Customs Authorities after inspection of goods was 7108.13 and under Rules for interpretation of Schedules, it is the basis for

[15] No.C3.23036/08/CT dated 29.09.08

determination of rate of tax. Further, the CCT relied on HSN code while issuing the clarification and hence the Department is bound to assess the goods based on HSN code. We reported the case to the Government (May 2011). We have not received further information (December 2011).

- (CTO, second circle, Ernakulam; November 2010)

We noticed from the assessment records that a bank had effected sale of gold bars in small quantities of 20/50 gms for ₹ 1.86 crore during 2008-09 and paid tax at the rate of one *per cent* applicable to bullion. This resulted in short levy of tax of ₹ 6.71 lakh.

When we pointed this out [to] the Department (December 2010), the AA replied that notice has been issued under Section 25(1). We reported the case to the Government (April 2011). Further report has not been received (December 2011).

2.14.3.2 (IAC, Kattappana; December 2009)

Notification[16] issued by the Government under the KVAT Act provides that confectionery including toffee, chocolates and sweets of all kinds sold under brand name registered under the Trade Mark Act 1999 are taxable at the rate of 12.5 *per cent.*

We noticed from the assessment records that a manufacturer of confectionery sweets under brand name 'Cryptms' self assessed output tax on sales turnover of confectionery of ₹ 8.23 crore during the years 2005-06, 2006-07 and 2007-08 at the rate of four *per cent* instead of at the correct rate of 12.5 *per cent*. This resulted in short levy of tax and interest of ₹ 84.50 lakh .

We pointed out (January 2010) the matter to the Department and to the Government in March 2011. The Government stated (October 2011) that the assessments for the years 2005-06, 2006-07 and 2007-08 were revised creating an additional demand of tax and interest of ₹ 1.01 crore. We have not received further information (December 2011).

2.14.3.3 (CTO, special circle, Mattancherry; August 2010)

The KVAT Act provides that bakery products including biscuits of all varieties, cakes, pastries, pizza and bread sold under brand name registered under Trade Marks Act, 1999 are liable to be assessed at the rate of 12.5 *per cent.*

We noticed from the assessment records that an assessee manufacturing and selling cakes and bakery products under registered brand name assessed tax on sales turnover of such products for ₹ 1.08 crore at four *per cent* instead of at the correct rate of 12.5 *per cent* during 2008-09. This resulted in short levy of tax and interest of ₹ 10.73 lakh.

[16] SRO 82/2006, Entry 24(1) (c) and (d).

We pointed out the matter to the Department in October 2010 and [to] the Government in January 2011. We have not received further information (December 2011).

2.14.3.4 (CTO, special circle, Mattancherry; July 2010)

The High Court of Kerala had held[17] that Ujala Supreme and Ujala Stiff and Shine are not industrial raw materials coming under list A of the Third schedule to the KVAT Act but are commodities taxable at 12.5 *per cent* under the Act. The KVAT Act provides that where the sale is to or by Canteen Stores Department, the tax payable shall be at half the rate applicable to such goods.

We noticed from the assessment records that a dealer assessed tax for the year 2008-09 on sales turnover of 'Ujala Supreme' and 'Ujala Stiff and Shine' valued at ₹ 4.93 crore at the rate of four *per cent* and sales turnover valued at ₹ 7.14 lakh to Canteen Stores Department at two *per cent* instead of at the correct rate of 12.5 *per cent* and 6.25 *per cent* respectively. This resulted in short levy of tax and interest of ₹ 49.02 lakh.

We pointed out the matter to the Department (July 2010) and to the Government (March 2011), the Government replied (October 2011) that the assessment has been revised (June 2011) applying the correct rate. We have not received further information (December 2011).

- (CTO, Ettumanoor; December 2009).

We noticed from the assessment records that a dealer assessed tax on the sales turnover of Ujala Supreme and Ujala Stiff and Shine for ₹ 1.03 crore during the period 2007-08 at the rate of four *per cent* instead of at the correct rate of 12.5 *per cent*. This resulted in short levy of tax and interest of ₹ 10.62 lakh.

We pointed out the matter to the Department in December 2009 and to the Government (February 2011). The Government stated (July 2011) that the assessment was completed under Section 25(1) of the Act creating additional demand of ₹ 14.14 lakh against which the assessee remitted ₹ 4.71 lakh in June 2010. We have not received further information (December 2011).

2.14.3.5 (CTO(WC & LT), Alappuzha; August 2010)

Section 6(1) (f) of the KVAT Act provides that in the case of transfer of goods involved in execution of works contract, where the transfer is not in the form of goods, but in some other form, the tax liability is at the rate of 12.5 *per cent.*

We noticed from the assessment records that a works contractor assessed tax at four *per cent* instead of at the correct rate of 12.5 *per cent* on transfer value of materials amounting to ₹ 4.25 crore for 2008-09. As the

[17] MP Agencies Vs State of Kerala reported in 18 KTR 82

contract was executed for Cochin International Airport Ltd., the assessee was not eligible for concessional rate of four *per cent* allowable to Government Departments etc. This resulted in short levy of tax and interest of ₹ 41.87 lakh.

We pointed out the matter to the Department in September 2010 and to the Government in February 2011. We have not received further information (December 2011).

- (CTO(WC&LT), Kollam; January 2010)

We noticed from the assessment records that an assessee engaged in tyre retreading returned tax at the rate of four *per cent* instead of at the correct rate of 12.5 *per cent* for the contract receipts of ₹ 23.97 lakh and ₹ 33.47 lakh during the periods 2006-07 and 2007-08 respectively. This resulted in short levy of tax and interest of ₹ 6.15 lakh.

We pointed out the matter to the Department in February 2010 and reported to the Government in December 2010. The Government replied (September 2011) that the assessments were completed in January 2011 and demand raised. We have not received further information (December 2011).

2.14.3.6 (CTO, special circle, Thrissur; May 2009)

Entry No.64 (8) of the notified list of goods provides that margarine is taxable at the rate of 12.5 *per cent.*

We noticed from the assessment records that a dealer assessed output tax on sales turnover of margarine for ₹ 1.53 crore at the rate of four *per cent* instead of at the correct rate of 12.5 *per cent* during the year 2005-06, 2006-07 and 2007-08. This resulted in short levy of tax and interest of ₹ 15.75 lakh.

We pointed out the matter to the Department (June 2009) and the Government (April 2011). The Government stated (September 2011) that the assessments were completed based on the audit observation and revenue recovery action is pending. We have not received further information (December 2011).

2.14.3.7 (CTO, first circle, Kottayam; June 2009 and June 2010)

Entry 30 of the notified list of 12.5 *per cent* taxable goods of the KVAT Act provides that digital photocopiers are taxable at the rate of 12.5 *per cent*.

We noticed from the assessment records that a dealer in digital photo copier computed tax on the sales turnover of ₹ 39.45 lakh, ₹ 31.84 lakh, ₹ 9.20 lakh and ₹ 56.98 lakh for the years 2005-06, 2006-07, 2007-08 and 2008-09 respectively at the rate of four *per cent* instead of at the correct rate of 12.5 *per cent*. This resulted in short levy of tax and interest of ₹ 14.51 lakh.

We pointed out (July 2009) short levy relating to the years 2005-06 to 2007-08, based on which the Department revised the assessments and created additional

demand of ₹ 15.42 lakh. However, we noticed (June 2010) that the same defect persisted in 2008-09. The Department stated (June 2010) that the commodity dealt with by the assessee is not digital copier but laser printer cum copier which comes under IT products chargeable at four *per cent* tax. The reply is not acceptable as the product is sold as digital copier as per the sales statement and further the Department had revised the assessment for the years 2005-06 to 2007-08. We reported the case to the Government (May 2011) and have not received any further information (December 2011).

2.14.3.8 (CTO (WC & LT), Kannur; June 2010)

Section 7(5) of the CST Act 1956 stipulates that a registered dealer may apply not later than six months before the end of a year for cancellation of registration, and the authority shall, unless the dealer is liable to pay tax under this Act, cancel the registration accordingly. The cancellation shall take effect from the end of the year.

We noticed from the assessment records that during the year 2007-08 the AA accepted the application dated 19.07.2007 for cancellation of registration of a works contractor with immediate effect and allowed him to pay compounded tax at three *per cent* instead of four *per cent* payable. Cancellation of registration in violation of the CST Act resulted in short levy of tax and interest of ₹ 4.16 lakh.

We pointed out the matter to the Department (July 2010) and the Government (March 2011). The Government stated (May 2011) that the assessment under Section 25 of the Act had been completed (January 2011) creating a demand of ₹ 4.52 lakh, including interest. We have not received further information (December 2011).

- (CTO(WC & LT), Kasaragod; May 2010)

We noticed from the assessment records that an AA accepted the application for cancellation of CST registration filed by a dealer in June 2006. The dealer assessed his works contract turnover of ₹ 2.21 crore relating to Government work at three *per cent* under Section 8(a) (i) of the Act instead of four *per cent* under Section 8 (a) (ii) of the Act for the year 2006-07, though the cancellation should have come into effect from the end of the year. This resulted in short payment of tax and interest to the tune of ₹ 3.30 lakh.

We pointed out the matter to the Department in June 2010 and to the Government in February 2011. The Department stated in July 2010 that notice was issued to the assessee. We have not received further information (December 2011).

2.14.3.9 (CTO, (WC&LT), Mattancherry; May 2010)

The KVAT Act, 2003, as it stood prior to April 2008 provides that a dealer registered under the Central Sales Tax Act can opt to pay compounded tax at four *per cent*. Though dealers were liable to pay tax at eight *per cent* from April 2008, they were permitted to pay tax at pre-revised rate in respect of work remaining partly unexecuted as on 1 April 2008.

We noticed from the assessment records of 2008-09 that a works contractor paid compounded tax at the rate of 2.3 *per cent* for the works remaining partly unexecuted as on 1 April 2008. As the dealer had CST registration during 2007-08, he was eligible to opt for compounding at the rate of four *per cent* under Section 8(a) (ii) of KVAT Act, 2003. Application of incorrect rate of compounding resulted in short levy of ₹ 3.76 lakh.

When we pointed out this (June 2010) the Department stated that as per the Finance Act 2009, works which commenced prior to 1 April 2008 and remaining partly executed on that date are liable to be taxed at the rate that existed prior to April 2008 and hence there was no short levy. The reply is not tenable as the compounded rate of 2.3 *per cent* related to civil work contracts of pre-VAT period which was valid only upto March 2007. We reported it to the Government (April 2011). Further report had not been received (December 2011).

2.14.4 Excess claim of input tax credit

2.14.4.1 (CTO, special circle(produce), Mattancherry; July 2010)

The assessing authority shall check all calculations and credits given in an assessment as per the instructions issued by the erstwhile Board of Revenue.

We noticed from the assessment records that an assesee in his annual return for 2008-09 brought forward a tax credit of ₹ 51.46 lakh depicting it as excess input tax credit of the previous year. However, input tax credit carried forward to the year as per the annual return of 2007-08 was nil. Besides computational mistakes resulted in further excess credit of ₹ 8.76 lakh as total of input tax was shown as ₹ 2,65,08,883 instead of ₹ 2,56,32,956. These resulted in short assessment of tax and interest of ₹ 69.25 lakh.

We pointed out (July 2010) the issue to the Department and to the Government (May 2011). We have not received further information (December 2011).

2.14.4.2 (CTO, Manjeri; October 2008)

Section 22(3) of the KVAT Act provides that if any dealer files an incorrect return and fails to file a fresh return, the assessing authority shall estimate the turnover of the return period and complete the assessment to the best of its judgment. The Act also provides for levy of penalty, not exceeding twice the amount of tax or other amount evaded or sought to be evaded, where the assessee has made bogus claim of input tax.

We noticed from the assessment records of 2005-06 that a dealer in timber claimed input tax credit twice on three purchases effected during December 2005 and March 2006 and availed excess input tax credit of ₹ 2.53 lakh. We consider that besides recovering excess credit of ₹ 2.53 lakh, the Department should levy penalty of ₹ 5.06 lakh for this offence.

We pointed out the matter to the Department in October 2008 and to the Government (February 2011). The Government stated (July 2011) that on the basis of audit observation tax, interest and penalty totalling to ₹ 8.62 lakh was demanded. The assessee paid ₹ 2.72 lakh and the balance was advised under Revenue Recovery. We have not received further information (December 2011).

2.14.5 Non-levy of reverse tax

(CTO, Special Circle, Kannur; August 2010)

Section 2 (xlii) of the KVAT Act specifies 'reverse tax' as that portion of input tax of the goods for which credit has been availed but such goods remain unsold at the closure of business or are subsequently used for any purpose other than resale or manufacture of taxable goods. Further Section 11(4) and 12(2) of the Act stipulates that a dealer paying compounded tax shall not be eligible for input tax credit / special rebate.

We observed from the assessment records that a dealer in jewellery had a closing stock of ₹ 16.89 crore during 2007-08 for which he had taken input tax credit. During 2008-09 he switched over to the compounding scheme for which no input tax credit is allowable. The tax payable under the compounded scheme is worked out on the basis of sales effected during the previous years. The huge closing stock at the end of 2007-08, on which the dealer had taken input tax credit, was sold during the subsequent year (2008-09), though the dealer was not eligible to avail input tax credit under the compounding scheme. This resulted in leakage of revenue of ₹ 67.54 lakh.

We pointed out the matter to the Department in October 2010 and to the Government (March 2011). The Department stated in December 2010 that the assessee availed input tax credit prior to the switching over to the compounding

scheme and it need not be reversed. The reply is not acceptable as no ITC is to be allowed on goods sold under compounding scheme and as such on the stock sold under compounding, reverse tax is leviable.

2.14.6 Non-levy of interest/non-appropriation of payment to interest

(CTO, special circle II, Ernakulam; February 2009)

Section 42(2) of the KVAT Act, 2003 provides that where any dealer detect any omission or mistake in the annual return submitted by him with reference to the audited figures, he shall file a revised annual return rectifying the mistake or omission along with the audit certificate. Where, as a result of such revision, the tax liability increases, the revised return shall be accompanied by proof of payment of such tax, interest due thereon under sub-section (5) of Section 31 and penal interest, calculated at twice the rate. Further, Section 91 of the Act stipulates that where any tax due or demanded under the Act is paid by the dealer, the payments so made shall be appropriated first towards interest accrued on such tax or other amount under Section 31 (5) and the balance shall be appropriated towards principal outstanding.

We noticed from the assessment records that an assessee filed revised return and differential tax of ₹ 1.61 crore during 2005-06 without remitting interest and penal interest due. Further the Department did not assess interest and appropriate the remittance first towards interest which resulted in short levy of tax and interest of ₹ 41.98 lakh.

We pointed out the matter to the Department in April 2009. The Department stated that the case would be examined. The case was reported to the Government in December 2010. We have not received further information (December 2011).

2.14.7 Short levy due to turnover escaping assessment

2.14.7.1 (CTO, (WC&LT), Mattancherry; May 2010)

Section 6(1)(f) of the KVAT Act, provides that in the case of transfer of goods involved in execution of works contract, where the transfer is not in the form of goods, but in some other form, tax at the rate of 12.5 *per cent* shall be levied. Further proviso to rule 10(2) (a) of KVAT Rules 2005 provides that when taxable turnover in respect of works contract not in the form of goods falls below the cost of goods transferred in the execution of works contract, an amount equal to the cost of goods transferred together with profit, if any, shall be the taxable turnover.

We noticed from the assessment records of 2008-09 that a works contractor conce ded taxable turn over of ₹ 4.13 crore. Out of the taxable turnover, ₹ 2.58 crore was assessed at four *per cent* instead of

at 12.5 *per cent*. Further, the taxable turnover of ₹ 4.13 crore was less than the cost of goods consumed in the works contract which amounted to ₹ 4.87 crore. Escapement of turnover from assessment coupled with application of incorrect rate resulted in short levy of tax and interest of ₹ 35.52 lakh.

We pointed out the case to the Department (May 2010) and the Government (April 2011). We have not received further information (December 2011).

- (CTO(WC & LT), Alappuzha; August 2010)

We noticed from the assessment records of 2008-09 that a works contractor who had contract receipts of ₹ 13.30 crore assessed tax on turnover of ₹ 4.92 crore only. The turnover was less than the cost of goods transferred to works contract of ₹ 6.33 crore. Hence, the taxable turnover including profit should be ₹ 6.38 crore and turnover of ₹ 1.46 crore that escaped assessment resulted in short levy of tax and interest of ₹ 21.10 lakh.

We pointed out the matter to the Department in September 2010 and to the Government in February 2011. We have not received further information (December 2011).

2.14.7.2 (CTO(WC), Malappuram; July 2009)

Under Section 42(2) of the KVAT Act, 2003 if there is omission or mistake in annual return with reference to audited figures he shall file revised annual return along with audit certificate rectifying the defect. If tax liability increases he shall file proof of payment of balance tax, interest and twice the amount of interest as penal interest.

We noticed from the assessment records that a dealer returned total and taxable turnover of ₹ 1.84 crore and ₹ 3.73 crore for the years 2006-07 and 2007-08 respectively as against ₹ 2.34 crore and ₹ 4.37 crore shown in the profit and loss accounts for the respective years. This resulted in short levy of tax, interest and penal interest of ₹ 32.08 lakh.

We pointed out the matter to the Department in July 2009 and to the Government in December 2009. The Government stated (July 2011) that the loss of revenue as pointed out by audit was assessed and is being collected. We have not received further reply (December 2011).

- (CTO, special circle, Mattancherry; September 2010)

We noticed from the assessment records that the sales turnover of minerals depicted in the annual return for 2008-09 and assessed to tax by an assessee was less than the certified accounts figure by ₹ 4.14 crore. This resulted in non-levy of tax of ₹ 19.75 lakh at the rate of four *per cent*.

We pointed out the matter to the Department in October 2010 and to the Government in January 2011. We have not received further information (December 2011).

2.14.7.3 (CTO, special circle I, Ernakulam; January 2011)

According to Entry 67 of notified list of 12.5 *per cent* taxable goods under KVAT Act, spare parts of motor vehicle are liable to be taxed at 12.5 *per cent*. Further, the Supreme Court held[18] that warranty charges received from the manufacturers by the agents for replacing defective parts of vehicles are sale of goods and hence liable to tax.

We noticed from the assessment records that the AA did not assessed warranty claim of ₹ 1.80 crore received by a dealer in 2008-09 resulting in short levy of tax and interest of ₹ 27.58 lakh.

We pointed out the matter to the Department (March 2011) and to the Government (May 2011). We have not received replies (December 2011).

- (CTO, special circle III, Ernakulam; July 2010)

We noticed from the assessment records that an assessee did not pay tax on goods involved in warranty replacement amounting to ₹ 78.67 lakh on the ground that a review petition on the issue is pending with the Supreme Court of India. As the Supreme Court decision has not been stayed the assesee is liable to comply with the existing decision and pay tax. Failure to do so resulted in short levy of tax, interest and cess of ₹ 11.50 lakh.

We pointed out the matter to the Department (July 2010) and to the Government (May 2011). The Government stated (September 2011) that the assessment was revised (October 2010) and the assessee paid the additional demand in full in February 2011. Collection particulars are awaited (December 2011).

2.14.7.4 (CTO (WC & LT), Kannur; June 2010)

The KVAT Rule provide that the taxable turnover in relation to a works contract, where transfer of property takes place not in the form of goods but in some other form, shall be arrived at after deducting labour and other specified charges from the contract receipt. If the turnover so arrived at falls below the cost of goods transferred in the execution of works contract, an amount equal to the cost of goods transferred in the execution of works contract together with profit shall be the taxable turnover in respect of such works contract.

We noticed from the assessment records that the AA did not assess the turnover that escaped assessment due to excessive exemption claimed by a dealer during 2008-09 resulting in short levy of tax of ₹ 17.39 lakh.

We pointed out the matter to the Department (June 2010) and to the Government (February 2011).

[18] Mohd Ekram Khan & Sons Vs Commissioner of trade tax (2004) 12 KTR 572.

The Government stated (May 2011) that the assessment under Section 25 was completed creating a demand of ₹ 31.50 lakh including interest. We have not received further information (December 2011).

2.14.7.5 (CTO, special circle, Thiruvananthapuram; January 2010)

Entry 30(2) (c) (1) of the Notified list of the KVAT Act provides that tax at the rate of 12.5 *per cent* shall be levied on photo copier spares. Materials involved in Full Service Maintenance Agreement (FSMA) and warrantee charges are taxable at the appropriate rate. Rule 9(2) C of the Act provides that if goods transferred in the execution of Annual Maintenance Contract (warrantee charges) is not ascertainable, 50 *per cent* of such contract amount is assessable to tax. Further Section 25(1) of the Act, provides that where for any reason the whole or any part of the turnover of business of a dealer has escaped assessment to tax in any year, the assessing authority may proceed to determine, to the best of its judgement the turnover which has escaped assessment to tax.

We noticed from the assessment records that a dealer in photocopiers, tax machines and consumables did not include in the return an amount of ₹ 1.01 crore being recovery of FSMA material cost and copier warrantee charges during the year 2007-08. This was not detected by the AA which resulted in short levy of tax and interest of ₹ 15.11 lakh.

We pointed out the matter to the Department in January 2010 and the Government in August 2010. We have not received further information (December 2011).

2.14.7.6 (CTO, third circle, Thiruvananthapuram; February 2010)

Explanation VII under Section 2(liii) of the KVAT Act 2003, stipulates that where a dealer sells any goods purchased by him at a price lower than that at which it was purchased and subsequently receives any amount from any person towards reimbursement of the balance price, the amount so received shall be deemed to be turnover in respect of such goods.

We noticed from the assessment records that a dealer in home appliances who sold goods at a price lower than purchase price did not assess to tax, the incentive of ₹ 75.89 lakh received as incentives during the period 2007-08. This resulted in short levy of tax and interest to the tune of ₹ 11.67 lakh.

We pointed out the matter to the Department (April 2010) and to the Government (December 2011). The Government stated (September 2011) that the assessment was revised (June 2011)with additional demand of ₹ 12.72 lakh including interest. We have not received further information (December 2011).

2.14.7.7 (CTO, Tirurangadi; October 2009)

Sale of IT software attracts tax at the rate of four *per cent* under the Third schedule to the KVAT Act 2003. Further, the Act stipulates that the assessing authority can proceed to determine to the best of his judgement, the turnover which has escaped assessment to tax and assess the tax thereon.

We noticed from the assessment records that a dealer in software did not assess the sales turnover of software amounting to ₹ 34.40 lakh and ₹ 2.07 crore for the years 2006-07 and 2007-08 respectively. This resulted in short levy of tax and interest of ₹ 11.56 lakh.

We pointed (November 2009) out the matter to the Department and to the Government (December 2010). The Government stated (April 2011) that the assessments were revised creating an additional demand of ₹ 12.94 lakh. We have not received any further information (December 2011).

2.14.7.8 (CTO, special circle, Palakkad; January 2011)

Sale of Duty Entitlement Pass Book (DEPB) licence attracts tax at the rate of four *per cent* under the Third schedule to the KVAT Act 2003.

We noticed from the assessment records that an assessee did not pay tax on the sales turnover of DEPB license amounting to ₹ 2.17 crore during 2008-09. This resulted in short levy of tax of ₹ 8.78 lakh.

We pointed out the matter to the Department (January 2011) and the Government (May 2011). The Government replied (October 2011) that the assessee followed accrual basis of accounting and based on Accounting Standard (AS) 9, revenue should be recognized to the extent expected to be realised. It was also stated that the amount of ₹ 2.17 crore represents a prudent estimate arising out of DEPB which was treated as income recognized, as required by AS 12 and corresponding debit has been made in 'miscellaneous receivable' account. The reply is not acceptable as the 'other income' as furnished in the accounts at the time of audit by the assessee specifically includes income out of sale of DEPB licenses. We have not received further information (December 2011).

- (CTO, special circle, Thiruvananthapuram; November 2009)

We noticed from the assessment records that a dealer in software did not assess the sales turnover of licences amounting to ₹ 15.60 lakh for 2006-07 and ₹ 46.15 lakh for 2007-08. This resulted in short levy of tax and interest of ₹ 2.99 lakh.

We pointed out the matter to the Department (November 2009) and reported it to the Government (February 2011). The Government replied (September 2011) that the assessments were completed based on audit observation. We have not received further information (December 2011).

2.14.7.9 (CTO(WC&LT), Kottayam; September 2010)

Section 2(xliv) of KVAT Act, 2003 provides that "sale price" means the amount of valuable consideration received or receivable by a dealer for the sale of any goods inclusive of any sum charged for anything done by the dealer in respect of the goods or service at the time of or before delivery thereof. The Hon'ble Supreme Court held[19] that expenditure incurred by the seller on freight would become part of the amount for which the goods are sold to the buyer and would fall within the scope of "turnover". Sale of manufactured goods to Kerala State Electricity Board (KSEB) is taxable at four *per cent* from April 2008.

We noticed from the assessment records that a works contractor supplying poles to KSEB at specified locations did not assess tax on transportation charges amounting to ₹ 19.72 lakh, ₹ 25.20 lakh and ₹ 10.14 lakh received during 2006-07, 2007-08 and 2008-09 respectively. This resulted in short levy of tax, cess and interest of ₹ 7.96 lakh.

We pointed out the matter to the Department (September 2010) and to the Government (April 2011). The Government stated (August 2011) that the audit objection is sustainable and the AA created additional demand as per order dated March 2011. We have not received further information (December 2011)

2.14.7.10 (CTO, special circle, Malappuram; February 2009)

The KVAT Act stipulates that motor vehicles used for a minimum period of fifteen months subsequent to registration under Motor Vehicles Act, 1988 are used vehicles and are taxable at four *per cent*. All other motor vehicles are taxable at the rate of 12.5 *per cent*.

We noticed from the assessment records that a dealer in motor vehicles did not assess tax on the sales turnover of demo vehicles of ₹ 7.99 lakh and ₹ 34.98 lakh for the year 2005-06 and 2006-07 respectively. This resulted in short levy of tax and interest of ₹ 7.09 lakh.

We pointed out the matter to the Department in February 2009. The Department stated that the demo vehicles were purchased within the State and sold as used vehicles and as the sale price was less than the purchase price no tax was levied. The reply is not tenable as the vehicles sold were not registered under the Motor Vehicles Act and setting off purchase price from sale price is against the provisions of the KVAT Act. The case was reported to the Government in December 2010. We have not received further information (December 2011).

[19] 34 VST 273(SC)

2.14.7.11 (CTO, Vadakara; August 2010).

The Departmental procedures prescribe, *inter alia*, internal and external surveys on a regular basis for collecting necessary data for enabling the assessing authorities to make proper assessments. Internal survey consists of gathering useful information from records of the assessing officers, whereas external survey consists of collection of necessary details from publications, reports, registers of other Departments. Every dealer who import goods shall be liable to pay tax on his sales irrespective of the turnover.

We noticed from the assessment records that an assessee included in his accounts import purchase of flooring material for ₹ 1.36 crore and ₹ 62.78 lakh during 2008-09 and 2007-08 respectively. We found that as per customs records his import purchase during these years were ₹ 1.56 crore and ₹ 74.08 lakh respectively. Failure to assess sales turnover corresponding to understated purchase turnover resulted in short levy of tax and interest of ₹ 5.07 lakh.

We pointed out the matter to the Department in September 2010 and reported to the Government in January 2011. The Department stated that the details of import was not available and the matter would be examined. We have not received further information (December 2011).

- (CTO, Kodungallur; December 2010)

We noticed from the assessment records that an assessee included in his accounts import purchase of flooring materials for ₹ 90.67 lakh during the year 2008-09. We found that as per customs records his import purchase during the year was ₹ 1.05 crore. Failure to conduct external surveys to verify purchase turnover resulted in short levy of tax, interest and penal interest of ₹ 2.91 lakh.

We pointed out the matter to the Department in January 2011 and reported to the Government (May 2011). We have not received further information (December 2011).

2.14.7.12 (CTO, second circle, Thiruvananthapuram; March 2010)

Section 6(1) (f) of the KVAT Act 2003 provides that in the case of transfer of goods involved in execution of works contract, where the transfer is not in the form of goods, but in some other form the liability to pay tax shall be 12.5 *per cent*.

We noticed from the monthly returns that an assessee engaged in fabrication and installation of machinery had a turnover of ₹ 70.10 lakh for the year 2007-08. We however, noticed that the assessee disclosed a turnover of ₹ 38.90 lakh only in his annual return, resulting in escapement of turnover. Further, the taxable turnover was assessed at four *per cent*. This was not correct as the turnover relates to works contract not in the form of goods, and hence the transfer

value of material amounting to ₹ 49.07 lakh is liable to be assessed at 12.5 *per cent*. These defects resulted in short levy of tax, interest and penalty of ₹ 4.58 lakh.

We pointed out the matter to the Department (March 2010) and the Government (February 2011). The Government stated (September 2011) that the assessment was revised and demand of ₹ 4.58 lakh created. We have not received further information (December 2011).

2.14.8 Irregular claim of input tax credit

2.14.8.1 (CTO, special circle (Produce), Mattancherry; July 2010)

Section 6 of the Kerala Finance Act 2008 provided for levy of one *per cent* social security cess from 1 April 2008, on tax payable under the KVAT Act on commodities other than declared goods. Section 6(5) of the Act stipulates that the provisions regarding assessment, input tax credit, special rebate and recovery in the KVAT Act 2003 shall mutatis mutandis apply to the cess also. Therefore goods not eligible for ITC, are not eligible for credit of cess also.

We noticed from the assessment records that an assesee did not avail ITC of ₹ 20.53 crore on purchase of rubber valued at ₹ 513.13 crore during 2008-09, as the goods were transferred to other States. However, the assessee availed credit of corresponding cess amounting to ₹ 20.53 lakh. Besides, the assessee availed credit of ₹ 12.09 lakh as excess cess brought forward from the previous return period. As cess was introduced from April 2008, there could not be any carry forward of cess from 2007-08. These mistakes resulted in short levy of cess of ₹ 32.62 lakh.

We pointed out this issue to the Department in July 2010 and the Government (May 2011). The government stated (October 2011) that the AA issued notice and the dealer paid an amount of ₹ 9.76 lakh being cess, interest and penal interest. We have not received further information (December 2011)

2.14.8.2 (CTO, special circle, Mattancherry; September 2010)

Notification issued in March 2005 under the KVAT Act provides that building materials and fixtures used in construction activities are outside the purview of capital goods and are not eligible for input tax credit.

We noticed from the assessment records that the AA did not disallow the input tax credit availed by an assessee during 2008-09 which related to purchase of building material used for construction purpose, resulting in short remittance of tax and interest of ₹ 12.10 lakh.

We pointed out the matter to the Department in October 2010 and the Government (May 2011). We have not received further information (December 2011).

2.14.8.3 (CTO, special circle (Produce), Mattancherry; June 2010)

The KVAT Act provides that the input tax credit availed in respect of tax paid on purchase of goods which are used subsequently for any purpose other than resale or manufacture of taxable goods or execution of works contract or use as container or packing materials of taxable goods within the State shall be assessed as reverse tax. The reverse tax so determined shall be deemed to be an amount due under the Act.

We noticed from the assessment records that the AA did not reverse the input tax credit of ₹ 8.23 lakh claimed by a dealer during 2008-09, being the tax paid on purchase of goods like cleaning powder, fire extinguisher, soap, iron products etc. which were used for purposes other than resale or manufacture of taxable goods etc. This resulted in short assessment of tax of ₹ 8.23 lakh.

We pointed out the matter to the Department in August 2010 and reported to the Government (May 2011). The Department stated (August 2010) that goods were purchased in the course of a continuing business and that it is not remaining unused or unsold and hence reverse tax will not apply. The reply is not acceptable as the items pointed out by audit were not used for resale or manufacture of taxable goods and hence would attract reverse tax.

2.14.8.4 (CTO, Special circle, Kannur; August 2010)

Section 11(5) (e) of the KVAT Act stipulates that no input tax credit shall be allowed on purchase of goods used in manufacture, processing and packing of goods mentioned in Schedule I. The input tax credit already availed of in respect of such goods shall be assessed as reverse tax.

We noticed from the assessment records that a manufacturer availed input tax credit for the year 2008-09 on raw materials used in production of Schedule I goods. The input tax credit availed was not assessed as reverse tax. This resulted in short levy of tax and interest of ₹ 3.00 lakh.

We pointed out the matter to the Department (October 2010) and the Department stated in December 2010 that the assessment had been finalised under Section 25(1) creating an additional demand of ₹ 3.91 lakh based on audit objection.

The case was reported to the Government in February 2011. We have not received further information (December 2011).

2.14.9 Irregular exemption

2.14.9.1 (CTO(WC), Palakkad; October 2009)

Section 8 of the KVAT Act stipulates that any works contractor, may at his option instead of paying tax in accordance with the provisions of Section 6 of the said Act, pay tax at four *per* cent of the whole contract amount received during 2007-08 and at three *per cent* during 2008-09. The Act also provides that an assessing authority can proceed to determine, to the best of his judgement, the turnover which has escaped assessment to tax and assess the tax payable thereon.

We noticed from the assessment records that an assessee who is engaged in works contract of building flats did not assess tax on whole contract amount of ₹ 12.02 crore while paying tax under Section 8 for the year 2007-08. The assessee deducted ₹ 5.31 crore from the whole contract amount stating that the amount represented value of land. This was not correct as the assessee was liable to pay tax on the whole contract amount. The AA did not detect the mistake and revise the assessment under Section 25(1). This resulted in short levy of tax and interest of ₹ 24.87 lakh.

We pointed out the matter to the Department (November 2009). The Department stated in August 2010 that the assessment was revised with an additional demand of ₹ 26.57 lakh. We reported the case to the Government in January 2011. We have not received further information (December 2011).

- (CTO (WC & LT), Kottayam; August 2010)

We observed from the assessment records that two works contractors who opted to pay tax at the compounded rate of three *per cent* claimed exemption under Rule 10 on account of labour etc. of ₹ 2.14 crore during 2008-09. As no exemption under the compounding is permissible, the irregular exemption resulted in short levy of tax and interest of ₹ 7.44 lakh.

We pointed out the matter to the Department (August 2010) and the Government (May 2011). The AA stated (December 2010) that action was initiated to realise the short levy. We have not received further information (December 2011).

2.14.9.2 (CTO, Chathannur; July 2009)

Item 67(6) of the notified list of goods under the KVAT Act, provides that bodies of motor vehicles are taxable at the rate of 12.5 *per cent*. Blacksmith products of units approved by Khadi and Village Industries are exempted from tax.

We noticed from the assessment records that a Khadi and Village Industries unit sold tipper bodies of Mahindra and Tata for ₹ 1.14 crore during 2007-08. The assessee paid tax on sales turnover of tipper bodies upto

September 2007 at four *per cent*. From October 2007 the assessee claimed exemption treating tipper body as product of blacksmithy, approved by Khadi and Village Industries. However, Mahindra and Tata bodies built by the unit would not come under products of blacksmithy. Failure to assess tax at the correct rate of 12.5 *per cent* resulted in short levy of tax and interest of ₹ 13.83 lakh.

We pointed out the case to the Department in July 2009 and the Government in December 2009. The Government stated in July 2010 that the assessment was completed demanding tax and interest of ₹ 16.21 lakh. We have not received further information(December 2011).

2.14.9.3 (CTO, first circle, Tripunithura; March 2009)

Section 2(lv) of the KVAT Act provides that works contract includes any agreement for carrying out for cash or for deferred payment or other valuable consideration the construction, fitting out, improvement, repair, manufacture, processing, fabrication, erection, installation, modification or commissioning of any movable or immovable property. Further where the labour cost involved in works contract is not ascertained, the taxable turnover shall be arrived at after deducting labour charges as provided in the table to Rule 10(2).

We noticed from the assessment records that a dealer engaged in the manufacture of plastic moulded components considered receipts on works contract of ₹ 39.60 lakh and ₹ 38.44 lakh during 2005-06 and 2006-07 as labour charges even though goods were used in the above works. The AA did not detect this which resulted in short levy of tax of ₹ 7.32 lakh.

We pointed out the matter to the Department in March 2009 and to the Government in January 2010. The Government stated in March 2010 that the assessment had been revised creating an additional demand of ₹ 8.75 lakh. We have not received further information (December 2011).

2.14.10 Short/Non-assessment of CST

2.14.10.1 (CTO(WC), Ernakulam; February 2010)

Section 7(5) of the CST Act 1956 stipulates that a registered dealer may apply not later than six months before the end of a year for the cancellation of registration, and the authority shall, unless the dealer is liable to pay tax under this Act, cancel the registration accordingly. The cancellation shall take effect from the end of the year.

We noticed from the assessment records that the AA accepted the application for cancellation of CST registration filed by a dealer in June 2005. The assessee opted for compounding and assessed contract receipt of ₹ 6.67 crore for the year 2005-06 to tax at two *per*

cent plus purchase tax. As the cancellation of CST registration takes effect only from the end of the year, the assessee was liable to four *per cent* tax for the entire year (2005-06). Further, the assessee had not paid the tax assessed and admitted in full and the AA did not initiate action to collect the balance tax.

Hence, interest under Section 31(5) read with Rule 31(6) of KVAT Act and Rules of ₹ 6.10 lakh is leviable. Total short remittance works out to ₹ 19.65 lakh.

We pointed out the matter to the Department in March 2010 and reported the Government in June 2010. The Government stated in December 2010 that the assessment was revised in April 2010 assessing tax at compound rate of four *per cent*. We have not received further information from the Government (December 2011).

2.14.10.2 (CTO, special circle, Mattancherry at Aluva; August 2010)

The CST Act provides that interstate sales turnover covered by C form shall be taxed at the rate of three *per cent* from April 2007 to May 2008 and at two *per cent* thereafter.

We noticed from the monthly returns that a dealer assessed tax on interstate sales turnover of power tiller for ₹ 13.37 crore pertaining to April and May 2008 at the rate of two *per cent* instead of correct rate of three *per cent*. This resulted in short levy of tax and interest of ₹ 15.51 lakh.

We pointed out the matter to the Department in October 2010. The Department replied that the assessee, a public limited company, had enjoyed concessional rate till March 2005 and it had applied for similar concessions and was awaiting Government orders. The reply is not tenable as tax is payable as per extant provisions till concessions are permitted. We reported the case to the Government in May 2011. We have not received further information (December 2011).

2.14.10.3 (CTO, special circle, Alappuzha; June 2010)

Section 8(2)(b) of Central Sales Tax Act 1956 provides that the tax payable by any dealer on his turnover in so far as the turnover or any part thereof relates to the sale of goods in the course of interstate trade or commerce not falling within sub section (1), shall be calculated at the rate applicable to the sale or purchase of goods inside the appropriate State. Electrical goods come under entry 33 of the notified list of goods taxable at the rate of 12.5 *per cent*.

We noticed from the assessment order that the AA assessed tax on interstate sales turnover of electrical goods of a dealer for ₹ 4.73 crore not covered by declaration in form C for the year 2007-08 at 10 *per cent* instead of at the correct rate of 12.5 *per cent*. This resulted in short levy of tax and interest of ₹ 14.89 lakh.

We pointed out the matter to the Department (June 2010) and to the Government (January 2011), the Government stated (July 2011) that the assessment was revised based on the audit

observation, demand notice issued, and amount advised for Revenue Recovery. We have not received further information (December 2011).

2.14.10.4 (CTO, special circle, Alappuzha; June 2010)

By an amendment to Central Sales Tax Act, Government had withdrawn concessional rate of tax on interstate sale of goods to Government Departments granted on production of Form D with effect from April 2007 and the goods are liable to tax at the rate mentioned in the schedules to the KVAT Act. Sales to Railways is taxable at four *per cent*.

We noticed from the assessment records that the AA did not assess tax on sales turnover of electrical goods for ₹ 2.09 crore, while finalising the assessment for the year 2007-08. The sales were effected to Railways and the turnover was covered by declaration in Form D. As the concessional rate of tax on the basis of declaration in Form D was withdrawn from April 2007, the assessee was liable to pay tax at four *per cent* applicable to Railways. This resulted in short levy of tax and interest of ₹ 10.52 lakh.

We pointed out the matter to the Department (June 2010) and reported to the Government (January 2011), the Government stated (July 2011) that the assessment was revised based on audit observation assessing the turnover at the rate of 12.5 *per cent* with interest. We have not received further information (December 2011).

2.14.10.5 (CTO, Special circle, Alappuzha; June 2010)

Central Sales Tax Act, stipulates that interstate sales turnover supported by valid declaration in Form C is taxable at the concessional rate of three *per cent* during 2007-08.

We noticed from the assessment records of 2007-08 that the AA, while finalising the assessment of an assessee, did not assess tax at the rate of three *per cent* on interstate sales turnover of electrical goods for ₹ 1.98 crore covered by declarations in Form C for the year. This resulted in short levy of tax and interest of ₹ 7.50 lakh.

We pointed out the matter to the Department (June 2010) and to the Government (January 2011). The Government stated (July 2011) that the assessment was revised assessing the turnover at the rate of three *per cent*. We have not received further information (December 2011).

2.14.10.6 (CTO, special circle, Mattancherry; August 2010)

The CST Act provides for assessment and collection of interest in respect of delayed payment of tax due under the Act at the rate applicable to tax due under the State Act, as if tax and interest payable under CST Act were a tax and interest under such sales tax law. The KGST Act provides for levy of interest on defaulted payment of tax at the rate of one *per cent* for the first three months and two *per cent* per month thereafter.

We noticed from the assessment records that while completing (July 2007) the CST assessment for the year 1995-96, the AA levied interest on belated payment of tax due at one *per cent* instead of 23 *per cent* for the period from November 1999 to December 2000, resulting in short levy of interest of ₹ 5.49 lakh.

We pointed out this case to the Department (August 2010) and to the Government (May 2011). We have not received further information (December 2011).

2.14.11 Incorrect carry forward of input tax

(CTO, special circle, Malappuram; March 2009)

Rule 16 of the KVAT Rules provides that the net tax payable by a registered dealer for a return period shall be the amount arrived at after deducting the input tax under Section 11 and special rebate under section 12 from the sum of the output tax, tax on the purchases under Section 6(2) and reverse tax under Section 11(7). There is no provision to adjust the excess credit available under the KGST Act against output tax.

We noticed from the assessment records that an assessee included ₹ 30.14 lakh stated to be due to him under the KGST Act in the input tax credit claim for the year 2005-06. After disallowing the incorrect input tax credit of ₹ 30.14 lakh the assessee was liable to pay tax of ₹ 12.55 lakh which was not demanded. This resulted in short levy of tax and interest of ₹ 16.81 lakh.

We pointed out the matter to the Department in April 2009 and to the Government (May 2011). The Department stated (April 2010) that the assessment of the dealer for 2005-06 was completed in February 2010 creating an additional demand of ₹ 16.81 lakh. We have not received further information (December 2011).

- (CTO, special circle, Malappuram; March 2009)

We noticed from the assessment records that the total input tax credit of an assessee for 2005-06 included ₹ 8.46 lakh being excess carry forward of credits from 2000-01 and 2001-02. The incorrect carry forward of credit against output tax resulted in short assessment of VAT and interest of ₹ 5.48 lakh.

We pointed out the matter to the Department (March 2009) and to the Government (March 2011). The Government stated (August 2011) that the AA completed the assessment (February 2010) and the short levy pointed out was made good. Collection particulars are awaited (December 2011)

2.14.12 Misclassification of goods

(CTO, Chittur; August 2009)

As per Entry 105(28) of the third schedule to the KVAT Act. readymade garments are taxable at the rate of four *per cent*.

We noticed from the assessment records that a dealer in readymade garments assessed taxable turnover of ₹ 0.74 lakh and ₹ 0.83 lakh and non taxable turnover of fabrics for ₹ 1.06 crore and ₹ 98.55 lakh in the annual returns for the years 2006-07 and 2007-08 respectively. However, we noticed that in the audited accounts the assessee had disclosed the cost of goods manufactured as ₹ 1.07 crore and ₹ 92.69 lakh and the sale of finished goods as ₹ 1.10 crore and ₹ 99.38 lakh for the years 2006-07 and 2007-08 respectively. As such the assessee is liable to pay tax on the sale of finished goods disclosed in the annual accounts. The AA did not detect the misclassification of sale of finished (readymade) garments as fabrics which resulted in short levy of tax and interest of ₹ 10.06 lakh.

We pointed out the matter to the Department in September 2009. The Department stated in January 2010 that the assessment was revised with an additional demand of ₹ 8.26 lakh. We reported the case to the Government in February 2011. We have not received further information (December 2011).

2.14.13 Loss due to delay in collection of cheques

(CTO, Manjeri; August 2008)

Rule 98(1) of the KVAT Act stipulates that where any payment by cheque or demand draft is permitted by these rules, the cheque or demand draft shall be of a bank or branch of a bank, which is a member of the clearing house, situated in the headquarters of the authority before whom it is presented.

We noticed from the assessment records that a dealer in vehicles, paid tax by way of cheques drawn on a bank at Kottayam during the year 2005-06. Delay of 18 to 95 days occurred in crediting the amounts to Government account. This resulted in loss of interest of ₹ 8.66 lakh.

We pointed out the case to the Department in October 2008. The matter was reported to the Government in December 2008. The Government stated (November 2009) that the assessment was completed demanding tax and interest of ₹ 12.40 lakh. We have not received further information (December 2011).

2.14.14 Short levy due to mistake in computation

2.14.14.1 (CTO, special circle, Kottayam; January 2009)

KVAT Act, stipulates that centrifugal latex and skim crepe are taxable at the rate of four *per cent.*

We noticed from the assessment records that an assessee incorrectly computed four *per cent* tax on sales turnover of ₹ 20.87 crore as ₹ 76.57 lakh instead of as ₹ 83.50 lakh during the period 2006-07. Besides, the assessee availed an excess input tax credit of ₹ 1.25 lakh. These resulted in short levy of tax of ₹ 8.18 lakh.

We pointed out the matter to the Department in January 2009 and to the Government in December 2010. We have not received their reply (December 2011).

2.14.14.2 (CTO, special circle III, Ernakulam; June 2010)

Section 6(1) of the Kerala Finance Act, 2008 provides that there shall be levied and collected from dealers a cess at the rate of one *per cent* on the tax payable by them under Section 6 and 8 of the KVAT Act.

We noticed from the assessment records that the AA incorrectly calculated the cess at 0.1 *per cent* on tax of ₹ 6.99 crore related to 2008-09. The short levy worked out to ₹ 6.98 lakh.

We pointed out the matter to the Department (June 2010) and to the Government (April 2011). The Government stated (July 2011) that the AA rectified the mistake under Section 66(1) of the Act and an order was served to the dealer to recover the short levy. We have not received further information (December 2011).

2.14.15 Short levy due to incorrect compounding

2.14.15.1 (CTO, special circle II, Kozhikode; December 2010)

Section 8(f) of the KVAT Act, 2003 provides that any dealer in ornaments or wares or articles of gold, silver or platinum group metals including diamond may at his option, instead of paying tax in respect of such goods in accordance with the provisions of section 6, pay tax at one hundred and fifty *per cent*, in case their annual turnover for the above goods for the preceding year exceeded ₹ one crore, of the highest tax payable by him as conceded in the return or accounts, or tax paid by him under this Act, whichever is higher, for a year during any of the three consecutive years preceding that to which such option relates.

We noticed from the assessment records that a dealer in jewellery remitted compounded tax of ₹ 9.21 lakh for the year 2008-09 being 150 *per cent* of the tax for 2006-07. The tax for 2006-07 was revised to ₹ 10.96 lakh in January 2010. However, the compounded tax for 2008-09 was not correspondingly revised, which resulted in short levy of tax of ₹ 7.30 lakh.

We pointed out the matter to the Department (January 2011) and to the Government (May 2011). The government stated (October 2011) that the assessment was re-opened and revised (February 2011). We have not received further information (December 2011).

- (CTO, special circle, Kannur; August 2010)

We noticed from the assessment records that a dealer in jewellery was permitted to pay compounded tax of ₹ 1.52 crore for the year 2008-09 instead of ₹ 1.58 crore. Incorrect determination of compounded tax resulted in short levy of tax of ₹ 6.09 lakh.

We pointed out the matter to the Department in October 2010 and reported to the Government in December 2010. The Department stated (April 2011) that the assessment had been revised creating an additional demand of ₹ 7.12 lakh and the assessee remitted the amount alongwith interest (October 2011).

2.14.15.2 (CTO(WC), Thiruvananthapuram; March 2010)

Works contractors undertaking electrical work were not permitted to opt for payment of compounded tax under Section 8(a) (ii) of the Act as it stood prior to April 2008.

We noticed from the assessment records that an assessee engaged in electrical works during 2007-08 opted to pay tax at the compounded rate of four *per cent* instead of assessing tax under section 6(1) at the rate of 12.5 *per cent* on a taxable turnover of ₹ 59.86 lakh. This resulted in short levy of tax and interest to the tune of ₹ 5.52 lakh.

We pointed out the matter to the Department in March 2010 and to the Government in December 2010. The Department stated in November 2010 that the assessment was revised creating an additional demand of ₹ 5.79 lakh. We have not received further information (December 2011).

Sales Tax

2.14.16 Incorrect allowance of concessional rate of tax

2.14.16.1 (CTO, Special circle II, Ernakulam; November 2010)

Government by a notification issued in December 1999 had reduced the rate of tax on the sale of goods for use in generation and distribution of power to power generating undertakings in the joint sector, with capacity of above 25 kilo watts, to four *per cent*. Government of India in their guidelines on the formation and functioning of joint sector has stipulated certain conditions which include minimum 26 *per cent* equity ownership by the State Industrial Development Corporations (SIDCs) of Government. Further no private partner can hold equity capital more than the SIDCs and no large Industrial House or foreign majority company can have any holding at all in the projects promoted by SIDCs except with the prior permission of the Central Government.

We noticed from the assessment order that while finalising the assessment of an oil company for the years 2000-01 to 2004-05 and another company for the years 2001-02 to 2003-04 between March 2008 and March 2010, sale of petroleum products to two power generating companies were assessed to tax at concessional rate of four *per cent* applicable to undertakings in the joint sector. However, these undertakings do not qualify as joint sector undertakings as they did not meet the equity ownership criteria specified by Government of India. Incorrect grant of concessional rate of tax resulted in short levy of tax of ₹ 42.46 crore.

When we pointed out the case to the Department in November 2010, the AA stated that the cases in respect of Naptha & HSD would be examined and remarked that rate of tax applicable to LSHS is 20 *per cent* as per a reduction notification of October 2000. The reply in respect of LSHS is not relevant as the reduced rate was effective only upto 31 March 2002 and the same was considered for computing short levy upto 2001-02. Rate of tax for LSHS from 3 April 2002 was 30 *per cent* as per a notification of April 2002. Thus the rate of tax on LSHS taken in audit was correct.

We reported the case to the Government in May 2011. We have not received further information (December 2011).

2.14.16.2 (CTO, special circle II, Ernakulam; November 2010)

Serial No. 98 of Schedule III to KVAT Act provides for levy of tax at four *per cent* on sale of petroleum products covered under the Act to KSEB, NTPC and other power generating undertakings in the joint sector. The Government of India issued guidelines (February 1973) stipulating conditions to be fulfilled to qualify as a joint sector undertaking. These included minimum 26 *per cent* equity ownership by the State Industrial Development Corporations (SIDCs) and holding of not more than 25 *per cent* share by private partner without prior approval of the Central Government. Under KVAT Act, Low Sulphur Heavy Stock (LSHS), a petroleum product, was taxable at the rate of 12.5 *per cent* (Sl. No. 58).

We noticed from the assessment records that a petroleum company assessed tax on sale of LSHS for ₹ 2.84 crore and ₹ 14.83 crore during 2005-06 and 2007-08 respectively to a power generating unit, BSES Kerala Power Ltd., at concessional rate of four *per cent* applicable to undertakings in the joint sector. However, BSES Kerala Power Ltd. does not qualify as a joint sector undertaking as it did not meet the equity ownership criteria specified by Government of India. The application of incorrect rate of tax of resulted in short remittance of tax ₹ 1.50 crore and interest of ₹ 53.75 lakh.

When we pointed out the case to the Department in November 2010, the Department stated that the genuineness of the Form 41[20] would be examined on the basis of assessment under Section 24 or 25 of the Act. The reply is not correct as all assessments are not taken up under Section 24 or 25. Further the assessment for 2005-06 was revised under Section 25 and the AA did not detect the above omission.

The case was reported to Government. We have not received any further information (December 2011).

2.14.16.3 (CTO, special circle II, Ernakulam; November 2010)

Government by a notification issued on 4 January 2001 under the KGST Act reduced the rate of tax on the sale of bitumen to State and Central Government Departments to four *per cent*. The reduction was extended for sale to local bodies also with effect from 11 April 2003. Bitumen was taxable at 24 *per cent* during 2001-02 and 30 *per cent* thereafter.

We noticed from the assessment orders that, while finalising the assessment of four petroleum companies, turnover of bitumen sold to local bodies prior to 11 April 2003 and to the State Farming Corporation during 2004-05 were assessed to tax at four *per cent* applicable to Government Department. Incorrect grant of concession resulted in short levy of tax of ₹ 80.07 lakh.

[20] Declaration form for comcessional rate of tax for purchase of petroleum product by power generating public sector undertaking

We pointed out the matter to the Department (November 2010) and to the Government (April 2011). We have not received further reply (December 2011).

2.14.17 Non-forfeiture of illegal collection of tax

(CTO, special circle II, Ernakulam; November 2010)

The KGST Act, provides that any sum collected by way of tax against the provision of the Act should be forfeited to the Government. The Government of India vide notification in November 2002, exempted from the levy of all taxes and duties in India, fuels and lubricants filled into receptacles forming part of any aircraft registered in any other country and operating international air services to and from India, with effect from 23 November 2002.

We noticed from the assessment records that the AA did not forfeit to Government, an amount of ₹ 1.89 crore being tax illegally collected by an oil company in respect of Aviation Turbine Fuel sold to international aircraft from 23 November 2002 to 15 January 2003.

We pointed out the matter to the Department in January 2011 and to the Government (May 2011). We have not received further information (December 2011).

2.14.18 Turnover escaping assessment

2.14.18.1 (CTO, special circle II, Ernakulam; November 2010)

A notification issued (December 1999) under KGST Act provided for reduced rate of tax of four *per cent* on sales turnover of goods for use in generation and distribution of power to National Thermal Power Corporation (NTPC) provided a certificate in Annexure I to the notification was produced. The Act empowers the assessing authority to assess to the best of his judgement the turnover escaping assessment.

We observed from the assessment records of an oil company that it had in 2000-01 returned turnover of naphtha taxable at the concessional rate of four *per cent* as ₹ 539.09 crore against ₹ 550.38 crore as revealed by the declaration furnished by the purchaser. This resulted in escapement of turnover of ₹ 11.28 crore and consequent short levy of tax and interest of ₹ 1.16 crore.

We pointed out the matter to the Department in January 2011. The Department accepted the matter (May 2011) and stated that action will be taken to make good the loss. We reported the case to the Government (May 2011). We have not received further information (December 2011).

2.14.18.2 (CTO, special circle, Mattancherry at Aluva; August 2010)

As per the KGST Act, sales turnover of Duty Entitlement Pass Book (DEPB) was to be taxed at the rate of eight *per cent* under first schedule to the Act.

We noticed from the assessment records that while finalising the assessments of a dealer for the period from 2000-01 to 2002-03, the AA did not assess tax on sales turnover of DEPB for ₹ 41.29 lakh resulting in short levy of tax, AST and interest of ₹ 8.27 lakh.

We pointed out the matter (October 2010) to the Department and to the Government (May 2011). We have not received further information (December 2011).

2.14.19 Non-levy of tax

(CTO, special circle II, Ernakulam; November 2010)

Goods specified in the Fifth schedule are taxable at two points if the sale is to a registered dealer under Section 5(v) of KGST Act. Petroleum products were under the Fifth schedule during 1 and 2 April 2002 as amended vide Finance Act 2002. First point of levy being sale by an oil company to another oil company was taxable at four *per cent.*

We noticed from the assessment records that while finalising the assessment for the year 2002-03 in December 2009 of an oil company, the AA did not assess tax on turnover of first sale of petroleum product effected on 1 and 2 April 2002. Short levy of tax and additional sales tax on this account, on a proportionate turnover of ₹ 24.79 crore, worked out to ₹ 1.14 crore.

We pointed out the matter to the Department (November 2010) and the Government (April 2011). We have not received further reply (December 2011).

2.14.20 Incorrect compounding

(CTO, second circle, Mattancherry; December 2010)

Section 7 of the Kerala General Sales Tax Act, 1963, as amended from July 2006, stipulates that any bar attached hotel not being a star hotel of and above three star hotel, heritage hotel or club, may, at its option, pay turnover tax on the turnover of foreign liquor calculated at one hundred and forty *per cent* of the purchase value of such liquor or at one hundred and fifteen *per cent* of the highest turnover tax payable by it as conceded in the return or accounts or the turnover tax paid for any of the previous consecutive three years, whichever is higher.

We noticed from the assessment order that a bar attached hotel in municipal corporation area, was assessed to compounded tax during 2006-07 and 2007-08 on the basis of 140 *per cent* of purchase value of liquor, even though 115 *per cent* of tax paid/payable for the preceding years was higher. Incorrect determination of compounded tax resulted in short levy of ₹ 19.39 lakh.

We pointed out the matter to the Department (December 2010) and reported it to the Government (May 2011). The Government replied (October 2011) that the assessments were completed based on the audit observation (April 2011) and RR action initiated. We have not received further information (December 2011).

2.14.21 Incorrect grant of exemption

(CTO, special circle II, Ernakulam; November 2010)

The Goods specified in the Fifth schedule are taxable at two points unless the sale is to a person other than a registered dealer. Petroleum products were under the Fifth schedule during 1 and 2 April 2002 as amended by the Finance Act 2002. First point of levy was at the point of first sale by an oil company to another oil company and second point of levy was at the point of second sale by an oil company. Liquified petroleum gas was taxable at four *per cent* and eight *per cent* at the first point and at the second point of sale respectively.

We noticed from the assessment records that while finalising the assessments for the year 2002-03 of three oil companies[21] in January 2010, the AA did not assess tax on second sale of LPG. This included proportionate turnover of 1 and 2 April 2002 which was liable to be taxed at eight *per cent.* Incorrect grant of exemption resulted in short levy of tax of ₹ 15.75 lakh.

When we pointed out the matter to the Department in November 2010, the AA stated that action will be

[21] Bharat Petroleum Corporation, Hindustan Petroleum Corporation Limited and Indian Oil Corporation Limited.

taken to make good the loss. We reported the case to the Government in April 2011.We have not received further reply (December 2011).

2.14.22 Non-assessment of additional sales tax

(CTO, special circle, Mattancherry at Aluva; August 2010)

The KGST Act stipulates that the tax payable under Section 5 and Section 5 A shall be increased by an additional sales tax (AST) at the rate of 15 *per cent* of the tax payable under the said section.

We noticed from the assessment order that the AA did not assess AST from July 2003 in respect of an assessee, though the same was mentioned in the assessment order (October 2010). This resulted in short levy of AST of ₹ 12.99 lakh.

We pointed out the matter to the Department (October 2010) and to the Government (May 2011). The Government stated (October 2011) that the assessment was revised (June 2011) rectifying the defect as pointed out by audit. We have not received further information (December 2011).

2.14.23 Application of incorrect rate of tax

2.14.23.1 (CTO, first circle, Mattancherry; July 2009)

Entry 113 of Schedule I to the KGST Act provides that HDPE sheets are taxable at the rate of 12 *per cent*.

We noticed from the assessment order that while finalising the assessment of a dealer for the years 2003-04 and 2004-05, the AA assessed sales turnover of HDPE Sheets used for covering autorikshaws, jeeps etc. at four *per cent* treating it as packing materials against the correct rate of 12 *per cent*. Application of incorrect rate of tax resulted in short levy of tax and interest of ₹ 12.13 lakh.

We pointed this out to the Department (September 2009) and to the Government (December 2010). The Government stated (February 2011) that the assessments for the years 2003-04 and 2004-05 were revised in October 2010 creating an additional demand of ₹ 7.59 lakh and that the amount has been advised for revenue recovery. Further reply has not been received (December 2011).

2.14.23.2 (CTO, special circle III, Ernakulam; June 2010)

Non-stick Cookware and utensils are taxable at the rate of 12 *per cent* under Schedule I of the KGST Act

We noticed from the assessment order that turnover assessed at the rate of four *per cent* by the AA included sales turnover of non-stick cookware and utensils amounting to ₹ 37.95 lakh and ₹ 36.33 lakh respectively for the years 2003-04 and 2004-05.

Application of incorrect rate of tax resulted in short levy of tax of ₹ 6.83 lakh and interest of ₹ 4.87 lakh (total ₹ 11.70 lakh).

We pointed out the matter to the Department (June 2010) and to the Government (April 2011). The Government stated (September 2011) that the assessments were reopened under section 17 D(2) of the Act and revised (February 2011). We have not received further information (December 2011).

2.14.23.3 (CTO, special circle III, Ernakulam; June 2010)

Canon Kinetiser (Hot Plate) comes under entry 54(1) of Schedule I to the KGST Act and is taxable at the rate of 12 *per cent* from 1 April 2004.

We noticed from the assessment order that while completing the assessment for the year 2004-05 (July 2009) sales turnover of Canon Kinetiser (Hot Plate) of ₹ 1.50 crore was assessed to tax at the rate of eight *per cent* instead of correct rate of 12 *per cent* . Application of incorrect rate of tax resulted in short levy of tax and interest of ₹ 11.13 lakh.

We pointed out the matter to the Department (June 2010) and to the Government (April 2011). The Government stated (October 2011) that the assessment was reopened and completed applying correct rate of tax (February 2011). We have not received further information (December 2011).

2.14.23.4 (CTO, first circle, Kollam; October 2010)

The KGST Act, 1963 stipulates that footwear of all kinds are taxable at the rate of 12 *per cent.*

We noticed from the assessment orders that while completing (February 2010) the assessments of a dealer in footwear for the years 2003-04 and 2004-05 tax was assessed at the rate of eight *per cent* instead of at 12 *per cent* on the turnover of ₹ 21.18 lakh and ₹ 25.42 lakh respectively. This resulted in short levy of tax of ₹ 3.67 lakh.

We pointed out the matter to the Department (November 2010) and to the Government (May 2011). The Government stated (September 2011) that the assessments were reopened under section 17 D(2) of the Act and revised(June 2011) taking into consideration all aspects pointed out by audit. We have not received any further information (December 2011).

2.14.24 Short levy of turnover tax

(CTO, Kottarakkara; December 2009)

Section 5(2c) of the KGST Act, provides that every dealer of foreign liquor in a bar hotel shall pay turnover tax on the sales turnover of liquor at the rate of 10 *per cent*.

We observed from the assessment order that while completing the assessment of a dealer of foreign liquor in a bar hotel for the year 2004-05, on best judgement basis, the assessing officer assessed turnover tax of ₹ 13.42 lakh on escaped turnover of ₹ 1.11 crore. Against this tax assessed, the AA gave credit of ₹ 11.30 lakh being tax paid on the turnover already conceded by the assessee. This resulted in short levy of tax of ₹ 11.30 lakh.

We pointed out the matter to the Department (January 2010) and reported it to the Government (October 2010). The Government stated (October 2011) that the assessments were reopened and revised rectifying the mistake. We have not received further information (December 2011).

2.14.25 Short levy of tax and interest due to non-appropriation of payment

(CTO, special circle, Palakkad; February 2009)

Section 55C of the KGST Act stipulates that where any tax or any other amount due or demanded under the Act is paid by any dealer, the payments so made shall be appropriated first towards interest accrued on such tax on such date of payment and the balance available shall be appropriated towards principal outstanding.

We noticed from the assessment records that the AA while finalising the assessment (August 2007) of a dealer for the year 2002-03, had incorrectly appropriated the amount paid by the assessee towards tax due instead of appropriating it first towards interest. This resulted in short levy of tax and interest of ₹ 9.34 lakh.

We pointed out the matter to the Department (February 2009) and to the government (February 2010). The Government stated (August 2011) that the assessment has been revised creating additional demand of ₹ 14.52 lakh and that necessary directions have been issued to initiate RR action. We have not received further information (December 2011).

EXECUTIVE SUMMARY

Increase in tax collection	In 2010-11 the collection of tax from AIT was 291.41 *per cent* of the budget estimate and 69.38 *per cent* higher than the collections of earlier year. While we acknowledge the healthy growth rate in revenue collection, we consider that the Department needs to streamline its budgeting process as significant variations between budget estimates and actual receipts were noticed persistently.
Internal audit and outstanding assessments	The internal audit of AIT was not conducted last year. Out of 9020 assessments outstanding, the Department had completed only 1970 assessments (21.84 *per cent*) leaving 7050 assessments as arrears.
Very low recovery by the Department	During the period 2006-07 to 2009-10 we pointed out inadmissible expenses, income escaping assessment, incorrect computation of income etc. with revenue impact of ₹ 42.53 crore in 199 paragraphs. Of these, the Department accepted audit observation in 74 cases involving ₹ 3.14 crore but recovered only ₹ 0.47 crore in 33 cases.
Results of audit	In 2010-11 we test checked 23 units relating to agricultural income tax and found underassessment of tax and other irregularities involving ₹ 17.07 crore in 59 cases. The Department accepted underassessment and other deficiencies of ₹ two lakh in four cases out of which one case involving ₹ 0.03 lakh was pointed out in audit during the year 2010-11.
What we have highlighted in this Chapter	In this Chapter we present illustrative cases of ₹ 7.54 crore selected from observations noticed during our test check of records relating to Agricultural Income Tax Office, where we found that the provisions of the Act/Rules were not observed. It is a matter of concern that similar omissions have been pointed out by us repeatedly in the Audit Reports for the past several years, but not only do the irregularities persist, these remain undetected till an audit is conducted.
Our conclusion	We recommend that internal audit may be operationalised immediately. Further, the Department needs to improve the internal control system so that weaknesses in the system are addressed and omissions of the nature detected by us are avoided in future. It also needs to initiate immediate action to recover the inadmissible expenses, income escaping assessment, incorrect computation of income etc. pointed out by us, more so in those cases where it has accepted our contention.

CHAPTER - III : TAXES ON AGRICULTURAL INCOME

3.1 Tax administration

The Department of Commercial Taxes is under the control of the Secretary to Government, Taxes at the Government level and collection of tax under the Kerala Agricultural Income Tax (KAIT) Act, 1991 is administered by the Commissioner of Commercial Taxes (CCT). The KAIT Act, 1991 governs the levy and collection of tax on agricultural income. The assessment, levy and collection are done by Inspecting Assistant Commissioners, Agricultural Income Tax and Commercial Tax Officers.

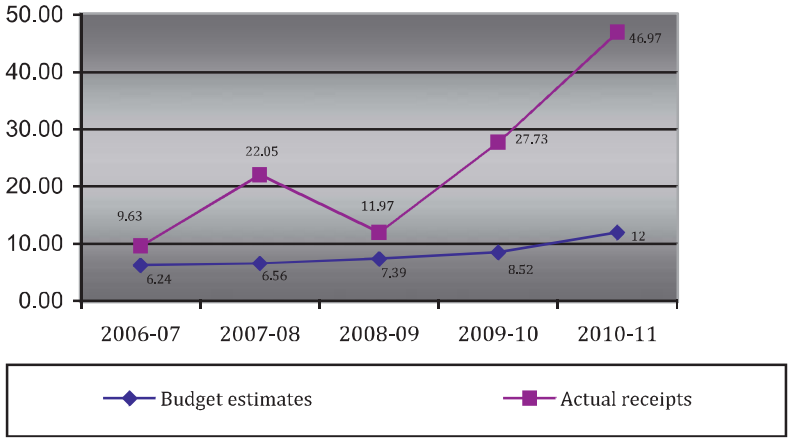
3.2 Trend of receipts

Actual receipts from agricultural income tax during the last five years (2006-07 to 2010-11) along with the budget estimates during the same period is exhibited in the following table and graph.

(₹ in crore)

Year	Budget estimates	Actual receipts	Variation	Percentage of variation	Total tax receipts of the State	Percentage of actual receipts vis-à-vis total tax receipts	Percentage of growth rate
2006-07	6.24	9.63	(+) 3.39	(+) 54.33	11,941.82	0.08	56.58
2007-08	6.56	22.05	(+) 15.49	(+) 236.13	13,668.95	0.16	128.97
2008-09	7.39	11.97	(+) 4.58	(+) 61.98	15,990.18	0.07	(-) 45.71
2009-10	8.52	27.73	(+) 19.21	(+) 225.47	17,625.02	0.16	131.67
2010-11	12.00	46.97	(+) 34.97	(+) 291.41	21,721.69	0.22	69.38

Budget estimates and actual receipts



We noticed that the Department was able to achieve a healthy growth rate of 69.38 *per cent* during 2010-11. We, however, feels that the Department needs to streamline their budgeting process to make the budget estimates realistic as significant variations were noticed persistently between budget estimates and actual receipts.

3.3 Arrears in AIT assessment

The Department furnished the position of arrears under agricultural income tax which is as shown below :

Opening balance	6,314
Addition during 2010-11 including remanded cases	2,706
Total	**9,020**
No. of assessments completed	1,970
Arrear cases – 1,913	
Current cases – 57	
Closing balance	**7,050**

The above table shows that the Department completed 1,970 assessments which was only 21.84 *per cent* of the cases due to be assessed.

3.4 Impact of audit

Revenue impact

During the last four years, we pointed out inadmissible expenses, income escaping assessment, incorrect computation of income, underassessment due to assignment of incorrect status etc., with revenue implication of ₹ 42.53 crore in 199 paragraphs. Of these, the Department/Government accepted audit observations involving ₹ 3.14 crore and had since recovered ₹ 0.47 crore. The details are shown in the following table:

(₹ in crore)

Year of Audit Report	Paragraphs included		Paragraphs accepted		Amount recovered	
	No.	Amount	No.	Amount	No.	Amount
2006-07	50	4.61	29	1.72	8	0.24
2007-08	43	3.69	17	0.35	10	-
2008-09 Vol. I	67	28.66	9	0.12	4	0.11
2009-10	39	5.57	19	0.95	11	0.12
Total	**199**	**42.53**	**74**	**3.14**	**33**	**0.47**

The recovery of cases vis-a-vis the accepted paragraphs was almost negligible.

3.5 Working of internal audit wing

As internal audit was not conducted, we were unable to comment on the performance of the internal audit wing.

3.6 Results of audit

In 2010-11, we test checked the records of 23 units relating to agricultural income tax and noticed underassessment of tax and other irregularities involving ₹ 17.07 crore in 59 cases which fall under the following categories:

(₹ in crore)

Sl. No.	Categories	No. of cases	Amount
1.	Income escaping assessment	13	11.03
2.	Incorrect computation of income	03	0.15
3.	Incorrect computation of tax	08	0.16
4.	Inadmissible expenses	07	1.42
5.	Others	28	4.31
Total		**59**	**17.07**

During the course of the year, the Department accepted underassessment and other deficiencies of ₹ two lakh in four cases out of which one case involving ₹ 0.03 lakh was pointed out in audit during the year 2010-11. The Department realised an amount of ₹ 0.03 lakh in one case during the year 2010-11.

A few illustrative audit observations involving ₹ 7.54 crore are mentioned in the succeeding paragraphs.

3.7 Audit observations

We scrutinised the assessment records of agricultural income tax in the Commercial Taxes Department and found several cases of non-observance of the provisions of the Act/Rules, incorrect determination of income/interest, grant of inadmissible expenses/allowances and other cases as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on a test check carried out in audit. Such omissions on the part of the Assessing Authorities (AAs) are pointed out by us each year but not only do the irregularities persist; these remain undetected till an audit is conducted. There is need for the Government to improve the internal control system including strengthening of the internal audit.

3.8 Non-observance of provisions of Act/Rules

The KAIT Act and Rules made thereunder provide for completing assessments observing the following aspects:

i) levy of tax at the prescribed rate on the agricultural income derived by the assessee;

ii) allowance of deductions on income derived subject to certain conditions; and

iii) levy of interest on the balance tax payable.

We observed that the AAs, while finalising the assessments, did not observe some of the provisions of the Act/Rules resulting in short levy of tax and interest of ₹ 7.54 crore as mentioned in the paragraphs 3.8.1. to 3.8.3.

3.8.1 Income escaped assessment

3.8.1.1 (IAC(AIT&CT), Mattancherry; October 2010).

Under the first proviso to Section 39(6) of the KAIT Act, 1991, in the case of assessment of agricultural income derived from manufactured tea, if the assessment under Income Tax Act 1961 is not completed when the agricultural income tax officer (AITO) proceeds to complete the assessment, he may provisionally accept agricultural income as per the return filed by him and revise such assessment in accordance with the order of the income tax authority. The limitation fixed under any of the provisions of the Act shall not apply for such revision, in respect of tea income.

We noticed that the assessment of a domestic company for the year 2001-02 was provisionally finalised (December 2003) accepting the loss of ₹ 6.13 crore from manufactured tea returned by the assessee. Even though the composite loss on manufactured tea was assessed at ₹ 54.03 lakh in the income tax assessment in February 2004, the AITO did not revise the assessment reckoning

the loss as ₹ 32.42 lakh (60 *per cent* of ₹ 54.03 lakh) in place of ₹ 6.13 crore computed in the AIT provisional assessment. The omission to revise the assessment resulted in excess carry forward of loss of ₹ 5.81 crore.

After we pointed out the case in October 2010 the assessing authority stated that even after revising the assessment, there would be loss and hence tax would not be payable for the assessment year. The reply is not tenable as the assessee was allowed to carry forward more loss than eligible and this was not allowable.

We pointed out the matter to the Department in November 2010 and to the Government in December 2010. We reminded the Government in September 2011. We have not received any further information from them (December 2011).

3.8.1.2 (AIT&CT, Kottayam; March 2011)

Section 5 of the KAIT Act enumerates the deductions allowable from the agricultural income. Further, expenditure on the upkeep and maintenance of immature plantations is not allowable deduction as per clause (p) of Section 5.

We noticed that while finalising the assessment (December 2009) of a public sector company for the assessment year 2007-08 in IAC Kottayam, the assessing officer allowed an amount of ₹ 1.53 crore being the cost of the failed plantations. As the cost of raising failed plantations is a capital loss, this will not qualify for deduction under Section 5 of the KAIT Act. The irregular deductions resulted in escape of income of ₹ 1.53 crore with tax effect of ₹ 76.57 lakh.

After we pointed out the matter to the Department in March 2011 and reported to the Government in May 2011, the Government stated (August 2011) that the corporation is raising plantations solely for felling and sale of wood and income out of this sale was subjected to tax and hence cost of raising it ought to have been allowed for deduction. Further, failure of plantation is very common and 10 to 20 *per cent* plantations will perish when they attain maturity. It is clear from the reply that the plants had perished when plants were in the immature stage and in view of the provisions in the Act that expenditure incurred for the cultivation, upkeep or maintenance of immature plants from which no agricultural income is derived during the previous year shall not be allowed.

3.8.1.3 (AIT&CT, Kottayam; March 2011)

We noticed that while finalising the assessment (December 2009) of a public sector company for the assessment year 2007-08, an amount of ₹ 31.83 lakh being the amount of development of property (cost of raising tea, coffee and cashew plantation till the commercially yielding stage) written off was wrongly allowed as deduction under Section 5 of the KAIT Act. This resulted in escapement of income of ₹ 31.83 lakh with consequent tax effect of ₹ 15.92 lakh.

We pointed out the case to the Department in March 2011 and reported to the Government (May 2011). The assessing authority stated that the case would be examined.

3.8.1.4 (IAC, Kottayam; March 2011)

The KAIT Act stipulates that agricultural income means any income derived from land by sale by the cultivator or received by him in respect of which no process has been performed. The forest development tariff is the amount collected by the assessee at the rate of five *per cent* of the value of invoice raised during the year for timber and timber growth retained by them.

We noticed that while finalising the assessment for the year 2007-08 of a public limited company (December 2009) the assessing officer did not add forest development tariff of ₹ 36.16 lakh collected by the assessee as shown in the comments in the Profit and Loss account of the company submitted alongwith the AIT return. This resulted in escapement of income of ₹ 36.16 lakh with resultant short levy of tax of ₹ 18.08 lakh.

After the case was pointed out to the Department in April 2011 and reported to Government in May 2011, the Government stated (August 2011) that forest development tariff would not form part of income as in the case of forest development tax. The reply is not correct since tax and development tariff are different.

3.8.1.5 (IAC(AIT&CT), Mattancherry; October 2010)

Income derived from sale of manufactured tea by a seller shall be computed as if it were liable to tax. The High Court of Kerala[1] had ruled that levy of tax under the AIT Act can relate only to sixty *per cent* of the income derived from sale of manufactured tea. Income from sale of green tea leaves is an agricultural income chargeable exclusively under agricultural income tax.

We noticed that in the case of a domestic company who had income from both manufactured tea and green tea leaf, the assessing authority finalised the assessment for the year 2007-08 in November 2009 assessing only sixty *per cent* of the income of ₹ 39.34 lakh derived from the sale of green tea leaves as returned by the company. The omission to assess the entire income of green tea leaves resulted in underassessment of income of ₹ 15.74 lakh leading to short levy of tax of ₹ 7.99 lakh.

After we pointed out the case (November 2010) the Department stated that the assessment completed was provisional which was subject to modification on completion of assessment by the income tax authorities and the assessee had sufficient loss carried forward from previous years which was sufficient to set off

[1] 184 ITR 561 Ker

the additional income pointed out. The reply of the assessing authority is not tenable as the assessment order is provisional only in respect of income relating to manufactured tea. Further, the contention that there is sufficient loss carried forward from previous years is no justification for assessing income incorrectly.

The case was reported to the Government in February 2011, their reply has not been received (December 2011).

3.8.1.6 (AIT & CT, Nedumkandam; February 2011)

Under the KAIT Act, agricultural income means an income derived from land by sale of agricultural produce. Agricultural income chargeable to tax shall be computed in accordance with the method of accounting regularly employed by the assessee. Cash system of book-keeping envisages accounting of actual cash receipts and cash payments as they occur.

We noticed that while finalising the assessment for the year 2009-10 of an assessee following cash system of accounting (September 2009) the assessing authority did not add an amount of ₹ 19.48 lakh realised from sundry debtors of the previous year by the assessee. This resulted in escapement of ₹ 19.48 lakh with consequent tax effect of ₹ 5.84 lakh. The actual short levy after adjusting carried forward loss would come to ₹ 4.43 lakh.

We pointed out the case to the Department in February 2011 and to the Government in May 2011. The assessing authority stated that the case would be examined. Further report is awaited.

3.8.2 Irregular adjustment of loss

3.8.2.1 (IAC(AIT&CT), Mattancherry; October 2010).

Under the KAIT Act, the total agricultural income of the previous year of any person comprises of all agricultural income derived from land situated within or outside the State. Under Section 12 of the Act, where any person sustains a loss as a result of computation of agricultural income for any year, the loss shall be carried forward to the following year and set off against the agricultural income of that year and if it cannot be wholly set off, shall be carried forward to the following year and so on but no loss shall be carried forward for more than eight years.

We noticed that the assessing authority while finalising (November 2009) the assessment of a domestic company for the assessment year 2007-08, accepted adjustment of income of ₹ 49.47 lakh derived during the year against the loss of ₹ 16.70 crore carried forward from assessment year 1998-99 onwards. Adjusting loss relating to 1998-99 against the income earned in 2007-08 resulted in escapement of income of ₹ 49.47 lakh having potential tax effect of ₹ 24.73 lakh.

We pointed out the matter in October 2010. The assessing authority stated that the assessment completed was provisional and subject to revision on finalisation of Central Income Tax assessment and further, the assessee had sufficient carry forward loss from 1999-00. We consider that the reply of the assessing authority is not proper as the provisional assessment relates only to income from manufactured tea and assessment of income from other sources was final. Further, loss cannot be carried forward for more than eight years and the carried loss has a potential tax impact.

We pointed out the matter to Government in December 2010. We have reiterated our stand to the Department in September 2011.

3.8.2.2 (AIT & CT, Kottayam; March 2011)

We noticed that while finalising the assessment of a company for the assessment year 2005-06 in March 2010 the assessing authority fixed the net income at ₹ 46.66 lakh and recorded that this would be adjusted against the losses carried forward from the previous year. As per the assessment order for the year 2004-05, the balance of loss to be carried forward was ₹ 27.12 lakh only. Hence there was a taxable income of ₹ 19.54 lakh which was not assessed. This resulted in excess set off loss of ₹ 19.54 lakh with consequent tax effect of ₹ 9.77 lakh. Further while arriving the taxable income, the assessing authority had deducted ₹ 1.90 lakh being excess expenditure disallowed, which should have been added. This resulted in escapement of income of ₹ 3.81 lakh and consequent short levy of tax of ₹ 1.90 lakh. The total short levy works out to ₹ 11.67 lakh.

We pointed out the case to the Department in March 2011. The assessing authority stated that a reply would be furnished after examining the case. Further developments have not been reported (December 2011).

The case was reported to the Government in May 2011. Their reply has not been received. (December 2011).

3.8.3 Grant of inadmissible expenses

3.8.3.1 (IAC, Wayanad; December 2009)

The KAIT Act 1991 allows deduction of expenditure not being in the nature of capital expenditure or personal expenses of the assessee expended wholly and exclusively for the purpose of deriving the agricultural income. Repairs of residential building is not an expenditure incurred wholly and exclusively for the purpose of deriving agricultural income.

We noticed that while finalising the assessment of an assessee for the assessment years 2004-05 and 2005-06 in February 2007 and 2006-07 in October 2008 respectively, the assessing officer allowed expenses of ₹ 15.94 lakh incurred for the repairs of residential building. The incorrect allowance of expenditure resulted in excess carry forward of loss of ₹ 15.94 lakh having potential tax effect of ₹ 7.97 lakh.

We pointed out (December 2009) the case to the Department. The Department replied (August 2010) that the assessment orders have been revised by disallowing the expenses. We have not received any further information from them (December 2011).

The case was reported to the Government in May 2011. Their reply has not been received (December 2011).

3.8.3.2 (IAC, Kottayam; March 2011)

Section 5 of the KAIT Act provides that expenditure incurred during the relevant previous year for the production of agricultural income is an allowable expenditure.

We noticed that while finalising the assessment (December 2009) of a public limited company for the year 2007-08, the assessing officer allowed expenditure of ₹ 12.07 lakh being expenditure incurred by the assessee towards repairs and maintenance and sale of tea and eucalyptus relating to the period prior to the relevant previous year 2006-07. This resulted in escapement of income of ₹ 12.07 lakh with consequent tax effect of ₹ 6.04 lakh.

After we pointed out the matter to the Department in March 2011 and reported to the Government in May 2011, the Government stated (August 2011) that certain income and expenditure related to the previous year are derived and incurred in the current year which was allowed as per the order of the AIT Tribunal. The remark of the Government is not correct as the AIT Tribunal order requires prior period income and expenditure to be assessed in accordance with law and the Act does not allow expenses incurred in a year to be adjusted against income in subsequent assessment years.

EXECUTIVE SUMMARY

Increase in tax collection and reduction in percentage of expenditure to gross collection	After two years of negative growth in revenue collection in 2008-09 and 2009-10, the Department achieved positive growth during 2010-11. Due to such a healthy growth in revenue collection, the cost of collection expressed as a percentage of gross collection has come down subsequently by 1.46 *per cent* during the year.
Internal audit	During 2010-11 internal audit wing covered 261 units out of 303 units planned for audit. The IAW observed that the implementation of fair value has improved the revenue collection considerably and noted that non-stipulation of guidelines for the value of buildings is a system deficiency in the fair value reform which may lead to leakage of stamp duty. We endorse the views of the IAW.
Very low recovery by the Department	During the last four years, we pointed out undervaluation of documents, short levy of stamp duty etc. with revenue implication of ₹ 18.24 crore in 834 paragraphs. Of these, the Department/Government accepted audit observations involving ₹ 3.75 crore but had recovered only ₹ 0.09 crore.
Results of audit	In 2010-11 we test checked the records of 164 units relating to the Registration Department and detected under valuation of documents and other lapses involving ₹ 47.24 crore in 235 cases. The Department accepted undervaluation and other deficiencies of ₹ 2.75 crore in 87 cases, of which 38 cases involving ₹ 1.61 crore were pointed out in audit during the year 2010-11 and the rest in earlier years.
What we have highlighted in this Chapter	In our review on 'Levy and Collection of Stamp Duty and Registration Fees' we pointed out several cases involving money value of ₹ 41.29 crore. We noticed that the Department did not have an effective mechanism to dispose of large number of under valuation cases and to verify the correctness of stamp duty of documents produced before public officers. We present illustrative cases of ₹ 25.14 lakh in this report.
Our conclusion	We recommend that the Department must implement a time-bound action plan to dispose of huge number of undervaluation cases, particularly by focussing on high money value cases. The Department needs to initiate immediate action to recover undervaluation of documents, short levy of stamp duty etc. pointed out by us, more so in cases where it has accepted our contention.

CHAPTER - IV : STAMP DUTY AND REGISTRATION FEES

4.1 Tax administration

The Registration Department is under the control of the Secretary to the Government, Taxes at Government level and the Inspector General of Registration is the head of the Department. Instruments affecting immovable property are to be presented for registration in the office of the Sub-Registrar within whose jurisdiction the whole or some portion of the property is situated.

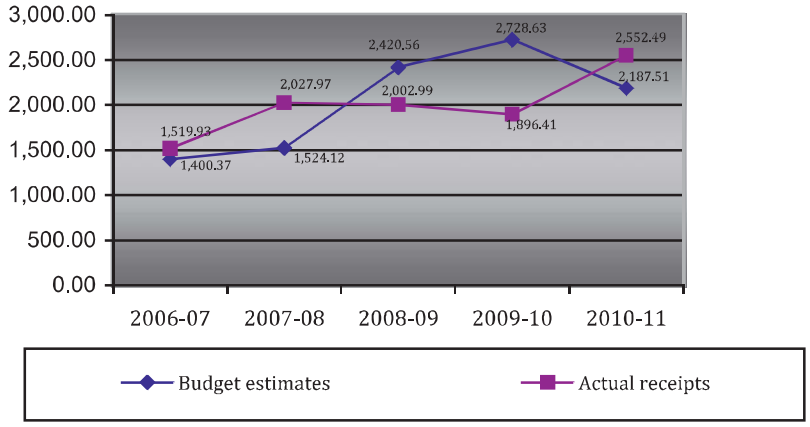
4.2 Trend of receipts

Actual receipts from stamp duty and registration fees during the last five years (2006-07 to 2010-11) along with the budget estimates during the same period is exhibited in the following table and graph.

(₹ in crore)

Year	Budget estimates	Actual receipts	Variation	Percentage of variation	Total tax receipts of the State	Percentage of actual receipts vis-à-vis total tax receipts	Percentage of growth rate
2006-07	1,400.37	1,519.93	(+) 119.56	(+) 8.54	11,941.82	12.73	37.99
2007-08	1,524.12	2,027.97	(+) 503.85	(+) 33.06	13,668.95	14.84	33.42
2008-09	2,420.56	2,002.99	(-) 417.57	(-) 17.25	15,990.18	12.53	(-) 1.23
2009-10	2,728.63	1,896.41	(-) 832.22	(-) 30.50	17,625.02	10.76	(-) 5.32
2010-11	2,187.51	2,552.49	(+) 364.98	(+) 16.68	21,721.69	11.75	34.59

Budget estimates and actual receipts



We noticed that after two years of negative growth in 2008-09 and 2009-10 the Department achieved positive growth during 2010-11.

4.3 Cost of collection

The gross collection of revenue receipts under the head Stamps and registration fees, expenditure incurred on collection and the percentage of expenditure to gross collection during 2006-07 to 2010-11 alongwith the all India average percentage of expenditure on collection to gross collection for relevant years are mentioned below:

Year	Collection	Expenditure on collection of revenue	Percentage of expenditure to gross collection	All India average percentage over the previous year
	(₹ in crore)			
2006-07	1,470.73	59.06	4.02	2.87
2007-08	1,946.08	77.64	3.99	2.33
2008-09	1,931.75	82.97	4.30	2.09
2009-10	1,812.89	100.70	5.55	2.77
2010-11	2,477.19	101.56	4.09	2.47

(Source: Finance Accounts and Departmental figures)

We appreciate that the cost of collection has come down substantially (1.46 *per cent*) during 2010-11 due to increase in revenue collection by 36 *per cent*. However, the cost of collection is more than the All India average and thus Government may take steps to reduce the cost of collection.

4.4 Impact of Audit

During the last four years, we pointed out undervaluation of documents, short levy of stamp duty etc. with revenue implication of ₹ 18.24 crore in 834 paragraphs. Of these, the Department/Government accepted audit observations involving ₹ 3.75 crore and had since recovered ₹ 0.09 crore. The details are shown in the following table:

(₹ in crore)

Year of Audit Report	Paragraphs included		Paragraphs accepted		Amount recovered	
	No.	Amount	No.	Amount	No.	Amount
2006-07	96	0.59	15	0.10	9	0.01
2007-08	245	1.59	118	0.25	6	0.02
2008-09 Vol I	235	7.02	54	0.38	52	0.03
2009-10	258	9.04	176	3.02	54	0.03
Total	**834**	**18.24**	**363**	**3.75**	**121**	**0.09**

As seen from the above table, the recovery made by the Department is only 2.40 *per cent* of the amount involved in the total accepted cases.

4.5 Results of audit

In 2010-11 we test checked the records of 164 units relating to the Registration Department and detected undervaluation of documents and other irregularities involving ₹ 47.24 crore in 235 cases which fall under the following categories :

(₹ in crore)

Sl. No.	Categories	No. of cases	Amount
1	**Levy and collection of Stamp Duty and Registration Fees (A review)**	1	41.29
2	Undervaluation of documents	225	5.89
3	Other lapses	9	0.06
	Total	**235**	**47.24**

The Department accepted undervaluation and other deficiencies of ₹ 2.75 crore in 87 cases, of which 38 cases involving ₹ 1.61 crore were pointed out in audit during the year 2010-11 and the rest in earlier years. An amount of ₹ 4.02 lakh was realised in 74 cases during the year of which seven cases involving ₹ 0.47 lakh pertained to 2010-11.

A review on **"Levy and collection of Stamp Duty and Registration Fees"** with financial impact of ₹ 41.29 crore and a few illustrative observations involving ₹ 25.14 lakh are mentioned in the following paragraphs.

4.6 Levy and collection of Stamp Duty and Registration Fees

4.6.1 Highlights

- Loss of revenue due to non-accounting of undervaluation cases - ₹ 43.96 crore.

(Paragraph 4.6.10.3)

- Potential revenue pending realisation in undervaluation cases - ₹ 286.32 crore.

(Paragraph 4.6.10.3)

- Loss of revenue due to lack of mechanism to effectively enforce provisions of the Kerala Stamp Act 1959 in respect of documents produced before public officers - ₹ 23.46 crore.

(Paragraph 4.6.11.1)

- Loss of Revenue due to non-execution/registration of lease of Cochin Port Trust Land - ₹ 2.70 crore

(Paragraph 4.6.11.3)

- Loss of revenue due to undervaluation of documents executed by builders in favour of buyers of flats/apartments/villas - ₹ 21.69 crore

(Paragraph 4.6.12)

- Non/short collection of stamp duty on issue of bonds/debentures - ₹ 19.62 crore.

(Paragraph 4.6.13)

- Non-remittance of differential duty on documents executed outside Kerala - ₹ 7.70 crore

(Paragraph 4.6.14)

- Non-payment of stamp duty on instruments evidencing agreement relating to deposit of title deed - ₹ 2.03 crore

(Paragraph 4.6.15)

4.6.2 Introduction

The Indian Stamp Act (IS Act), 1899, the Registration Act, 1908, the Kerala Stamp Act (KS Act), 1959 and the rules made thereunder regulate receipts from stamp duty and registration fees in the State. Section 17 of the Registration Act deals with documents for which registration is compulsory and Section 18 deals with documents for which registration is optional. Every instrument chargeable with duty shall be stamped before or at the time of execution of the document at the rates prescribed in the Schedule to the Kerala Stamp Act and the Indian Stamp Act.

The adequacy of stamp duty in respect of documents which require compulsory registration is to be ensured by the registering authority when the documents are presented for registration, whereas no mechanism is in existence to ensure the adequacy of stamp duty in respect of documents for which registration is optional. However, Section 34 of the KS Act, envisages that public officers shall not act upon instruments not duly stamped, unless proper stamp duty, along with penalty which may extend upto ten times the deficit stamp duty, is paid. Further, Section 68 of the KS Act requires public officers to keep records maintained in public offices open to inspection by a person authorised by the Collector to identify any fraud or omission in relation to any duty.

4.6.3 Organisational setup

The Secretary to the Government, Taxes Department has administrative control over the Department of Registration, which deals with levy of stamp duty, registration fees, penalty and other dues under the Kerala Stamp Act. The Inspector General of Registration (IGR) is the head of the Department and is assisted by one Joint IGR, two Asst. IGRs and one Deputy IGR at Headquarters. The Department is divided into four zones, each under the control of a Dy. IGR. There are 14 District Registrars (General) (one for each district) and 10 District Registrars (Audit) and 321 Sub Registrars posted in the 310 Sub Registry Offices. The levy and collection of stamp duty and registration fee on instruments is done by District Registrars and Sub Registrars.

4.6.4 Audit objectives

We conducted the review to examine

- the efficiency and effectiveness of the systems and procedures relating to levy and collection of stamp duty and registration fee;
- whether the Department has systems in place to identify various types of transactions that require payment of stamp duty and registration fee;
- the extent of compliance with the prescribed rules and procedures;
- the objective and manner of implementation of the Amnesty scheme and the extent to which the objective was achieved;

- whether systems are in place and are effective for timely detection and plugging of leakage of revenue.

4.6.5 Scope and methodology of audit

We conducted the review during November 2010 to March 2011 and covered the period from 2005-06 to 2009-10. We test checked records and collected information from the IGR's office, the District Registrar's offices in seven[1] districts selected out of 14, and 35[2] Sub Registry Offices selected out of 169 SROs in the selected seven districts. The details regarding issue of bonds/debentures/shares by companies were collected from the Registrar of Companies, Kerala and the Ministry of Corporate Affairs' website. The details of trade in securities by brokers on behalf of clients in Kerala were collected from the BSE and NSE. Details regarding sale of flats/apartments were collected from Commercial Taxes Department and Sub Registry Offices. Details of lease of immovable properties were collected from Local Bodies and Cochin Port Trust.

For selection of seven districts (50 *per cent*) for the review the fourteen districts were divided into two clusters; Cluster I consisting of five districts having municipal corporations and Cluster II consisting of the remaining nine districts. Three districts from Cluster I and four districts from Cluster II were selected by using Probability Proportional to Size Sampling Without Replacement (PPSWOR) method. One district each in Cluster I and II were replaced with districts suggested by the Departmental officers of the Government of Kerala during the entry conference (December 2010) attended by the Joint Secretary (Taxes) and Joint IGR. Selection of 35 SROs (20.7 *per cent*) out of 169 in seven districts were also made using the above method. The Secretary to Government (Taxes) and Joint IGR attended the exit conference (June 2011). Replies of the Government/Department furnished during the exit conference and subsequently have been appropriately included in the Report.

4.6.6 Acknowledgment

We acknowledge the help and co-operation extended by the Registration Department, Commercial Taxes Department, Registrar of Companies, (Kerala & Lakshadweep), Local Bodies and Cochin Port Trust, NSE/BSE, NSDL and banks in providing necessary information and records for the review. The draft review report was forwarded to the Government on 30 May 2011 for their response.

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1 Ernakulam, Idukki, Kannur, Kasargod, Kozhikode, Thiruvananthapuram and Thrissur,

2 Ayyanthole, Attingal, Chalai, Chalakudy, Chathamangalam, Edappally, Ernakulam, Fort, Hosdurg, Kadachira, Kakkody, Kannur, Karikode, Kasargod, Kattappana, Koduvally, Koothuparamba, Kozhikode, Kuttanallur, Kuzhuppilly, Maradu, Meenchanda, Mundoor, Nemom, Neyyattinkara, Pattom, Thiruvallam, Thalassery, Thaliparamba, Thodupuzha, Thrikkakkara, Thrissur, Vadakkanchery, Varkala and Westhill, .

Audit findings

4.6.7 Trend of revenue

(₹ in crore)

Year	Budget Estimates	Actual collection	Variation Excess(+)/ Shortfall(-)	Percentage of variation to Budget Estimates
2005-06	895.27	1,101.41	206.14 (+)	23.03 (+)
2006-07	1,400.37	1,519.93	119.56 (+)	8.54 (+)
2007-08	1,524.12	2,027.97	503.85 (+)	33.06 (+)
2008-09	2,420.56	2,003.00	417.56 (-)	17.25 (-)
2009-10	2,728.63	1,896.41	832.22 (-)	30.50 (-)

There was a steady increase in the budget estimates. The actual revenue collection was in excess of the budget estimates during the years 2005-06 to 2007-08 and there was shortfall in collection during 2008-09 and 2009-10. The shortfall was substantial during 2009-10 in spite of collection of ₹ 63.77 crore under compounding scheme in 2,70,130 undervaluation cases. The reason for the shortfall during 2008-09 and 2009-10 was stated to be the effect of recession in real estate business in these years. We also found that the shortfall during 2008-09 and 2009-10 was due to decrease in the number of documents registered.

Chapter III para 14 of Kerala Budget Manual stipulates that the estimates should neither be inflated nor under-pitched, but as accurate as practicable. The Department stated that the budget estimates were prepared in respect of stamp duty and registration fees by adding 20 *per cent* and 5 to 10 *per cent* over the actual collection in the previous year respectively. However, on an analysis of budget estimates, we found that the increase over actual collection ranged from 10.25 *per cent* to 51.73 *per cent* in respect of judicial stamps and (-) 2.82 *per cent* to 33.24 *per cent* in respect of non-judicial stamps. The increase in respect of registration fee ranged from 5 *per cen*t to 105.6 *per cent*. Hence, we recommend that the Department must devise a more scientific basis for preparing budget estimates than adopt a flat *per cent* inflation.

4.6.8 Computerisation of Registration Department

The Government of Kerala approved the project of Computerisation of the Registration Department in January 2000. NIC developed the software - Package for Effective Administration of Registration Laws (PEARL) with Visual Basic and MS SQL Server in Windows platform. All the 310 SROs have been supplied with a server, two personal computers (three PCs where there were two Sub Registrars), two dot-matrix printers, one laser jet printer and one scanner each along with the required UPS working in LAN. For issuing certified copies a digital imaging unit comprising a digital camera, a PC and a laser printer each was provided to all the 310 SROs.

An IT audit review on PEARL was conducted during the period February-May 2009. The findings of the review report appeared in the Audit Report for the year ending March 2009. We noticed that the Department had taken considerable

efforts to implement the recommendations made by us in our earlier audit review and to rectify/change the software.

Further, the Department envisaged (August 2009) an IT enabled solution for the implementation of the Compounding scheme 2009 introduced by the Government as a one time settlement for clearing all pending undervaluation cases in the Registration Department. Accordingly, E-mudra (Electronic Module for undervalued documents in registration and administration) software was developed by C-DIT for managing the one time settlement of undervaluation as per the user requirement specification furnished by the Department. An amount of ₹ 10.92 lakh was paid to C-DIT for software development charges, database conversion charges and hosting charges. The existing PEARL database was converted into Unicode format for integration with the application.

The system consists of the following modules

1. Offline Notice Generation Module
2. Offline Remittance Module
3. Online Data Updation Module
4. The Report Generation Module
5. The Administration Module

The software was installed in the District Registrar Offices between December 2009 and February 2010, i.e. eight months after commencement of the Compounding Scheme 2009 by which time 8.97 lakh notices had already been issued manually. Out of 6.57 lakh notices issued after installation of E-mudra, only 16,190 notices were generated in seven DR offices through E-mudra (2.44 *per cent*) using the Offline Notice Generation Module. Receipts for remittances made under the scheme were generated using Offline Remittance module in 5,156 cases. The Online Data Updation Module could not be put to use since feeding of primary details of UV cases had not been completed in any of the DR offices. Thus, the objective of implementation of E-mudra could not be achieved.

4.6.9 Compliance deficiency – Fixation of fair value

Under the Registration Act, 1908, instruments affecting immovable property are to be presented for registration in the office of Sub Registrar (SR) within whose sub-district, the whole or some portion of the property is situated. Under section 28A of the KS Act, every Revenue Divisional Officer (RDO) shall fix the fair value of the land situated within the area of his jurisdiction, for the purpose of determining the duty chargeable at the time of registration of instruments involving lands. Under section 45A, where the registering officer finds that the value of land or consideration set forth in the instrument is less than the fair value of the land fixed under section 28A, he shall by order direct the payment of proper stamp duty on the fair value of the land. Though the fair value of land in the State was fixed by the RDOs concerned on 5 January 2004, it was withdrawn on 19 February 2004 due to public complaints and to provide an opportunity to interested parties to file objections/suggestions on the value notified. Though the

Government directed the RDOs in February 2004 that the final notification would be issued within 120 days from the draft notification after considering objections and suggestions received from the public, the final notification of the fair value of land was issued and implemented only with effect from 1 April 2010.

During the period under review, no fair value was in existence. In the absence of fair value, undervaluation cases were to be dealt with under Section 45 B of the KS Act, which provides that if the registering officer, while registering instruments involving transfer of property has reason to believe that the value of the property or the consideration has not been fully and truly set forth in the document, he may, after registering such document, refer the same to the Collector for determination of the value or consideration and the duty payable thereon. The Collector may also *suo-motu*, within two years from the date of registration of any instrument not already referred to him, call for and examine the instrument and determine its consideration and the duty payable thereon. The Government in October 1986 appointed the District Registrars (DR) as Collectors for this purpose. Year-wise details of undervaluation cases reported during the period of review are given below:

Year	Number
2005-06	2,51,600
2006-07	2,54,980
2007-08	1,87,462
2008-09	1,28,441
2009-10	24,285
2010-11	23,218

During the review period, the SRs had reported 26.24 *per cent* of the total documents registered as undervaluation cases. Out of this 21.25 *per cent* was decided by the DRs and 26 *per cent* of the decided cases were settled. We find that the Department was not manned by trained officials to handle the huge number of undervaluation cases accumulating year after year.

We consider that fixation of fair value has had a salutary impact on the number of cases reported for undervaluation which came down drastically from an average of two lakh cases a year to 23,218 during 2010-11.

4.6.10 Implementation of compounding scheme

The Government introduced compounding schemes in 1997 and 2002 with the objective of settling pending undervaluation cases since 1986. Under the first scheme, liability of the parties stood completely discharged on payment of 30 *per cent* of the stamp duty already levied, whereas the second scheme envisaged payment of 30 *per cent* of the deficit stamp duty and registration fee.

On expiry of the Compounding Scheme, 2002 on 31 March 2004, there were 4.85 lakh UV cases pending settlement. Introduction of the amnesty schemes at regular intervals and large number of undervaluation cases remaining unsettled at

the end of these schemes indicated that these schemes were not effectively implemented.

The total number of UV cases pending settlement as on 31 March 2009 was 17.19 lakh. The PAC in its 111th Report (2008-11) on undervaluation cases in the Registration Department had reiterated the need to sort out the matter either by revenue recovery processes or through an Amnesty Scheme, giving maximum possible discounts on stamp duty.

Based on the recommendation of PAC, the Government of Kerala, introduced[3] a scheme for disposal of undervaluation cases referred to the Collectors by the registering officers under sub-section (1) of Section 45B of KS Act up to 31 March 2009. Under the scheme, about 20.11 lakh cases involving revenue of ₹ 2,409 crore were proposed to be considered for disposal and the liability of the parties stood completely discharged on payment of a fixed amount which was based on the extent of land and locality as detailed below :-

Sl. No.	Extent	Corporation area	Muncipal area	*Panchayat* area
1	Transactions upto 5 cents	₹ 2,000	₹ 1,000	Fully exempted
2	Above 5 cents upto 10 cents	₹ 5,000	₹ 3,000	₹ 1,000
3.	Above 10 cents upto 50 cents	₹ 10,000	₹ 5,000	₹ 2,000
4.	Above 50 cents	6 *per cent* of the stamp duty already paid or ₹ 12,000, whichever is higher	4 *per cent* of the stamp duty already paid or ₹ 7000, whichever is higher	2 *per cent* of the stamp duty already paid or ₹ 3000, whichever is higher.

We were unable to verify the rationale behind the determination of fixed amount of duty for each category, as such records were not available with the IGR. The scheme, though initially introduced for a period of six months from 1 April 2009 was finally extended upto 31 March 2011. We noticed that the successive compounding schemes have been more generous than the earlier schemes in discharging liability in undervaluation cases. We consider that such liberal dispensations may deter prompt settlement of undervaluation cases.

4.6.10.1 Target and achievement under compounding scheme

We noticed that the Department had made concerted efforts to issue 15.54 lakh notices to parties to settle undervaluation cases under the scheme. However, despite such efforts, the Department was able to mop up only ₹ 69.22 crore in 2.91 lakh cases (18.73 *per cent*) at an average of ₹ 2,380 per case under the scheme against a target of ₹ 100 crore. We consider that failure of the Department to initiate action against 4.73 lakh out of 4.85 lakh persons who did

[3] Notification No. G.O. (P) 57/2009/TD dated 27.03.2009

not respond to the previous compounding schemes was mainly responsible for the poor response to the compounding scheme.

4.6.10.2 Loss of revenue due to short accounting of UV cases

Analysis of data furnished by IGR, Thiruvananthapuram, revealed that 2,13,190 UV cases involving revenue of ₹ 50.74 crore, were not brought under Compounding scheme 2009 as detailed below:

No of UV cases pending settlement as on 31 March 2004	No. of UV cases reported from 2004-05 to 2008-09 by SROs	Total	No. of cases settled during 2004-05 to 2008-09	Cases to be brought under compounding scheme	No. of UV cases pending as on 31 March 2009 as per information furnished by IGR	Difference (being cases not brought under compounding scheme)
9,53,770	10,41,999	19,95,769	58,316	19,37,453	17,24,263	2,13,190

The collection under compounding scheme was as detailed below:

No. of UV cases pending disposal as on 31 March 2009	No. of cases exempted being below 5 cents in *Panchayat* area	No. of cases settled under compounding scheme as on 31 March 2011	Balance number of cases pending collection as on 31 March 2011	Amount collected under compounding scheme as on 31 March 2011 ₹	Average collection per case under compounding scheme. ₹
17,24,263	2,30,440	2,90,808	12,03,015	69.22 crore	2,380

Based on the average collection of ₹ 2,380 per case settled under the compounding scheme, the total revenue involved in respect of 1,84,708 cases (after giving an allowance of 13.36 *per cent* towards exemption in *panchayat* area) not brought under the compounding scheme in the State works out to ₹ 43.96 crore.

Lack of periodic reconciliation of UV cases reported by SROs with the records of UV cases received in the District Registrar Offices and improper maintenance of records resulted in the short accounting of UV cases.

The Department may take action to reconcile, identify and account for the missing UV cases for further action.

4.6.10.3 Potential revenue remaining unrealised in undervaluation cases

Test check of records of the selected 35 SROs in seven selected districts in the State with reference to the records of the District Registrar Offices of the selected districts revealed the following

- The total number of UV cases pending settlement in respect of selected SROs in seven districts as on 31 March 2009 was 3.63 lakh cases involving deficit stamp duty of ₹ 653.01 crore and registration fee of ₹ 134 crore.

- Final orders were issued in 5,854 cases which represents 1.61 *per cent* of UV cases pending in the selected SROs. Collection of ₹ 2.44 crore was effected in 5,381 cases in which final orders were issued during the period 2004-05 to 2008-09. This represents 91.92 *per cent* of the number of UV cases in which final orders were issued. Average collection of stamp duty in each case is ₹ 4,537.

The number of UV cases pending settlement in the State as on 31 March 2011 is 12.03 lakh. Potential revenue remaining unrealized in respect of the pending cases that could have been realised in the normal course by issue of final orders would work out to ₹ 545.81 crore based on the average collection of ₹ 4,537. Even if all the pending cases were settled under the compounding scheme potential revenue that could have been realised based on the average collection of ₹ 2,380 per case under the compounding scheme would be ₹ 286.32 crore.

The District Registrars stated that huge pendency in UV cases was due to paucity of staff. However, we noticed that no time limit/ target was fixed for issue of final orders by DRs in UV cases. In the absence of final orders no enforceable demand was created for recommending cases for RR action in case of non -payment of deficit SD & RF by the concerned parties in UV cases.

Government may implement a time bound action plan to settle outstanding undervaluation cases.

4.6.10.4 Loss of revenue due to short collection of stamp duty under compounding scheme

- In SRO Kozhikode, one undervaluation case involving an extent of 96 cents of land in corporation area was settled under the compounding scheme collecting ₹ 5,000 instead of ₹ 81,000 resulting in short collection of ₹ 76,000.
- In SRO, Thiruvananthapuram, three undervaluation cases involving an extent of more than 50 cents were settled under the compounding scheme collecting ₹ 36,000 (12,000 each) instead of ₹ 78,870 resulting in short collection of ₹ 42,870.
- In SRO Chala, one undervaluation case involving an extent of 1.01 hectare was settled under the compounding scheme collecting ₹ 13,500 instead of ₹ 40,500 resulting in short collection of ₹ 27,000.

The total short collection in three SROs mentioned above is ₹ 1.46 lakh. We are of the view that the above mistakes occurred due to application of incorrect rate of compounding duty based on the classification of land and stamp duty already paid.

4.6.10.5 Irregular exemption under compounding scheme

In SRO, Maradu one undervaluation case involving recommended deficit stamp duty of ₹ 3.70 lakh and RF of ₹ 0.70 lakh and having an extent of 51.02 cents of land was exempted as a case below 5 cents in *panchayat* area. The irregular exemption resulted in loss of revenue of ₹ 4.40 lakh.

4.6.11 Loss of revenue due to lack of mechanism to effectively enforce provisions of Kerala Stamp Act 1959

Every instrument chargeable with duty shall be stamped before or at the time of execution. Under section 33 of the Kerala Stamp (KS) Act, 1959, every person having by law authority to receive evidence and every person in-charge of a public office, before whom any instrument, chargeable in his opinion, with duty, is produced, or comes in the performance of his functions, shall impound the same if it appears to him that such instrument is not duly stamped. The instrument so impounded shall be sent in original to the District Registrar who shall require the payment of the proper duty or the amount required to make up the same, together with penalty of an amount not exceeding ten times the amount of the proper stamp duty or of the deficient portion thereon. As per section 34 of the KS Act, no instrument chargeable with duty shall be admitted in evidence or shall be acted upon by any public officer, unless such instrument is duly stamped.

As per section 68 of the KS Act, public officers shall permit any person authorised in writing by the Collector, to inspect registers, books, papers, documents and proceedings which may tend to secure any duty, or to prove or lead to the discovery of any fraud or omission in relation to any duty. District Registrars have been notified as Collectors to exercise the powers under section 68.



4.6.11.1 As per section 17(d) of the Indian Registration Act, 1908 registration is compulsory for leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent. Lease includes an under lease or sub-lease and any agreement to let or sublet (Article 33 of KS Act, 1959).

Test check of records maintained in selected public offices revealed revenue loss of stamp duty and registration fee amounting to ₹ 23.46 crore due to failure of District Registrars to authorise persons to inspect records of public offices under Section 68 of KS Act 1959, to detect omissions/deficiencies in relation to stamp duty. The details are furnished below.

- **Non-registration of lease/licence deeds/agreements executed between Mobile tower infrastructure companies and land/building owners.**



Test check in nine[4] local bodies of 301 lease/rent/licence agreements of mobile tower infrastructure companies with the owners of the buildings along with applications for permits for setting up mobile towers revealed that none of the agreements was registered and the agreements were executed on stamp paper of ₹ 50/100 even though the agreements have all the essential characteristics of lease and all the agreements were required to be compulsorily registered. The revenue loss involved in 301 cases was ₹ 1.64 crore. The Officers in charge of local bodies failed to impound the documents under section 33 of the KS Act. During 2005-06 to 2009-10, 8,412 permits were issued by the local bodies for setting up mobile towers in the State. Based on the average revenue loss per case, the potential revenue loss worked out to ₹ 23.18 crore[5].

- **Non-registration of lease/licence/rent agreements relating to lodges/boarding homes/resorts**

Test check of lease/rent agreements produced along with application for registration of hotels/lodging houses under the Kerala Luxury Tax Act in three[6] Luxury Tax Offices in the State showed that the agreements were executed on stamp paper worth ₹ 50/100 and the agreements were not registered. The deficit stamp duty and registration fee involved in respect of 18 cases is ₹ 27.99 lakh.

The Department has not prescribed any norms for inspection of public offices. As per information collected from selected District Registrars and IGR, no inspection of public offices was conducted by officers of the Registration Department under section 68 of the KS Act to detect omission/deficit in relation to stamp duty.

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[4] Aluva, Ernakulam, Kannur, Koduvally, Kollam, Kozhikode, Kunnamangalam, Thiruvananthapuram and Thrissur

[5] Average revenue loss in one case in Corporation Area ₹ 58095 X 353 permits = ₹ 205.08 lakh
Muncipal area ₹ 46946 X 1082 permits = ₹ 507.96 lakh
Panchayat area ₹ 23000 X 6977 permits = ₹ 1604.71 lakh
Total = ₹ 2317.75 lakh

[6] Ernakulam, Mattanchery and Thiruvananthapuram

4.6.11.2 Non-registration of lease agreements for installing ATMs of banks.



Many ATMs were established by various banks like public sector, private sector and new generation banks in Kerala during the last five years. Most of the ATMs were established in private buildings on long term lease with the building owners. With a view to identifying leakage of revenue in different areas, we collected details of 72 lease agreements executed by three[7] banks with building owners for setting up ATMs in two[8] cities in Kerala. It was noticed that out of 72 lease agreements, 38 agreements were not registered even though the lease was for periods exceeding one year and liable for compulsory registration. Revenue loss involved in respect of 38 lease agreements alone works out to ₹ 3.52 lakh.

4.6.11.3 Loss of revenue due to non-execution of lease of Cochin Port Trust land



Lease deeds were not executed and registered in respect of 122 cases of lease of land of Cochin Port for periods exceeding one year to 37 years. This deprived the State Government of revenue by way of stamp duty and registration fee amounting to ₹ 2.15 crore and ₹ 54.71 lakh respectively

There was no mechanism in the Department to obtain details of such omissions leading to leakage of revenue.

We recommend that the Government may prescribe norms for inspection of public offices by the employees of DRs to detect omission/deficiency in realisation of stamp duty.

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7 Syndicate Bank, Canara Bank and Federal Bank

8 Ernakulam and Thiruvananthapuram

4.6.11.4 Loss of revenue due to execution of instruments having essential characteristics of lease as licence deeds

As per Section 2(l) of the KS Act, lease means a lease of immovable property, and also includes 'any agreement or other undertaking in writing, to occupy, or pay or deliver rent for immovable property'. As per article 33 of KS Act, lease includes an under lease or sub-lease and any agreement to let or sublet.

As per section 17(d) of the Indian Registration Act, 1908 registration is compulsory for leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent.

We observed in one Luxuary Tax assessment circle and Corporation of Thiruvananthapuram that two agreements, between lessor and lessee leasing out hotels, having all the essential characteristics of lease for period of more than one year were executed as licence agreements on stamp paper worth ₹ 50. The revenue loss involved by way of stamp duty and registration fee was ₹ 6.93 lakh and ₹ 2.99 lakh respectively.

We found that states like Karnataka and Maharastra have included 'Licence of movable and immovable properties' in their Schedules to the Stamp Act at a rate equal to that of lease. However, no such provision exists in the Schedule to the Kerala Stamp Act to plug the practice of creating documents of lease as licence deeds to evade stamp duty.

The Government may consider amending the KS Act by inserting provisions for levy of stamp duty on licence agreements relating to movable and immovable properties akin to such provisions in other States.

4.6.12 Loss of revenue due to undervaluation of sale deeds executed by builders/developers of flats/apartments

We test checked 1,155 sale deeds executed by 22 builders of flats/apartments in selected Sub Registrar Offices in the State and cross verified the details with reference to details in Form 49/agreements filed by the respective builders in four[9] works contract offices under the Commercial Tax Department in the State.

We noticed that only two out of the 22 builders had shown the consideration reported as per form 49 in the 75 sale deeds executed by them. All the 504 sale deeds identified with reference to Form 49/agreements out of the balance 1,080 sale deeds executed by the remaining 20 builders[10] were undervalued. The deficit stamp duty and registration fee involved in the identified 504 cases was ₹ 8.36 crore and ₹ 1.75 crore respectively as shown below.

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[9] Thiruvananthapuram, Kottayam, Ernakulam , Thrissur

[10] Abad constructions, AC city builders, Castle homes, Creation India, Desire homes, Heera constructions, Kent constructions, Sky line foundation and structures, Olive builders, Infra Housing, KGL builders, Mather projects, MRG builders, Noel villas, Oceanus builders, Pentark builders, Sree Gokulam housing, Sunny housing, Skyline builders & Wexco Constructions,

Total no. of sale deeds test checked	1155
No. of cases in which discrepancy noticed with Form No. 49 (retuned filed with the Commercial Taxes Department)	504
Short levy of stamp duty and registration fee in 504 cases	₹ 10.11 crore

In respect of the remaining 576 sale deeds, details of consideration set forth in Form 49/agreements were not available with Commercial Tax Department. The Builders were following the same pattern of undervaluation in all the sale deeds executed by them. Based on the average revenue loss of ₹ 2.01 lakh in one case the total deficit stamp duty and registration fee involved in respect of the remaining 576 sale deeds worked out to ₹ 11.58 crore. The loss of revenue would be substantial if sale deeds executed by all the builders in the State were taken into account.

We are of the view that if the registering officers had insisted for production of the original agreements for purchase/construction of flats/apartments with builders at the time of registration of sale deeds, they could have ensured the correctness of the consideration set forth in the sale deed. Further, the Registration Department did not co-ordinate with the Commercial Taxes Department to obtain details regarding transfer of apartments/flats/villas and the cost of flat in respect of each purchaser/intending purchaser.

We recommend that the Government may direct registering officers to insist on production of original agreements for purchase/construction of flats/apartments at the time of registration of sale deeds. We also recommend that the department may evolve a mechanism to obtain data on a periodic basis regarding actual cost of flats/apartments from the Commercial Taxes Department (Works contract) and co-relate the same with sale deeds to detect undervaluation of flats/apartments.

4.6.13 Non/short collection of stamp duty on corporate bonds/debentures

As per section 8A of the Indian Stamp Act, 1899, an issuer, by the issue of securities to one or more depositories shall, in respect of such issue, be chargeable with duty on the total amount of security issued by it and such securities need not be stamped.

Bonds come under the meaning of securities as per Section 2(16A) of the Indian Stamp Act read with Section 2(h) of the Securities Control (Regulation) Act, 1956. According to Section 2(12) of Companies Act, 1956, "debenture" includes bonds.

As per Article 27 of Indian Stamp Act, 1899, on debenture (whether mortgage debenture or not) being a marketable security transferable by delivery (issued in demat form) the rate of stamp duty was 'three rupees seventy five paise for every ₹ 500 or part thereof in excess of rupees 1000' from 1 March 2004 to 12 September 2008 and at the rate of 0.05 *per cent* per year of the face value of the

debenture, subject, to a maximum of 0.25 *per cent* or ₹ twenty five lakh, whichever is lower from 12 September 2008.

Debenture (whether mortgage debenture or not), being a marketable security transferable by endorsement or by a separate instrument of transfer (issued in physical form) attracts stamp duty at the rate ₹ 1.85 per ₹ 500 upto 11 September 2008 and at the rate 0.05 *per cent* per year of the face value of the debenture, subject to the maximum of 0.25 *per cent* or ₹ 25 lakh, whichever is lower from 12 September 2008 onwards.

4.6.13.1 As per the data collected from NSDL, seven companies registered in Kerala had issued bonds valued at ₹ 1,986.40 crore in demat form having face value of ₹ 10 lakh each during the period 2005-06 to 2009-10. Three Companies paid stamp duty at the rate applicable to promissory notes, two companies paid stamp duty at the rate applicable to debentures transferable by endorsement or by separate deed of transfer and two companies did not pay any stamp duty. The total short/non-remittance of stamp duty works out to ₹ 5.66 crore as detailed below:

Name of Company/ Bank	Year of issue	No. of Bonds/ debent-ures issued	Value of bonds/ Debentures issued (₹ in crore)	Stamp duty payable (₹in lakh)	Stamp duty paid (₹ in lakh)	Short/non remittance of SD (₹ in lakh)
Apollo tyres	2008-09	1250	125	25.00	4.20	20.80
Dhanalakshmi Bank	2005-06 to 2006-07	434	43.40	32.55	24	8.55
Manappuram General Finance & Leasing Co.	2009-10	250	25.00	6.25	nil	6.25
State Bank of Travancore	2005-06 to 2007-08	13200	1320.00	990.00	662	328.00
Catholic Syrian Bank	2005-06	400	40.00	30.00	14.80	15.20
Federal Bank	2006-07	2000	200.00	150.00	30.40	119.60
The South Indian Bank	2005-06	650	65.00	48.75	6.50	42.25
-do-	2009-10	1680	168.00	25.00	Nil	25.00
Total			**1986.40**			**565.65**

There was no mechanism in the Registration Department to obtain data on a periodic basis from depositories regarding issue of bonds/debenture by companies/banks in demat form and to check the adequacy of stamp duty thereon. Lack of co-ordination with depositories, SEBI and the Registrar of Companies resulted in loss of revenue amounting to ₹ 5.66 crore**.**

We recommend that the Department may evolve a mechanism in consultation with depositories to obtain details of issue of securities by

companies registered in Kerala and ensure that stamp duty thereon was paid before admitting such securities in depositories.

4.6.13.2 During the period 2005-06 to 2009-10 four companies issued non-convertible secured debentures of different series totaling ₹ 6,480.16 crore. One company paid a nominal amount of stamp duty and the other three companies did not pay any stamp duty on the debentures issued.

When we pointed this out, it was stated by the companies in their letters addressed to the Registrar of Companies that these companies issued the debentures on private placement basis and not as marketable securities and such debentures were not listed in stock exchanges. Hence, they were not liable to pay stamp duty under Article 27 of the Indian Stamp Act which deals with marketable securities.

Marketable securities have been defined under Section 2(16A) of the Indian Stamp Act and Section 2(m) of the KS Act as a 'security of such a description as to be capable of being sold in any stock market in India'. The contention of the companies cannot be accepted since the term marketable security does not necessarily imply securities which are listed in stock exchanges, but all securities which are capable of being listed in stock exchanges. As per SEBI circular No.SEBI/MRD/SE/AT/36/2003 dated 30 September 2003, any listed company making issue of debt securities on private placement basis shall issue and trade them in demat form. Further as per SEBI circular dated 22 December 2003, unlisted companies/statutory corporations/entities, if they so desire, may get their privately placed debt securities listed in the stock exchanges. Hence the companies have the option to list the debentures in the stock exchanges though, issued on private placement basis. Moreover, the debentures issued by the companies were transferable by separate deed of transfer and endorsement on the debenture certificate as is evident from both the debenture certificate and the prospectus. Hence, debentures issued by the companies attract stamp duty under Article 27 of the Indian Stamp Act. The stamp duty leviable works out to ₹ 13.96 crore as detailed below:

Name of Company	Total value of debentures issued (₹in crore)	Period of issue	Stamp duty due under Article 27 of Indian Stamp Act (₹ in lakh)	Stamp duty paid (₹ in lakh)	Stamp duty due under Article 27 of Indian Stamp Act (₹ in lakh)
Muthoot Finance Ltd.	5,508.47	2005-06 to 2009-10	1,263.28	8.70	1,254.58
Muthoot Capital Services	68.61	2005-06 to 2009-10	23.10	Nil	23.10
Muthoot Fincorp Ltd.	531.46	2006-07 to 2009-10	32.93	Nil	32.93
Kosamattam Finance	371.62	2005-06 to 2009-10	85.07	Nil	85.07
Total	**6,480.16**		**1,404.38**	**8.70**	**1,395.68**

We noticed that the Registration Department did not coordinate with the ROC to obtain data to examine the adequacy of stamp duty paid on issue of debentures/bonds by companies who take advantage of the ambiguity in the Stamp Act to interpret the provisions therein in such a way that legitimate duties payable to Government is not paid.

We recommend that the Department may evolve a mechanism to periodically obtain data from ROC to verify the adequacy of stamp duty paid on debentures/bonds by companies. We also suggest that the Government may consider amending the Stamp Act to clearly establish liability for payment of stamp duty in cases similar to the one described above.

4.6.14 Non-remittance of differential duty

As per Section 19 of the KS Act, where any instrument of the nature described in any article in the Schedule and relating to any property situated or to any matter or thing done or to be done in the State of Kerala is executed out of the said State and subsequently received in the said State, the amount of duty chargeable on such instrument shall be the amount of duty chargeable under the Schedule on a document of the like description executed in the State of Kerala less the amount of duty, if any, already paid on such instrument in any other State in India.

On a test check of mortgage deeds executed outside Kerala involving immovable properties in the State by two selected companies registered in Kerala for securing debentures issued and corporate loans/credit facilities extended by Banks/ Consortium of banks, it was observed that differential duty applicable to mortgage deeds in the State of Kerala amounting to ₹ 7.70 crore under Section 19 was not remitted before registering the charge documents with the Registrar of Companies, Kerala under Section 125 of Companies Act as detailed below:

Name of Company	Details of documents executed in Bombay	Stamp duty due/Reference to Schedule to Stamp Act in Kerala	Stamp duty paid/reference to rate in other State	Differential duty due
M/s Joy Alukkas Traders India Pvt. Ltd.	Second supplementary Memorandum of entry(MOE) of ₹ 25 crore	₹ 37.50 lakh (Article 6(1) of Kerala Stamp Act @ ₹ 15 for every ₹ 1000 or part thereof)	₹ 5 lakh (Article 6(1) of Bombay Stamp Act @ 0.20 *per cent* of the amount secured)	₹ 32.50 lakh
	Third supplementary MOE for ₹ 50 crore	₹ 75 lakh	₹ 10 lakh	₹ 65 lakh
	Fourth supplementary MOE for ₹ 40 crore	₹ 60 lakh	₹ 8 lakh	₹ 52 lakh
M/s Apollo Tyres Ltd	Mortgage deed for ₹ 125 crore	₹ 625 lakh (Article 37(b) @ ₹ 5 per ₹ 100	₹ 4.20 lakh (0.25 *per cent* per ₹ 100	₹ 620.80 lakh
Total				**₹ 770.30 lakh**

4.6.15 Non-payment of stamp duty on instrument evidencing agreement relating to deposit of title deeds

Under article 6(1)(iii) of the Schedule to the KS Act, an agreement relating to deposit of title deeds, pawn or pledge, that is to say, any instrument evidencing any agreement relating to deposit of title deeds or instruments constituting or being evidence of the title to any property attracts stamp duty of ₹ 15 for every ₹ 1,000 or part thereof of the secured amount.

As per Section 2(j) of KS Act 'instrument' includes every document by which any right or liability is, or purports to be created.

M/s. Joy Alukkas Traders (India) Pvt. Ltd. having its registered office at Kochi, Kerala created an equitable mortgage by deposit of title deeds in respect of immovable properties situated in Kerala for obtaining credit facilities/loan from ABN Amro Bank Consortium and an instrument evidencing an agreement in this regard styled as Memorandum of Entry was executed. Copy of the instruments filed with the Registrar of Companies, Kerala revealed that no stamp duty was paid on the instrument. It was observed that stamp duty was paid on similar mortgages executed subsequently by M/s. Joy Alukkas in other States. The stamp duty involved in the documents works out to ₹ 2.03 crore as detailed below:

Date	Details of documents	Amount of credit facility/loan covered by the mortgage	Stamp duty involved (₹ 15 for ₹ 1,000 & part thereof)
1 September 2006	Memorandum of entry for ₹ 80 crore	₹ 80 crore	₹ 120 lakh
14 March 2007	First supplementary Memorandum of entry enhancing limit to 135 crore.	₹ 55 crore	₹ 82.50 lakh
Total		**₹ 135 crore**	**₹ 202.50 lakh**

We observed that the Registration Department did not coordinate with the ROC to obtain data for examining the adequacy of stamp duty paid on documents described in paras 4.6.14 and 4.6.15 above.

4.6.16 Non-remittance of Stamp duty on 'attested instruments evidencing an agreement relating to the hypothecation of movable property'

As per G.O.(MS)813/RD dated 2 September 1961 published in K.G. No.48 dated 12 September 1961, the Government of Kerala reduced stamp duty for "Attested instruments evidencing an agreement relating to the hypothecation of movable property where such hypothecation has been made by way of security for the repayment of money advanced or to be advanced by way of loan or of an existing or future debt, to the amount chargeable on agreement relating to deposit of title deeds, pawn or pledge under clause (a) of Article 6 of the Schedule to the Kerala Stamp Act, 1959, for the amount secured if such loan or debt is repayable on demand or more than three months from the date of the instrument and to half that

amount if such loan or debt is repayable not more than three months from the date of the instrument." The rate of stamp duty under Article 6(a) is ₹ 15 for every ₹ 1,000 or part thereof.

Verification of the documents filed in office of the ROC for registration of charge documents by M/s. Kosamattam Finance (P) Ltd. revealed that the company had raised working capital amounting to ₹ 200 crore by issue of redeemable non-convertible secured debentures as follows:

Date	No. of debentures issued	Face value	Total amount raised
September 2008	1,00,00,000	₹ 100	₹ 100 crore
July 2009	1,00,00,000	₹ 100	₹ 100 crore
Total			**₹ 200 crore**

The company created a charge by way of hypothecation of movable assets of the company as security for the debentures of ₹ 200 crore (₹ 100 crore each) issued in favour of the debenture trustees by executing two instruments titled as "unattested deed of hypothecation" on stamp papers worth ₹ 100 in one case and ₹ 50 in an other case. Verification of the said instruments revealed that the instrument dated 1 September 2008 was attested by two witnesses (Reena Mary Jacob and Julie John) and the instrument dated 15 August 2009 was attested by two witnesses (Reena Mary Jacob and Manjusree S).

The term "Attested" has been defined in the Transfer of Property Act as follows: "Attested" in relation to an instrument, means and shall be deemed always to have meant attested by two or more witnesses each of whom has seen the executants sign or affix his mark to the instrument, or has seen some other person sign the instrument in the presence and by the direction of the executants or has received from the executants a personal acknowledgment, of his signature or mark, or of the signature of such other person, and each of whom has signed the instrument in the presence of the executants; but it shall not be necessary that more than one of such witnesses shall have been present at the same time, and no particular form of attestation shall be necessary.

Even though the documents were titled as unattested deed of hypothecation, the same were actually attested deed of hypothecation liable to stamp duty as mentioned above. The stamp duty due on the secured amount of ₹ 200 crore works out to rupees three crore.

There was no coordination between the Registration Department and the ROC to obtain details regarding charge documents presented before the ROC under the Companies Act for registration, to examine and ensure the adequacy of stamp duty on such documents before registering the same by ROC.

The Department may evolve a mechanism in consultation with the Registrar of Companies(ROC), Kerala before whom charge documents have to be filed by companies, to ensure that proper stamp duty on debentures and charge documents are paid before registering the charge documents by ROC.

4.6.17 Notional loss of revenue due to failure to prescribe ad-valorem rate of stamp duty on share certificates

As per the Finance Act 2000 (Act 10 of 2000), Section 8A of the Indian Stamp Act was substituted which provides that " An issuer, by the issue of securities to one or more depositories (CDSL, NSDL etc.) shall in respect of such issue, be chargeable with duty on the total amount of security issued by it (in demat form) and such security need not be stamped". The rate prescribed in the KS Act (Article 17) for share certificates issued is ₹ 0.50 irrespective of the value of shares included in the share certificate. No ad-valorem rate has been prescribed. The corresponding article in the Stamp Act of Karnataka, Bombay and Delhi prescribes ad-valorem rate of 0.10 *per cent* on the value of shares issued.

Since no ad-valorem rate has been prescribed in the KS Act, no stamp duty is being paid by companies registered in Kerala on issue of shares in demat form, whereas companies registered in States like Karnataka, Bombay and Delhi pay stamp duty on the total value of shares issued including premium. Had the Government amended the rate of stamp duty leviable under Article 17 of the KS Act as ad-valorem (0.1 *per cent* of the value of shares issued) in line with other States, substantial revenue could have been generated. Failure of the Government to prescribe ad-valorem rate of stamp duty on share certificates after the introduction of Depositories Act and compulsory trading of securities in demat form (from January 1999) resulted in notional loss of revenue to the tune of ₹ 1.68 crore (Annexure).

The Government may consider amending Article 17 of KS Act to levy ad-valorem rate of stamp duty on share certificates.

4.6.18 Non-remittance of stamp duty on contract notes by share brokers

As per Article 40 of the KS Act, note or memorandum (contract notes) sent by a broker or agent to his principal intimating the purchase or sale of securities attracts stamp duty at the rates mentioned therein. Under Section 10A of the KS Act, share brokers who issue contract notes shall deduct stamp duty payable from the client and remit it to the Government treasury on or before the seventh day of the succeeding month.

The intention of the Government was to collect stamp duty on contract notes issued to all clients residing in Kerala based on the Unique client code (UCC) download address of clients. (Lr. No.13179/E2/09/TD dated 17 July 2009 from Prl. Secretary to Government, Taxes(E) Department addressed to NSE, Mumbai). However no specific provision in this regard was included in the Act. Hence, a large number of brokerage firms registered outside Kerala and issuing contract notes to clients in Kerala in respect of transactions effected through their branches in the State were not paying stamp duty to the Government of Kerala.

As per information received from Bombay Stock Exchange and National Stock Exchange, the total number of share brokers executing trades on behalf of clients based in Kerala was 220 and 221 respectively. However, only 27 share brokers

were collecting and paying stamp duty to the Government of Kerala. Hence 193 share brokers who have executed trades on behalf of clients in Kerala during the period 2005-06 to 2009-10 in BSE involving turnover of ₹ 7,142.78 crore and 194 share brokers in NSE who had executed trades on behalf of clients in Kerala during the period 2007-08 to 2009-10 involving turnover of ₹ 1,06,044.53 crore, had not remitted stamp duty on contract notes. The stamp duty involved worked out at the minimum rate of 0.002 *per cent* applicable in case of non-delivery transactions works out to ₹ 2.26 crore.

IGR is the authority entrusted with monitoring collection of stamp duty on contract notes. However, no database of share brokers functioning in the State and executing share transactions for clients based in Kerala is available with the IGR. There was no co-ordination between stock exchanges, SEBI and depositories for obtaining data of share transactions. This resulted in loss of revenue amounting to ₹ 2.26 crore.

The Government may evolve a mechanism to periodically obtain details of turnover of share brokers executing trades on behalf of clients in Kerala from NSE/BSE to examine, ensure and enforce payment of stamp duty collected by share brokers from clients.

4.6.19 Notional loss of revenue due to non-revision of Schedule I of Indian Partnership Act 1932

The Deputy Inspector General of Registration (Licencing) is designated as the Registrar of Firms in the State of Kerala. The Registrar of Firms collects fee for various services fixed vide Schedule I of the Indian Partnership Act, 1932. State Governments are empowered to levy fees for services stated in schedule I. The rates for registration of firms in Madhya Pradesh, Tamilnadu and Karnataka were ₹ 500, ₹ 100 and ₹ 50 respectively. The last revision of schedule I by Government of Kerala was done in 1973 by the Act 25 of 1973.

A proposal to escalate the existing rate of fee of ₹ 15 to ₹ 500 under the Indian Partnership Act, 1932 was forwarded by the Department to the Principal Secretary in February 2006; no revision however has been effected so far. The financial impact due to non revision of fee during the last four years was ₹ 63.79 lakh as detailed below:

Year	No. of firms registered	Fee at proposed rate of ₹ 500 ₹	Fee at existing rate of ₹ 15 ₹	Loss due to non revision ₹
2007	2,742	13,71,000	41,130	13,29,870
2008	2,845	14,22,500	42,675	13,79,825
2009	3,526	17,63,000	52,890	17,10,110
2010	4,040	20,20,000	60,600	19,59,400
Total	**13,153**	**65,76,500**	**1,97,295**	**63,79,205**

On this being pointed out, the IGR stated that the matter has been reported to the Government.

Government may consider enhancing registration fee of partnership firms by issue of necessary amendment to the Schedule to Indian Partnership Act.

4.6.20 Working of internal audit wing

Inspector General of Registration (IGR) Kerala monitors the functioning of the Internal Audit Wing (IAW) of the Registration Department. The District Registrar (DR) (Audit) is responsible for conducting audit in the district. The periodicity of audit of SROs is annual. The 63 employees perform internal audit work in the Department. DR (Audit) is the leader of the internal audit field team. There was neither an Internal Audit Manual nor a centralised training system for the audit wing. The auditee offices were being selected by giving preference to those offices where the Registering Officer was due to retire shortly. During 2010-11, the IAW audited 261 units out of 303 units planned for audit. The IAW observed that the implementation of fair value has improved the revenue collection considerably and noted that non-stipulation of guidelines for the value of buildings is a system deficiency in the fair value reform which may lead to leakage of stamp duty. We endorse the views of the IAW.

We recommend that the IAW may be strengthened by imparting training to the persons deployed for audit and an Internal Audit Manual must be prepared.

4.6.21 Internal control

Internal control is an integral process by which an organization governs its activities to effectively achieve its objectives. A built in internal control mechanism and strict adherence to statutes, codes and manuals provide reasonable assurance to the Department about the compliance of applicable rules, thus achieving reliability of financial reporting and effectiveness and efficiency in Departmental operations. Internal control is affected through internal inspection, internal audit and maintenance of registers. The Registration Department has separate wings for inspection and audit. In spite of this we noticed internal control failure due to the following:-

4.6.21.1 Shortfall in inspection

According to the Kerala Registration Manual Part II Vol. I, the IGR should inspect the SR offices at least once in five years and DR offices every year. The DR shall inspect the SR office twice in every calendar year. The position of inspection by IGR is given below.

Year	No. of inspections							
	Target		Achievement		Shortfall		Percentage of shortfall.	
	SRO	DRO	SRO	DRO	SRO	DRO	SRO	DRO
2005-06	310	24	45	19	265	5	85 *per cent*	21
2006-07		24		24		0		-
2007-08		24		9		15		63
2008-09		24		15		9		38
2009-10		24		17		7		29

It would be seen that there was a shortfall of 85 *per cent* in inspection of SROs and upto 63 *per cent* in inspection of DR offices.

4.6.21.2 Failure to fix time limit/target for disposal of undervaluation cases

As per section 46 of the KS Act, all duties, penalties and other sums required to be paid may be recovered by the Collector by distress and sale of the movable property of the person from whom the same are due, or by any other process for the time being in force for the recovery of arrears of land revenue.

During the period 2004-05 to 2008-09 only 12,160 cases out of 4,85,089 UV cases were reported for RR action. However, collection through RR action was effected in 7,399 cases only. It was observed that no target and time frame was fixed for issue of final orders by District Registrars in UV cases reported by Sub Registrars. Hence final orders in UV cases were issued only in about 10 *per cent* of the UV cases reported/pending.

We recommend that a time limit may be fixed for disposal of undervaluation cases by District Registrars.

4.6.21.3 Improper maintenance of records relating to undervaluation

During test check of the register of undervaluation cases maintained in DR offices, we found that all UV cases reported by SROs were not accounted in the register. No periodical reconciliation of undervaluation cases reported by SROs with records of DR offices has been prescribed and followed. The details of notices issued, provisional and final orders issued and collection details have been noted only in very few cases.

4.6.21.4 Failure to conduct inspection of public offices

As per section 68 of the KS Act, public officers shall permit any person authorized in writing by the Collector, to inspect registers, books, papers, documents and proceedings which may tend to secure any duty, or to prove or lead to the discovery of any fraud or omission in relation to any duty. District Registrars have been notified as Collectors to exercise the powers under section 68. Enquiry with District Registrars of selected districts and IGR revealed that no inspection of public offices was conducted till date to identify any fraud or omission in relation to any duty and to secure any stamp duty.

On this being pointed out, the IGR stated that District Registrars have been appointed to be Collectors under Section 68 only for the completion of procedures taken to deal with undervalued documents and that it is the duty of public officers to ascertain whether proper stamp duty has been levied for the instrument produced and impound the same for not duly stamped.

The reply of the Department is not acceptable since the District Registrars did not nominate persons to exercise the powers under Section 68 and the cases brought out by us could have been unearthed by the Department had it exercised the powers vested with it.

We recommend that the Department may fix the minimum number of inspection of other public offices to be carried out by District Registrars so as to identify cases of non-registration/undervaluation.

4.6.21.5 Lack of system to identify various streams of revenue while preparing budget estimates

No system exists in the Department to identify various streams of revenue by way of stamp duty and registration fee that can be tapped. It was also informed by the Department that no study was conducted to analyse the reason for shortfall and drop in revenue collection during 2008-09 and 2009-10.

The Government may consider establishing an Economic Intelligence Unit (EIU) in the Department to identify sources from which stamp duty and registration fee can be raised by conducting a study of Stamp Acts of other states. The EIU may also be vested with the responsibility of coordinating with external agencies to obtain data and verify that documents have been registered, where due, for the right value.

4.6.22 Conclusion

Our review revealed that

1. There was no effective system in the District Registrar offices in disposing of undervaluation cases which led to huge delay/non-recovery of stamp duty.
2. There was lack of co-ordination between the Registration Department and public officers to obtain data regarding documents produced before them to verify the correctness of stamp duty on such instruments.
3. There was no mechanism to co-ordinate with the Registrar of Companies, depositories and Stock exchanges to obtain data regarding issue of bonds/securities by companies. Hence the Department could not monitor and ensure payment of stamp duty on issue of securities and charge document registered by the ROC.
4. Lack of provision to levy ad-valorem rate of stamp duty on issue of shares and lack of provision to levy stamp duty on licence agreements resulted in notional loss of revenue.
5. The internal audit/inspection of Registration Department is in arrears and the District Registrars in their capacity as Collectors did not exercise the powers of inspection of public offices under Section 68 of KS Act.

4.6.23 Recommendations

- The Government may implement a time bound action plan to settle outstanding undervaluation cases.

- The Government may consider creating awareness amongst public officers regarding their responsibility in respect of understamped instruments produced before them.
- The Government may consider an Economic Intelligence Unit to coordinate with external agencies like Registrar of Companies, Stock Exchanges, Commercial Taxes Department, depositories etc. to obtain data and verify that documents have been registered when due for the right value.
- The Government may consider amendment to the Kerala Stamp Act to include provisions for collection of stamp duty on ad-valorem basis on issue of shares and levy of stamp duty on licence agreements as lease.
- The Government may direct registering officers to insist on production of agreements relating to purchase/sale of flats at the time of registration or evolve a mechanism to obtain data on a periodical basis on actual cost of flats/apartments from Commercial Taxes Department (Works contract) and cross verify the same with sale deeds to detect undervaluation of flats/apartments.
- Internal audit/inspection of sub offices may be made mandatory and up to date.
- Inspection of public offices may be contemplated to plug leakage of revenue.

4.7 Other audit observations

We scrutinised the records of various registration offices and noticed several cases of non-compliance of the provisions of the Indian Stamp Act, 1899 and the Kerala Stamp Act, 1959 (KS Act) and other cases as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on a test check carried out in audit. Such omissions on the part of the Sub-Registrars (SRs) are pointed out by us each year but not only do the irregularities persist; these remain undetected till an audit is conducted. There is need for the Government to improve the internal control system including strengthening the internal audit.

4.8 Non-compliance of provisions of Act/Rules

The provisions of the KS Act and Registration Rules require:-

i) initiating action in cases where documents were undervalued; and

ii) correct classification of documents.

We noticed that the SRs did not observe some of the above provisions at the time of registration of the documents. This resulted in short levy/evasion of stamp duty of ₹25.14 lakh as mentioned in the succeeding paragraphs.

4.8.1 Defalcation of receipts

(SRO, Pattom; April 2011)

The Kerala Treasury Code provides that every officer receiving money on behalf of the Government should maintain a Cash Book and all monetary transactions should be entered in the cash book as soon as they occur and be attested by the head of office in token of check. The cash book should be closed regularly and completely checked. The head of office should verify the totalling of the cash book or have this done by some responsible subordinate other than the writer of the cash book and initial them as correct. Rule 92(c) of the Kerala Treasury Code Vol.I stipulates that a government servant who maintains a cash book, on receiving any money on behalf of the Government, shall remit it into the treasury on the date of receipt or as soon as possible.

We test checked the cash book and related documents for the period from January 2009 to March 2011 and found that cash remitted to Government account was short by ₹ 33,929 in 15 instances. Some of the glaring mistakes are narrated below:

- Collection on 8 September 2009 was ₹ 3,30,832 against which remittance was made for ₹ 3,26,832.
- Undervaluation collection on 25 September 2009 was ₹2,05,450 against which ₹1,93,450 only was remitted.
- Collection of ₹ 6,011 on 29 December 2009 was not remitted to Government accounts.

- Collection on 5 January 2010 was ₹ 1,88,750 against which remittance into the treasury was for ₹ 1,88,550 resulting in short remittance of ₹ 200.

Besides short remittance there were other irregularities which are highlighted below:

- Receipt in respect of disbursement of ₹ 390 on 30 March 2009 was not noted.
- An amount of ₹ 4,09,779 was posted in the payment side of the cash book as against collection and remittance of ₹ 86,081.
- The closing balance of 31 August 2009 was certified as ₹ 3,91,837 against ₹ 4,03,123.
- Total of the entries for 15 September 2009 was arrived as ₹ 5,84,202 against ₹ 5,88,802.
- On 19 September 2009 collection was ₹ 1,51,275. The amount remitted on 22 September 2009 was ₹ 1,75,635 without indicating the details of remittance of ₹ 23,360.
- Receipt as on 29 January 2011 was ₹ 2,13,756. but the amount remitted on 31 January 2011 was ₹ 2,12,213 only.

These cases are only illustrative. Almost all noting in the cash book was not conforming to the cash transactions. We found that all these entries were attested by supervisory staff in token of check. Had the head of office detected these lapses in the initial stage the situation would not have continued for two years.

After we pointed out the matter (April 2011), the Sub Registrar stated that the matter would be examined.

The case was reported to the Government in May 2011; their reply has not been received (December 2011).

4.8.2 Short levy due to undervaluation of property

- (SRO, Rajakumari; August 2010)

> Section 45 B of the Kerala Stamp Act, 1959 stipulates that if the registering authority has reason to believe that the value of the property or the consideration has not been truly set forth in the instrument transferring any property brought before him for registration, he may after registering the document, refer the same to the District Collector for determination of the value or consideration and the proper duty payable thereon. For this purpose the power of the District Collector has been delegated to the District Registrars.

We noticed in two cases that the consideration revealed in documents relating to sale deeds registered on the same day or within a period of one or two weeks in respect of landed properties in the same locality and with similar features, varied substantially. The Sub Registrar had not reported these cases to the District Registrar. These cases should be examined to see whether there is undervaluation.

After we pointed out the matter to the Department in August 2010, the registering authority stated that detailed remarks would be furnished later. We have not received further information from the Department (December 2011).

The case was reported to the Government in May 2011; their reply has not been received (December 2011).

- (SRO, Mulanthuruthy; May 2010)

We noticed in Sub Registry Office, Mulanthuruthy that :-

40.47 ares of land in Mulanthuruthy *panchayat* was sold for rupees four lakh vide sale deed No. 186/08 dated 16 January 2008. On the next day, the same property was pledged with Ernakulam District Co-operative Bank Ltd. against a cash loan of rupees one crore. Hence the sale deed No. 186/08 was undervalued to the extent of ₹ 96 lakh resulting in short levy of stamp duty and registration fee of ₹ 11.52 lakh.

Similarly, 25.49 ares (63 cents) of land in Chottanikkara *panchayat* was sold for consideration of ₹ 12.60 lakh vide sale deed No. 958/08 dated 06 March 2008. 38.4 ares of land in the same survey number adjacent to the above property was registered as a sale deed on the same day for a consideration of ₹ 1.06 crore vide document 962/08 for establishing software unit for export under STP Scheme. This sale was exempted from stamp duty and registration fee shown in the document. The two properties lie adjacent to each other and are similarly placed in all respects. Hence, the property in document 958/08 was undervalued which needs to be examined.

The documents were not reported as cases of undervaluation as stipulated under Section 45 B.

When we pointed out the cases in June 2010, the registering authority stated (June 2010) that detailed remarks would be furnished later. Further report is awaited (December 2010).

The case was reported to the Government in May 2011; their reply has not been received (December 2011).

- (SRO, Mundur; June 2010)

We noticed huge variations in considerations in Sub Registry Office, Mundur in 11 sale deeds registered on the same day or within a period of two or three days in respect of landed properties in the same locality and with similar features sold by the same individual. The documents in which the land value was shown at lesser rates were not referred to the District Registrar as stipulated.

We pointed out the matter to the Department in June 2010. The Department stated (June 2010) that detailed remarks would be furnished later. We have not received further information (December 2011).

The case was reported to the Government in May 2011; their reply has not been received (December 2011).

- (SRO, Kothamangalam; July 2010)

We noticed in Sub Registry Office, Kothamangalam that in three cases properties measuring 26.30 *ares,* 22.26 *ares* and 16.69 *ares* were sold for a sale consideration of ₹ 3.28 lakh, ₹ 3.52 lakh and ₹ 1.60 lakh respectively. These properties were pledged in various branches of Ernakulam District Co-operative Bank Ltd. against cash loans of ₹ 21 lakh, ₹ 21 lakh and ₹ 10 lakh respectively within one to two days from the date of sale. As such the sale deeds were undervalued to the tune of ₹ 17.72 lakh, ₹ 17.48 lakh and ₹ 8.40 lakh respectively and the Sub-Registrar did not report the matter as a case of undervaluation. This resulted in total short levy of stamp duty and registration fee of ₹ 6.32 lakh.

We pointed out the matter to the Department in August 2010 and reported to Government in November 2010. We have not received further information (December 2011).

- (SRO, Chalappuram; May 2010)

We noticed in Sub Registry Office, Chalappuram that 23.72 cents of land was sold in January 2008 for a sale consideration of ₹ 23.72 lakh. We also noticed that in January 2008 itself another five cents of land in the same survey number sharing a common boundary with the first property was sold for a consideration of ₹ 12.50 lakh. As such the sale deed executed for 23.72 cents was undervalued to the tune of ₹ 35.58 lakh. However, the Sub-Registrar did not report the matter as a case of undervaluation.

We pointed out the matter to the Department in June 2010 and reported to Government in October 2010. We have not received further information (December 2011).

- (SRO, Sasthamangalam; May 2010)

We noticed in Sub Registry Office, Sasthamangalam that in December 2008, 2.22 *ares* of land in Thycaud village including a building was sold for a sale consideration of ₹ 4.96 lakh (building: ₹ 21,000, land ₹ 4,75,000). In January 2009 the same property, without any improvement in the land or building, was sold for a consideration of ₹ 28.87 lakh (building ₹ 21,000, land ₹ 28,66,000). As such the document executed in December 2008 was undervalued to the tune of ₹ 23.91 lakh. This resulted in short levy of stamp duty and registration fees of ₹ 3.71 lakh.

We pointed out the matter to the Department in May 2010 and reported to Government in October 2010. The Department stated that the District Registrar (General) has initiated action under Section 45(B) (3) ie. *suo motu*. We have not received further information from the Department (December 2011).

- (SRO, Chalai; March 2010)

We noticed in Sub Registry Office, Chalai that in June 2009, 2.01 *ares* of land including a building was sold for a sale consideration of ₹ 4 lakh (value of land and building: ₹ 2 lakh each). In September 2009 the same property was sold for a consideration of ₹ 25 lakh (land: ₹ 17 lakh and house: ₹ 8 lakh). As such the document executed in September 2009 was undervalued to the tune of ₹ 21 lakh. This resulted in short levy of stamp duty and registration fees of ₹ 3.26 lakh.

We pointed out the matter to the Department in April 2010 and reported to Government in October 2010. We have not received further information from the Government (December 2011).

EXECUTIVE SUMMARY

Tax collection and budget estimates	The Department collected ₹ 1,331.37 crore during the year which represented a 17.70 *per cent* increase over the previous year. The Department's budget estimate is quite accurate as in the last five years, the variation between budget estimates and actual receipts was less than 10 *per cent* in four years.
Very low recovery by the Department	During the last four years, we pointed out short/non-levy of tax, incorrect classification, irregular exemption etc. with revenue implication of ₹ 380.52 crore in 1,164 paragraphs. Of these, the Department/Government accepted audit observations involving ₹ 17.30 crore and recovered ₹ 2.11 crore.
Results of audit	In 2010-11 we test checked the records of 65 units relating to Motor Vehicles Department and detected short/non-levy of tax involving ₹ 6.98 crore in 414 cases. The Department accepted underassessment and other deficiencies of ₹ 1.16 crore in 93 cases, of which nine cases involving ₹ 4.97 lakh were pointed out in audit during the year 2010-11 and the rest in earlier years.
What we have highlighted in this chapter	In this chapter we present a review on 'computerisation in the Motor Vehicles Department' and a few illustrative cases involving ₹ 1.11 crore selected from observations noticed during our test check of records relating to levy and collection of motor vehicle tax in RTOs/SRTOs where we found that the provisions of the Act/Rules were not complied with. It is a matter of concern that similar omissions have been pointed out by us repeatedly in the Audit Reports for the past several years, but the irregularities persist, and remain undetected till we point it out.
Our conclusion	We recommended that the Department must upgrade its computerised system based on independent servers with a centralised server so that duplication of data can be avoided and better access control can be exercised. The Department needs to improve the internal control system so that weaknesses in the system are addressed and omissions of the nature detected by us are avoided in future.

CHAPTER-V: TAXES ON VEHICLES

5.1 Tax administration

The Transport Department is under the control of Principal Secretary (Transport) at Government level and the Transport Commissioner is the head of the Department. The levy and collection of tax and fee in the State are governed by the Motor Vehicles (MV) Act, 1988, Central Motor Vehicles (CMV) Rules 1989 and the Kerala Motor Vehicles Taxation (KMVT) Act, 1976. The activities of the Department include registration of motor vehicles, levy and collection of motor vehicle tax, grant of driving licence and road permits.

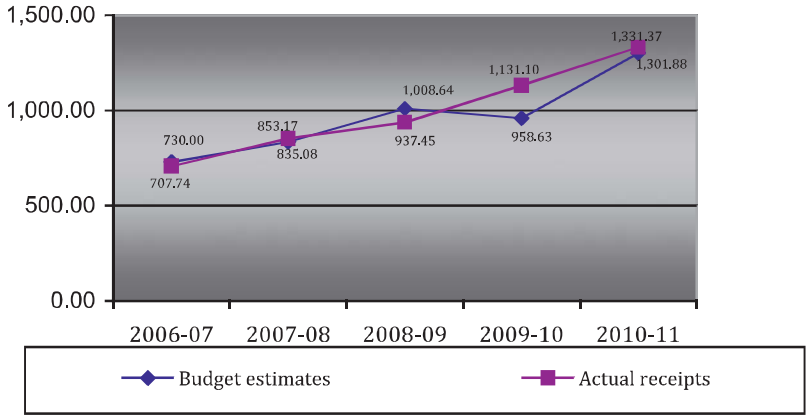
5.2 Trend of receipts

Actual receipts from taxes on motor vehicles during the years 2006-07 to 2010-11 along with the budget estimates during the same period is exhibited in the following table and graph.

(₹ in crore)

Year	Budget estimates	Actual receipts	Variation	Percentage of variation	Total tax receipts of the State	Percentage of actual receipts vis-à-vis total tax receipts	Percentage of growth rate
2006-07	730.00	707.74	(-) 22.26	(-) 3.05	11,941.82	5.93	12.60
2007-08	835.08	853.17	(+) 18.09	(+) 2.17	13,668.95	6.24	20.54
2008-09	1,008.64	937.45	(-) 71.19	(-) 7.06	15,990.18	5.86	9.88
2009-10	958.63	1,131.10	(+) 172.47	(+) 18.00	17,625.02	6.42	20.65
2010-11	1,301.88	1,331.37	(+) 29.49	(+) 2.26	21,721.69	6.13	17.70

Budget estimates and actual receipts



We noticed that except during 2009-10, the variation between the budget estimates and actual receipts was less than 10 *per cent.*

5.3 Cost of collection

The gross collection of revenue receipts under the head Taxes on vehicles, expenditure incurred on collection and the percentage of expenditure to gross collection during 2006-07 to 2010-11 alongwith the all India average percentage of expenditure on collection to gross collection for relevant years are mentioned below:

Year	Collection	Expenditure on collection of revenue	Percentage of expenditure to gross collection	All India average percentage of the previous year
	(₹ in crore)			
2006-07	707.74	21.61	3.05	2.67
2007-08	853.17	26.00	3.05	2.47
2008-09	937.45	30.05	3.21	2.58
2009-10	1,131.10	33.96	3.00	2.93
2010-11	1,331.37	35.55	2.67	3.07

(Source: Finance Accounts for the relevant years)

We note with appreciation that there is a decline in the *percentage* of expenditure when compared to all India average cost of collection during the year 2010-11 which we consider to be largely due to growth in revenue collection.

5.4 Impact of audit

Revenue impact

During the last four years, we pointed out short/non-levy of tax, incorrect classification, irregular exemption etc., with revenue implication of ₹ 380.52 crore in 1,164 paragraphs. Of these, the Department/Government accepted audit observations involving ₹ 17.30 crore and had since recovered ₹ 2.11 crore. The details are shown in the following table:

(₹ in lakh)

Year of Audit Report	Paragraphs included		Paragraphs accepted		Amount recovered	
	No.	Amount	No.	Amount	No.	Amount
2006-07	159	299.00	184	399.24	35	7.45
2007-08	148	206.00	162	271.43	25	13.07
2008-09 Vol I	404	398.00	138	604.64	131	77.66
2009-10	453	37,149.00	369	454.78	432	113.00
Total	**1164**	**38,052.00**	**853**	**1730.09**	**623**	**211.18**

Though the Department accepted 853 cases involving ₹ 17.30 crore against 1164 cases featured in IRs, it could recover ₹ 2.11 crore only which was 12.20 *per cent* of the total accepted amount.

5.5 Results of audit

In 2010-11 we test checked the records of 65 units relating to Motor Vehicles Department. We detected short/non-levy of tax and other irregularities involving ₹ 6.98 crore in 414 cases which fall under the following categories :

(₹ in crore)

Sl. No.	Categories	No. of cases	Amount
1	**All India review on computerisation in Motor Vehicles Department**	1	0
2	Short/non levy of tax	125	1.37
3	Incorrect classification	9	.03
4	Irregular exemption	11	.03
5	Other lapses	268	5.55
Total		**414**	**6.98**

The Department accepted underassessment and other deficiencies of ₹ 1.16 crore in 93 cases, of which 9 cases involving ₹ 4.97 lakh were pointed out in audit during the year 2010-11 and the rest in earlier years. An amount of ₹ 59.04 lakh was realised in 125 cases during the year 2010-11.

A review on "Computerisation in the Motor Vehicles Department" and a few illustrative observations involving ₹ 1.11 crore are mentioned in the following paragraphs.

5.6 All India Review on Computerisation in Motor Vehicles Department

5.6.1 Highlights

- Adequate documentation was not maintained for the development of application SMART MOVE.

(Paragraph 5.6.12)

- Creation of multiple records for vehicles and licences in the database resulted in redundancy of data which adversely affected the reliability of information.

(Paragraph 5.6.14)

- Vehicle particulars and driving license particulars were not captured correctly in the National Register created for vehicles and licenses.

(Paragraph 5.6.15)

- The online services envisaged in the computerisation project to reduce the rush in the RTO offices were not made fully operational.

(Paragraph 5.6.17)

- Unauthorised access to the database is possible by accessing the tables through backend.

(Paragraph 5.6.19)

- Smart card prescribed by Government of India for the issue of registration certificate and driving licences was not implemented.

(Paragraph 5.6.22)

5.6.2 Introduction

The Motor Vehicles Department (MVD) administers the provisions of the Motor Vehicle Acts and Rules in the State and is one of the major revenue earning Departments. MVD had computerised all its major operations such as registration of vehicles, collection of vehicle tax, issue and renewal of permits, driving licences, fitness certificates, conductor licences etc. Sub Regional Transport Office, Pattambi was granted Quality System Certification (ISO:9001:2008) by the Bureau of Indian Standards for the period from 16 March 2011 to 15 March 2014. SMART MOVE (application software for registration of Motor Vehicles, issue of Licences and Permits connected with Motor Vehicles) was also selected as a finalist for the Microsoft's SKOCH Awards (award funded and managed by Microsoft Corporation) for the year 2006.

5.6.3 Organisational setup

The Department is headed by the Transport Commissioner and under him four zonal offices, 18 Regional Transport Offices (RTO), 47 Sub Regional Transport

Offices(SRTO) (including five new offices proposed/opened in 2011) and 17 check posts are also functioning.

5.6.4 History of computerisation

The Department signed a Memorandum of Understanding (MoU) with the National Informatics Centre (NIC) for the development of an application software based on the core software provided free of cost by NIC Delhi unit in 2001. Computer Aided Learners Driving Licence System (CALLS) was installed at RTO, Thiruvananthapuram on 23 May 2002, at Ernakulam on 21 November 2002 and at Kozhikode on 13 June 2003. The customised application SMART MOVE based on VAHAN (a software for Registration of Vehicles) and SARATHI (a software for issue of licences connected with Motor Vehicles) software, comprising 97 modules, was installed for automation of all activities in RTO, Thiruvananthapuram as a pilot project in October 2002, funded by State Government. This project was replicated in RTO, Ernakulam under the modernization of information technology (MIT) project which was financed by the Government of India, Ministry of Information Technology in 2004. The State Government vide GO Ms 7/03-Tran dated 25 February 2003 decided to roll out computerisation of all other RTOs, SRTOs and Checkposts as a Build Operate Maintenance and Transfer (BOMT) model. Electronic Corporation of India Limited (ECIL) was entrusted with the implementation of the project with responsibility to create the infrastructure and provide support manpower and facility management to the MVD for a period of three years from the date of declaration of 'GO LIVE' of the project. The project was declared 'GO LIVE' on 1 January 2007. It was also decided that payment to the service provider (ECIL) was to be made from the service charges collected for each service rendered by the Department. Computerisation was completed in the Transport Commissionorate, 63 field offices and 17 check posts. Four zonal offices were not computerised. M/s. ECIL was the service provider for the period from 1 January 2007 to 31 December 2009 and from 1 July 2010, Centre for Development of Information Technology (C-DIT) is the service provider.

5.6.5 Information system

The application SMART MOVE is a two-tier Graphical User Interface (GUI) application written in Visual Basic and supports MSSQL Server 7.0, 2000 or higher.

5.6.6 Objectives of computerisation

The objectives of computerisation were as follows:

- Achieve computerisation in all the offices of the Department.
- Provide efficient, transparent, faster and quality services to the citizens.
- Provide better facilities and ambience to the citizens in the offices.
- Provide better working conditions to the staff.

- Digitize manual records of licences and registration books.
- Achieve total network connectivity through KSWAN between all the offices of the Department.

5.6.7 Background of the review

We had already conducted an integrated review on the functioning of Motor Vehicles Department including IT aspects in 2010 and our observations featured in the Audit Report for the year 2009-10. The gist of observations relating to IT aspects that appeared in the Report of 2009-10 are given below

- Neither NIC, the software developer nor MVD maintained any documentation of the major changes to the application.
- The computers and servers in the MVD had neither bios password nor windows password. There was no physical access control preventing entry of persons into the server room.
- The Windows Server 2003 which hosts the MS SQL database has neither system nor database password and hence access control for initial logging into the SMART MOVE application can be bypassed by a user.
- Due to lack of interconnection, it was not possible to verify the data of a different office when some service has to be rendered in respect of a vehicle registered at another RTO Office.
- The network protection had not been updated since November 2007. The personal firewall preventing internet access had also not been enabled in the computers. Due to lack of timely updating of Anti-Virus software, virus outbreak resulted in system crash at the RTO, Ernakulam in June 2009.
- The MVD did not carry out necessary tests stipulated in the agreement with ECIL before declaring 'Go-Live'.
- Despite the Government of Kerala directions on quality assessment on the implementation of e-governance solutions, the steps for carrying out the standardisation test have not been done so far.
- An analysis of data stored in vehicle registration table showed that the chassis number was not unique. The presence of duplicate chassis numbers in the database was due to the lack of input validation check in the database.
- We observed that there was no provision in the registration module to capture details of insurance cover, which was a statutory requirement under Chapter XI of the MV Act.
- We observed that Demand Collection Balance (DCB) module in the software SMART MOVE was not generating true information on arrears of tax in respect of transport vehicles.

The present review was taken up as part of an All India review to assess the overall achievement of computerisation at the national level and on the compatibility of State and National Register for vehicles and driving licences.

5.6.8 Audit objectives

The audit objectives were to ascertain whether :-

- The overall objectives of computerisation were achieved;
- The variation, if any, of SMART MOVE from VAHAN and SARATHI affected the computerisation objectives of the Ministry of Transport;
- The computerised National Permit System was implemented as planned for the project objectives were achieved;
- Reliable general and security controls exist; and
- An Internal control mechanism is in place with Department.

5.6.9 Audit methodology

We conducted the audit during the period from June to August 2011 covering the period from 2005-06 to 2010-11. Apart from the office of the Transport Commissioner we collected data from 13 field offices[1] (including two check posts) spread over Kerala by adopting Simple Random Sampling Method.

5.6.10 Audit criteria

The provisions in the Motor Vehicles Act 1988, Central Motor Vehicles Rules 1989, Kerala Motor Vehicles Rules 1989, Kerala Motor Vehicles Taxation Act 1976, Kerala Motor Vehicles Taxation Rules 1975, Project Documents, User Requirement Specification (URS), System Requirement Specification (SRS) and System Design Document (SDD) were relied upon as criteria to review the Department's performance.

5.6.11 Acknowledgement

We acknowledge the co-operation extended by the MVD in providing necessary information and records to audit. We held an entry conference on 9 June 2011 with the Transport Commissioner wherein the scope and methodologies of audit were explained. We held an exit conference on 28 October 2011 with the Secretary to the Government wherein key audit findings and recommendations were discussed. The responses made during the exit conference and on other occasions have been suitably incorporated in the report.

[1] RTO: Palakkad, Vatakara, Thiruvananthapuram and Wayanad.
SRTOs: Adoor, Chenganoor, Kayamkulam, Nedumangad, Pattambi, Perumbavoor and Ponnani
Check Posts: Velanthavalam and Walayar

Audit findings

5.6.12 No guidelines/specifications or documentation for the customisation of VAHAN & SARATHI

NIC Kerala unit developed the application SMART MOVE for the Motor Vehicles Department (MVD) by making modifications in the core software VAHAN and SARATHI supplied by the NIC, Karnataka unit. The MoU between the Government of Kerala and NIC Kerala unit (signed on 25 July 2001) required thorough examination of the desired modifications by a team of officials from NIC and MVD and approval of agreed changes/modifications by the Transport Commissioner and the Principal Secretary to the Government. We however noticed that no documentation was maintained of the changes incorporated in the customised application. In the absence of documentation we are unable to express an opinion on the justifications for the changes and whether all the changes decided and agreed upon were actually carried out.

5.6.13 Deficiency in interconnectivity

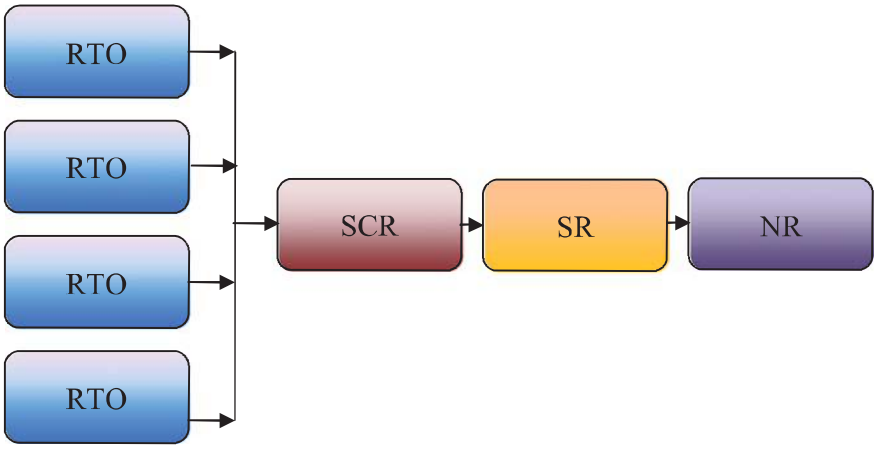
All the offices except the check posts were connected to the State Data Centre (SDC) either through the Kerala State Wide Area Network (KSWAN) or through BSNL leased line. Due to lack of connectivity the check post staff could not access the State Consolidated Register (SCR) or National Register (NR) to check the authenticity of the records produced by the vehicle owners in case of a doubt on the genuineness of the records. The Department may consider interconnecting the check posts to strengthen their effectiveness.

5.6.14 Creation of multiple records for vehicles and licences resulted in redundancy of data which adversely affected the reliability of information

Data related to vehicles and licences at each RTO/SRTO in the State are stored in independent servers kept at respective locations. This data is transmitted and updated at the database in the servers at SDC, Thiruvananthapuram maintained by the Kerala IT Mission every 10 minutes. From the SDC the data is again transmitted to the database of the State Register (SR) maintained by NIC at Poonkulam, Trivandrum. Data from SR is transmitted to the National register maintained in the servers at Hyderabad.

Data in respect of some vehicles or licences were stored in more than one RTO office due to change of address of the vehicle owner/ license holder, transfer of ownership of vehicles, issue of permits from a different office other than the one where the vehicle was registered, remittance of tax in different offices etc. Therefore multiple records in respect of one vehicle or one license were created in the database of the servers in the SDC. The web site of the Kerala Motor Vehicles Department was relying up on the data available with the SDC. When the information about a vehicle or driving licence is enquired through the department website, more than one record could be retrieved in several cases and it would not be possible to ascertain which data was current and valid. The Ministry of Road

Transport and Highways started a website parivahan.nic.in on 20 July 2011. Details of vehicles and licences are also available in this site which is retrieved from the NR to which data is transmitted from the respective SR. Even though multiple records in respect of the same vehicle was noticed in the SCR, only the latest changed record is being transmitted to the NR. Even though the NIC maintained a server at Poonkulam for SR, data from SR was not made available to the website. Department could not explain the process of data transmission from the SCR to SR and from SR to NR.



5.6.15 Discrepancies in the National Register

The ultimate objective of computerisation was to create State and National Registers for vehicles and licences. The objectives of creation of such registers were to provide online services to customers, to provide information to State Transport Department, Department of Road Transport and Highways, RTOs, border checkposts, Police Department etc and to act as backup data in the event of a disaster, as a repository at the State and National level. We found the following discrepancies in the information available in the NR.

- Vehicles were wrongly classified in the NR even though the classification was correctly captured in the SCR. For example a vehicle correctly classified as 'Motorcycle above 95 cc' in the SCR was wrongly shown as 'Goods Carriage National Permit' in the NR.
- Details of vehicles with registration numbers starting from 1 to 999(all series) were not captured in the NR.
- Even though provision was made in the NR to capture 'class of vehicle' in respect of driving license, such data was not updated from the SR.

5.6.16 Variations between the National register and State consolidated register

- The format of License Number in the SCR (like '01/5583/1988' consisting of three fields viz RTO code, License No., License Year) is different from

the format used in the NR (for the above license is KL01 19880005583). Thus the public would be unable to input the licence number in the national website to get online service due to the difference in the format of licence number in the State and National register.

- There was no provision in the NR to capture information on permit, validity of certificate of fitness in respect of transport vehicles, validity of registration in respect of non-transport vehicles and tax remittance particulars.
- Provision to capture the serial number of the present owner of a vehicle was made in the NR, but data in respect of Kerala vehicles were blank due to non-inclusion of this information in the SCR. This information would be helpful in knowing the number of ownership changes for a particular vehicle.
- Provision for incorporating insurance policy particulars such as Policy Number, Name of Insurance Company and date of expiry of policy were made in the NR whereas provision for the same was not available in SCR. Even if the provision was made in the software, the vehicle owners have to approach the field offices to update the validity each year on renewal of insurance policy as there is no connectivity between field offices and Insurance Companies for online updating.
- License for establishing vehicle pollution testing centre are issued by the Department. No provision for issue/ renewal of such license electronically was made in SMART MOVE. Provision for updating the information on Pollution Under Control Certificate (PUCC) issued by such institutions in respect of vehicles in the vehicle registration table was also not made.
- In VAHAN, details of recovery of tax, fees or fine pointed out in audit can be entered, but no such facility exists in SMART MOVE.

5.6.17 Non-operation of online services

The Department provided e-application for 20 services through their website *www.keralamvd.gov.in* hosted in 2008. Even though it was termed as e-application, the facility provided through the web site was only for filling up and taking print out of the application forms. The applicant has still to approach the concerned RTO office along with the applications printed from the site and submit supporting documents for availing the service. As the e-payment facility was also not made operational, the applicant still has to visit the concerned RTO for remitting fees even for the services for which presence of the applicant or production of the vehicle was not required and hence the concept of 'Any where any service' could not be fulfilled.

5.6.18 Insufficient power supply

In the presence of audit on 11 July 2011, the RTO, Thiruvananthapuram could not function upto 1.00 PM due to power failure. No generator was installed in the office due to lack of space. The Joint RTO, Perumbavoor, Joint RTO Chengannur and Joint RTO, Adoor also stated that the generators installed were not functioning properly. Also in almost all the field offices the generator backup covers only 60 *per cent* of the total systems available. In respect of other systems only UPS backup is available for about an hour.

5.6.19 Security flaw in the software SMART MOVE

All the back end tables in the database stored in the servers of field offices are accessible to anyone from the client machines. Using SQL query option in MS-Excel a user can write SQL Queries in the Query Window in Excel and can modify data, add data or delete data/ table from the database. Any user can bypass the SMART MOVE and directly access the backend tables as mentioned above. Therefore the username and password provided to the users in the Department to log on into SMART MOVE is not effective in restricting unauthorised access to the database.

Even though the lapses in the security of the IT system were pointed out in the Audit Report of 2009-10, the Department introduced new security policy only in 35 offices and rectified the problem. In the remaining offices the flaw was still continuing.

5.6.20 Ineffective virus control

According to the agreement signed between the Department and service providers the responsibility for procuring the Antivirus package (Symantec Endpoint Protection 11.0) is vested with the Department and its installation and periodic updation is the responsibility of the service provider. Out of 14 offices test checked, Symantec Endpoint protection was not installed in the servers in three offices. In the other offices even though it was installed in servers, automatic updation in the client machines was not possible as the software was installed with the 'unmanaged' option instead of 'managed client server' option. In SRTO, Nedumangad instead of Symantec Licensed version, free edition of 'Avast Antivirus' was used. The responsibility to install and update the Symantec Antivirus package was vested with the service provider and was to be ensured by the head of office. The Transport Commissioner did not monitor the compliance.

5.6.21 Introduction of new national permit system

According to the new National permit system introduced by the Ministry of Transport and Highways, the registered owner of National permit goods carriages has to remit ₹ 15,000 to get an authorisation for plying his vehicle throughout India for one year. The amount shall be remitted through an SBI account opened for the purpose. The payment details shall be updated in the web portal vahan.nic by the bank authorities and authorisation shall be got printed and handed over to

the vehicle owner by the concerned RTO by accessing the website. For logging into the website, user ID and password were given to each RTO. The RTOs were unable to extract the list of vehicles authorised by him to ply under new permit system as such a feature was not provided in the website.

5.6.22 Non-introduction of smart card

The driving licence and registration certificate should be printed in the form of smart card as per rule 16(2) and (3) of Central Motor Vehicle Rules, 1989. Smart card should have also the facility to record the offences committed and penalties imposed on the license holder in addition to the data made compulsory by MV Act. Smart card has not been introduced in Kerala till date. The Department replied that tenders have been invited to identify the service provider for introducing smart card.

5.6.23 Defective/non-functioning of modules in SMART MOVE

The following problems were brought to the notice of audit by the field office staff in the working of various modules in SMART MOVE;

i. Closing balance of a preceding quarter in the DCB statement does not tally with the opening balance of the succeeding quarter.

ii. Refund of fee deposited for fancy registration number reservation to the unsuccessful bidder through SMART MOVE was not possible.

iii. When the class of vehicle is altered as non transport, the validity of the changed status is not shown in the Registration Certificate (RC) printout.

iv. In case of issue of license to driving school, heavy goods and passenger vehicle class cannot be added to the license.

v. The change of address in RC/RC cancellation cannot be issued in SMART MOVE 6.0.4

vi. RMA(Registration Mark Assignment)action/issue-verify window was not active in SMART MOVE 6.0.4

vii. Printing of RCs and Driving Licenses (DL) through new version in SMART MOVE 6.0.4 was not possible.

viii. To overcome the constraints faced in SMART MOVE 6.0.4 , the old version SMART MOVE 6.0.1 is also being used in field offices.

ix. Stock of DL cards, RC forms, Fees receipts, tax tokens cannot be entered and issued through SMART MOVE.

x. Full particulars of vehicle details or driving licence details relating to other offices cannot be downloaded from the Department website.

The Department admitted the problems mentioned in item(i) and (ii) as flaws in the software. But in respect of items (iii) to (x) they replied that these could be sorted out either by the service provider or by the staff in the Smart Support

Group (SSG) which was formed at the Transport Commissionorate to take up the issues related with the IT system.

5.6.24 Non-updation of master table

A master table called "Vehmast" was created in the database containing particulars of all models of vehicles available in the Indian markets. Particulars of the latest models of vehicles could be incorporated in this table only at the office of the Transport Commissioner and patches containing the modification have to be sent to all the RTOs to update their database. We noticed that details of all the latest model vehicles were not incorporated in the master table "Vehmast" which necessitated vehicle details to be keyed in to the system by the counter clerks at the field offices. We are of the view that non-updation of 'Vehmast' table and allowing field offices to capture details defeats the data validation controls and could result in wrong/partial entries of vehicle particulars which would in turn result in short/excess levy of tax. For example, tax in respect of motorcars, goods carriages and stage carriages are calculated based on the cubic capacity/unladen weight, gross vehicle weight and number of seats in the vehicle respectively. The Department replied that the 'Vehmast' table was made up-to-date. We verified the table again but found that it was not updated.

5.6.25 Incomplete legacy data

We found that transmission of legacy data relating to the period before computerisation, to the database was not completed in most of the field offices (except RTO, Wayanad, SRTO, Kayamkulam, SRTO, Ponnani) and the verification of the data already entered was also not done.

5.6.26 No provision for generating reports

It was found that statements of collection of fees, tax, cess, service charge, compounding fee etc for a quarter or year, report of number of driving license issued/renewed, permits issued/renewed, vehicles fined etc for a quarter/year which are required to be sent to DTC, TC are still prepared manually in all offices since the system has no report generation facility.

5.6.27 Failure of business continuity planning

Business continuity planning is essential to ensure that the organisation can minimise disruption to business and resume processing in the event of natural disaster or other untoward incident. Regular back up of data is important to achieve business continuity planning. According to the back up policy evolved and circulated by the Department, differential backup is to be taken on a daily basis and full back-up on weekly basis and sent to the Transport Commissioner. Back-ups were also to be stored in the main server, back-up server and another computer.

The main server in the SRTO, Perumbavoor was down on 3 December 2010 in the morning before the commencement of the office work. The Department could

not resume the functioning of the office till 6 December 2010 as the attempt to restart the work by making use of the back-up server failed. The back-up server could be operationalised only on 6 December 2010 after restoring the data available in the back-up CDs containing data up to 2 September 2010. As a result the data related to the period from 3 September 2010 to 2 December 2010 was lost. Although some portion of the lost data was restored from the server in the State Data Center, the Department did not restore complete data even after a lapse of six months. In SRTO Adoor, full backup to the tape cannot be taken due to error. The last full backup was taken on 2 February 2011. In RTO Wayanad, the office could not function on 16 August 2010 due to server problems. The Transport Commissioner neither replied to the above observations nor fixed responsibility on the respective field officers for the lapses.

We had suggested in the Audit report 2009-10 (Revenue Receipts, Chapter V, Taxes on Vehicles, Para 5.8.12.6), the necessity of a single server system to be maintained at the Transport Commissionerate to transmit data from all RTO/SRTOs so as to act as a backup. Had this been implemented the loss of data could have been avoided.

5.6.28 Change control procedures

Change management is a key IT control used to regulate system changes. It reduces the possibility of unauthorised changes to the system without forethought and ensures proper documentation of system changes. We noticed that at least ten versions of application software SMART MOVE and about 40 patches were released by NIC from September 2006 depending on the needs of the Department and changes in the taxation rules. The non maintenance of proper documentations for system changes was commented in the report for the year 2009-10. The latest version of SMART MOVE 6.0.4 was introduced in 2010-11. For this version also the Department had not maintained documentation. The Transport Commissioner stated that proper documentations was made for modification in the software and each modification was introduced only after testing and field trial. However copies of such documentation were not produced to Audit for verification.

5.6.29 Post implementation review (PIR)

A post implementation review (from a project management perspective) evaluates how the project was run and whether or not the goals have been accomplished. The post implementation review results in the PIR report, which is essentially the lessons learned document. A PIR would bring to light the area of weaknesses, deficiencies, flaws, drawbacks, etc. based on which the management could take measures to improve the system so that the goals are achieved with limited resources. We observed that no such review was conducted.

5.6.30 Conclusion

We found that

- Reliability of data in the National Register was not ensured.

- Creation of duplicate records in SCR resulted in redundancy of data.
- Online services were not made fully operational.
- Business continuity planning was not adequately monitored.
- The system security is compromised due to lack of system controls.
- Defective/Non-functioning of Modules in SMART MOVE reported by the field offices was not redressed.
- Smart card was not introduced.

5.6.31 Recommendations

- The Department may replace the existing system of storing data at independent servers in various locations with a centralised server system.
- E-payment/online submission of application may be enabled to facilitate online services.
- The Department may consider recruiting qualified personnel to administer the IT applications.

5.7 Other audit observations

We scrutinised the records of various Transport Offices which revealed several cases of non-compliance of the provisions of the Motor Vehicles Act 1988 (MV Act) and the Kerala Motor Vehicles Taxation Act (KMVT Act), 1976 and Government notifications and other cases as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on a test check carried out in audit. Such omissions on the part of the Regional Transport Officers (RTOs) are pointed out by us each year but not only do the irregularities persist; these remain undetected till an audit is conducted. There is need for the Government to improve the internal control system.

5.8 Non-compliance of provisions of Acts/Rules

The provisions of the MV Act and KMVT Act and Rules made thereunder provide for:

i) collection of revenue on transport vehicles/stage carriages;

ii) levy of tax/fees at the prescribed rates within the due dates; and

iii) levy of penalty for various offences.

We noticed that the RTOs did not observe some of the above provisions which resulted in non/short levy of tax/fee/fine of ₹ 1.11 crore as mentioned in paragraphs 5.8.1 to 5.8.5.

5.8.1 Short levy of one time tax

(8 RTOs[2] and 19 SRTOs[3]; June 2010).

Section 3(1) of the KMVT Act, 1976, stipulates that one time tax shall be levied from the date of purchase of vehicle at the rates specified at the time of first registration of the vehicle. The rate for motorcycles, motor cars, three wheelers and omnibus is six *per cent* of the purchase value of the vehicle. In the case of vehicles registered in the State on or after 1 April 2007 and re-classified as non-transport vehicle from the category of transport vehicle, the rate of one-time tax payable shall be determined on percentage basis with respect to the age of vehicle from the month of original registration.

We noticed that the registering authority short levied one time tax in 258 cases during 2009-10 due to difference in computing tax on purchase value of vehicles migrated from other States. The RTOs/ SRTOs adopted wrong values while manually calculating the rate of tax payable when transport vehicles such as motor cars, three wheelers and omnibus were reclassified as non-transport vehicles. This resulted in short levy of tax of ₹ 45.14 lakh.

After we pointed out the matter to the Department between April 2010 and November 2010 and reported to Government in January 2011, the Department stated (July 2011) that ₹ 6.81 lakh had been collected from 43 cases. Report on recovery of balance amount has not been received (December 2011).

The department may modify the SMART MOVE software to ensure automatic calculation of one time tax.

[2] RTOs: Alappuzha, Ernakulam, Kottayam, Kozhikode,Pathanamthitta, Thirvananthapuram, Thrissur and Wayanad.

[3] SRTOs: Aluva, Changanassery, Cherthala, Irinjalakuda, Guruvayoor, Kanjirappally, Kayamkulam, Kodungalloor, Koduvally, Kothamangalam, Mallappally, Mattancherry, Neyyattinkara, Pala, Perumbavor, Thripunithura, Quilandy, Vaikom and Wadakkancherry

5.8.2 Short collection of permit fee for Educational Institution Bus

(7 RTOs[4] and 25 SRTOs[5]; May 2010 to January 2011)

The Motor Vehicles Act 1988 as amended by Motor Vehicles (Amendment) Act 2000 prescribes contract carriage permit for educational institution buses (EIBs). Government of India, Ministry of Road Transport and Highways in their letter[6] reiterated and clarified that EIBs are contract carriages. Accordingly, the State Government in August 2008 directed the Transport Commissioner to issue contract carriage permit for all newly registered educational institution buses and for all the existing EIBs on the expiry of Private Service Vehicle permits issued to them. The fee prescribed for contract carriage permits are ₹ 2000, ₹ 2500 and ₹ 3000 for vehicles having seats upto 13, between 14 and 20 and above 20, respectively.

We noticed that 32 RTOs/SRTOs issued Private Service Vehicle permits to 1,417 EIBs at the rate of ₹ 500 from June 2009 instead of issuing contract carriage permits from August 2008 onwards. The delay in implementation of the direction of the Government pertaining to contract carriages permits for EIBs resulted in short levy of permit fee of ₹ 32.78 lakh.

Further, the Department continued to issue Private Service Vehicle permits to 419 EIBs after June 2009 instead of levying permit fee at prescribed rates applicable for contract carriage. This resulted in short levy of fee ₹ 9.65 lakh.

After we pointed out the matter to the Department between May 2010 and January 2011 and to the Government in February 2011. The Department stated (July 2011) that ₹ 17.43 lakh had been collected in 826 cases. Report on recovery of the balance amount has not been received (December 2011).

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4 RTOs: Attingal, Ernakulam, Muvattupuzha, Pathanamthitta, Thiruvananthapuram, Thrissur and Wayanad.

5 SRTOs: Adoor, Aluva, Chengannur, Guruvayoor, Kanjirapally, Kayamkulam, Kazhakuttam, Kodungallur, Kothamangalam, Kottarakkara, Koduvally, Mallapally, Mannarkkad, Mattancherry, Mavelikara, North Parur, Nedumangad, Pala, Parassala, Pattambi, Perumbavoor, Punalur, Thripunithura, Vaikom and Wadakkancherry.

6 Letter No. RT-11012/32/008 MVT dt: 28 August 2006.

5.8.3 Non-levy of penalty

(6 RTOs[7] and 11 SRTOs[8]; November 2010).

Under Section 113 of the MV Act, no person shall drive any motor vehicle or trailer, the laden weight of which exceeds the gross weight specified in the certificate of registration. Under Section 194 of the Act, whoever drives a motor vehicle or causes or allows a motor vehicle to be driven in contravention of the above provisions shall be punishable with minimum fine of ₹ 2,000 and an additional amount of ₹ 1,000 per tonne of excess load together with liability to pay charges for off loading the excess load.

We noticed that fine was not collected in certain cases by enforcement officials of the Department when they intercepted overloaded vehicles on road, as the drivers of the vehicles were not having sufficient money with them. In such cases a check report was sent to the RTOs/SRTOs concerned. We found that fine of ₹ 13.79 lakh was not realised in 263 check reports in 17 RTOs/SRTOs during 2009-10.

After we pointed out the matter to the Department between April 2010 and November 2010 and reported to the Government in January 2011, the Department stated (July 2011) that ₹ 3.42 lakh had been collected in 81 cases. Report on recovery of balance amount has not been received (December 2011).

We recommend that the Department may devise a system of recording the offence against the vehicle number so that the fine can be realised at the time of next remittance of tax for the vehicle.

5.8.4 Short levy of one time tax on value on percentage basis

(8 RTOs[9] and 18 SRTOs[10]; October 2010).

Section 3(1) of the KMVT Act stipulates that one time tax is leviable at the rate of six *per cent* of the purchase value of the vehicle at the time of registration of newly purchased motor cycles, motor cars, three wheelers and omni buses with effect from 1 April 2007.

We noticed that the purchase value of vehicles was entered in the computer manually. While capturing the data, the purchase value was entered wrongly without adding discount/Sales tax, cess etc in 658 cases in 26

[7] RTOs: Ernakulam, Kottayam, Muvattupuzha, Pathanamthitta, Thrissur and Wayanad.

[8] SRTOs: Changanassery, Cherthala, Guruvayoor, Irinjalakuda, Kanjirappally, Kodungallur, Kothamangalam, Mavelikkara, Pala, Perumbavoor and Wadakkancherry.

[9] RTOs: Alappuzha, Attingal, Ernakulam, Kottayam, Kozhikode, Pathanamthitta, Thirvananthapuram and Wayanad.

[10] SRTOs: Aluva, Changanassery, Cherthala, Guruvayoor, Kanjirappally, Kayamkulam, Kazhakuttom, Koduvally, Mallappally, Mattancherry, Mavelikkara, North Parur, Nedumangad, Pala, Parassala, Thripunithura, Vaikom and Wadakkancherry.

RTOs/SRTOs during 2009-10. This resulted in short levy of tax of ₹ 6.58 lakh.

After we pointed out the matter to the Department between April 2010 and December 2010 and reported to the Government in January 2011, the Department stated (July 2011) that ₹ 1.34 lakh had been collected in 162 cases. Report on the recovery of balance amount has not been received (December 2011).

5.8.5 Incorrect grant of moffusil permits

(3 RTOs[11]; December 2010).

The KMV Rule 269 stipulates that the minimum seating capacity of a stage carriage shall be directly proportionate to the wheel base of the vehicle. The seating capacity determines the tax due on stage carriage. The seating capacity can be reduced by two seats in respect of vehicles with separate entrance and exit and further reduced by one fifth in respect of vehicles operating as city/town service. However, such vehicles with reduced seating capacity are eligible for moffusil permit only on enhancement of seating capacity to the original position prescribed in the Rule.

We noticed that while transferring the vehicles to the jurisdiction of three RTOs, moffusil permits were granted to seven vehicles after collecting tax based on the reduced seating capacity of the vehicles instead of collecting tax at the minimum seating capacity of the stage carriage proportionate to the wheel base prescribed. This resulted in short collection of tax of ₹ 3.26 lakh.

After we pointed out the matter to the Department between July 2010 and October 2010 and reported to the Government in February 2011, the Department stated (July 2011) that ₹ 1.59 lakh had been collected in one case. Report on the recovery of balance amount has not been received (December 2011).

[11] RTOs: Ernakulam, Kozhikode and Vatakara.

EXECUTIVE SUMMARY

Stagnant tax collection and wide variation from budget estimates	Collection of Land revenue and building tax remained virtually stagnant during 2006-07 to 2010-11. Further, the revenue collection during 2010-11 was 63.92 *per cent* less than the budget estimates.
Internal audit	The Internal Audit Wing (IAW) audits about 22 out of 120 units every year and at this rate it may not be able to cover all the units even once in five years. Further, only 2.01 *per cent* of the outstanding internal audit observations were cleared during 2010-11 which indicates poor response to the IAW observations.
Very low recovery by the Department	During the period 2006-07 to 2009-10 we pointed out underassessment of building tax, short levy of lease rent etc. with revenue implication of ₹ 349.37 crore in 399 cases. Of these, the Department/Government accepted audit observations in 161 cases involving ₹ 9.63 crore but recovered only ₹ 2.32 crore in 127 cases.
Results of audit	In 2010-11 we test checked the records of 61 units relating to land revenue and building tax and detected underassessment of tax and other irregularities involving ₹ 19.34 crore in 38 cases. The Department accepted underassessment and other deficiencies of ₹ 5.62 crore in 110 cases during the year 2010-11. The Department realised an amount of ₹ 84.27 lakh in 62 cases during the year 2010-11.
What we have highlighted in this Chapter	In this Chapter we present illustrative cases of ₹ 3.72 crore selected from observations noticed during our test check of records relating to assessment and collection of building tax in *Taluk* offices where we found that the provisions of the Acts /Rules were not complied with. It is a matter of concern that similar non compliances were pointed out by us repeatedly in the Audit Reports for the past several years, but the irregularities still persist and remain undetected till an audit is conducted.
Our conclusion	We recommend that the IAW needs to be strengthened on a priority basis so that all the units covered by them over a 2-3 year cycle. Further, an action plan may be drawnup to settle the high number of outstanding internal audit observations and to recover underassessments pointed out by us.

CHAPTER - VI : LAND REVENUE AND BUILDING TAX

6.1 Tax administration

The Revenue Department is under the control of the Additional Chief Secretary at the Government level and the Land Revenue Commissioner is the head of the Department. The revenue collection of the Department includes collection of basic tax, plantation tax, lease rent and building tax. The Department realises arrears of public revenue under the Kerala Revenue Recovery Act with interest and cost of process prescribed.

6.2 Trend of receipts

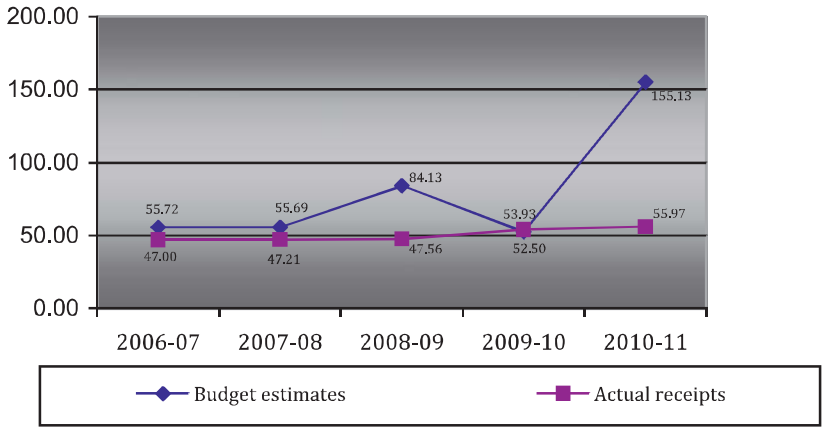
Actual receipts from land revenue and building tax during the last five years (2006-07 to 2010-11) along with the budget estimates during the same period is exhibited in the following table and graph.

(₹ in crore)

Year	Budget estimates	Actual receipts	Variation	Percentage of variation	Total tax receipts of the State	Percentage of actual receipts vis-à-vis total tax receipts	Percentage of growth
2006-07	55.72	47.00	(-) 8.72	(-) 15.65	11,941.82	0.39	7.11
2007-08	55.69	47.21	(-) 8.48	(-) 15.23	13,668.95	0.35	-♥
2008-09	84.13	47.56	(-) 36.57	(-) 43.47	15,990.18	0.30	-♥
2009-10	52.50	53.93	(+) 1.43	(+) 2.72	17,625.02	0.31	13.39
2010-11	155.13	55.97	(-) 99.16	(-) 63.92	21,721.69	0.26	3.78

♥ Not appreciable

Budget estimates and actual receipts



We noticed that the actual receipts fell short of the budget estimates during 2006-07 to 2010-11, except during 2009-10. The shortfall was particularly high during 2010-11 at 63.92 per cent below budget estimates. We are of the view that revenue collection has remained almost static during 2006-07 to 2010-11 and the Department may identify ways to augment revenue. The budget estimate for 2010-11 was raised to ₹ 155.13 crore anticipating additional revenue of ₹ 100 crore from receipts under the Kerala Conservation of Paddy Land and Wet Land Act, 2008, but practically nothing was realised from this source. The Government may examine the reason for non-receipt of revenue from this head.

6.3 Impact of audit

Revenue impact

During the last four years, we pointed out underassessment of building tax, short levy of lease rent, short realisation of collection charges, non-levy of luxury tax etc., with revenue implication of ₹ 349.37 crore in 399 paragraphs. Of these, the Department/Government accepted audit observations involving ₹ 9.63 crore and had since recovered ₹ 2.32 crore. The details are shown in the following table:

(₹ in lakh)

Year of Audit Report	Paragraphs included		Paragraphs accepted		Amount recovered	
	No.	Amount	No.	Amount	No.	Amount
2006-07	91	323.00	28	47.58	28	35.91
2007-08	113	330.00	83	607.05	50	102.00
2008-09 Vol. I (Review)	91	32,562.00	16	222.05	16	35.04
2009-10	104	1,722.00	34	86.55	33	59.34
Total	**399**	**34,937.00**	**161**	**963.23**	**127**	**232.29**

Thus, against the accepted cases involving ₹ 963.23 lakh, the Department had recovered ₹ 232.29 lakh which was 24.11 *per cent*. However, out of the accepted cases involving ₹ 222.05 lakh relating to 2008-09, the Department could recover only ₹ 35.04 lakh which was 15.98 *per cent.*

6.4 Working of internal audit wing

The Internal Audit Wing (IAW) of the Land Revenue Commissionerate is supervised by the Senior Finance Officer under the control of the Commissioner of Land Revenue. The audit of *Taluk* offices, Revenue Divisional Offices and Revenue Recovery Offices are conducted in a period of two to three years. The IAW is manned by one senior superintendent, three junior superintendent and six clerks. Every year about 22 units were taken up for audit which is not sufficient to cover 120 units even in five years. The Department stated that shortage of staff and ceiling on TA restricted the selection of units. During 2010-11 the Department had cleared only 405 paragraphs out of 20,143 paragraphs which is

only 2.01 *per cent* of the outstanding objections. During the previous years also the clearance was marginal. Thus, the functioning of IAW was not effective.

We recommend that the functioning of the IAW may be strengthened by deploying more staff if necessary so that all units could be audited over a reasonable period and targets fixed for timely clearance of outstanding paras.

6.5 Results of audit

We test checked the records of 61 units relating to land revenue and building tax. We detected underassessment of tax and other irregularities involving ₹ 19.34 crore in 38 cases which fall under the following categories:

(₹ in crore)

Sl. No.	Categories	No. of cases	Amount
1	Underassessment and loss under building tax	30	1.74
2	Underassessment and loss under other items	8	17.60
	Total	**38**	**19.34**

The Department accepted underassessment and other deficiencies of ₹ 5.62 crore in 110 cases during the year 2010-11. The Department realised an amount of ₹ 84.27 lakh in 62 cases during the year 2010-11.

A few illustrative audit observations involving ₹ 3.72 crore are mentioned in the following paragraphs.

6.6 Audit observations

We scrutinised the records of various Taluk Offices and found several cases of non- compliance of the provisions of the Rules for Assignment of Land within Municipal and Corporation Areas 1995 (RALMCO) and Kerala Revenue Recovery Rules 1968, (KRR Rules), Kerala Building Tax Rules (KBT) and other cases as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on a test check carried out in audit. Such omissions on the part of the Tahsildars are pointed out in audit each year, but not only do the irregularities persist these remain undetected till an audit is conducted. There is need for the Government to improve the internal control system including strengthening of internal audit.

6.7 Non-compliance of provisions of Acts/Rules

The provisions of the KBT Act/Rules, RALMCO and KRR Rules require:-

i) levy of lease rent on land assigned to various persons at the prescribed rates;

ii) levy of collection charges on the amount recovered under RR Act; and

iii) assessment of building tax and luxury tax at prescribed rates.

We noticed that the Tahsildars did not observe some of the above provisions at the time of levying tax. This resulted in short levy of lease rent/building tax/ collection charges of ₹3.72 crore as mentioned in the paragraphs 6.7.1 to 6.7.6.

6.7.1 Non-levy of luxury tax

(18 *Taluk* offices[1], between April 2010 and February2011)

The Kerala Building Tax Act, 1975 as amended by the Finance Act, 1999 prescribes that luxury tax at the rate of ₹ 2000 is leviable each year on all residential buildings having a plinth area of 278.7 square metres or more and completed on or after April 1999. The Act further stipulates that luxury tax is to be paid in advance on or before 31 March every year.

We noticed from the building assessment register that luxury tax was not demanded/realised on 2,975 residential buildings having plinth area exceeding 278.7 square metres which were completed after April 1999. This resulted in short collection of luxury tax amounting to ₹ 1.69 crore.

After we pointed out the matter to the Department between April 2010 and February 2011, in five[2] cases *Tahsildars* stated that action would be

[1] *Taluk* Offices: Alathur, Aluva, Chavakkad, Chirayinkeezhu, Devikulam, Ernad, Kanayannur, Kottarakkara, Kozhenchery, Nedumangad, Ottappalam, Palakkad, Perinthalmanna, Thalappilly, Thalassery, Thiruvalla, Thiruvananthapuram and Thrissur.

[2] *Taluk* Offices: Alathur, Aluva, Chirayinkeezhu, Perinthalmanna and Thiruvalla

taken to realise the luxury tax and in eight[3] cases *Tahsildars* stated that directions would be given to the village officers to realise the luxury tax due. In five[4] cases *Tahsildars* replied that the matter would be examined. Further developments on the recovery have not been received (December 2011).

We reported the matter to the Government in March 2011. We have not received any further information from them (December 2011).

6.7.2 Non-assessment of building tax

(Five *Taluk* offices[5]; between March 2010 and January 2011)

Under the Kerala Building Tax Act and the Kerala Building Tax (Plinth Area) Rules, 1992 made thereunder, every village officer shall transmit to the assessing authority, within 5 days of the expiry of each month, a monthly list of buildings liable to assessment, together with extracts from the building application register of the local authority within whose area the buildings included in the list are situated.

We cross verified the building tax assessment records of five *taluk* offices with the registers containing building numbers maintained by the local authority for property tax and found that 295 buildings completed between April 2006 and March 2010 were not assessed to building tax. This resulted in non assessment of building tax of ₹ 93.88 lakh.

After we pointed out the matter to the Department between March 2010 and January 2011 the Department stated that the cases would be examined.

We reported the matter to the Government in March 2011; we have not received any further information (December 2011).

6.7.3 Non-collection of security deposit from the assignee

(*Taluk* office, Udumbanchola; February 2010)

Rule 18(2) of the Kerala Land Assignment Rules, 1964 provides that the assignee shall, in addition to the rent payable under Rule 18(1) deposit with the Government in advance an amount equal to one year's rent as security deposit.

We scrutinised the records of *Taluk* office, Udumbanchola and found that lease rent of 149.1053 ha. of land amounting to ₹ 1.66 crore demanded from Agency for Non-Conventional Energy and Rural Technology (ANERT) for the period 2005-06 to 2007-08 was not paid. We noticed that the

[3] *Taluk* Offices: Devikulam, Ernad, Kanayannur, Kottarakkara, Kozhenchery, Nedumangad, Thalassery and Thiruvananthapuram
[4] *Taluk* Offices: Chavakkad, Ottappalam, Palakkad, Thalappilly and Thrissur.
[5] *Taluk* Offices: Aluva, Ernad, Ottapalam, Thalassery and Thiruananthapuram

land was leased out despite the fact that the security deposit of ₹ 55.24 lakh was not paid. Further, the lessee had not paid lease rent of ₹ 1.66 crore for the period 2005-06 to 2007-08 and demand for 2008-09 and 2009-10 for lease rent has not been raised. This resulted in non-deposit of security deposit of ₹ 55. 24 lakh and non-recovery of lease rent of ₹ 1.66 crore.

We pointed out the case to the Department (April 2010) and to the Government in May 2011. We have not received further information (December 2011).

6.7.4 Non-levy of building tax

(*Taluk* office, Kannur; March 2011)

Section 5(6) of the Kerala Building Tax Act, 1975 stipulates that the assessee or the owner of the building shall pay the building tax assessed. Owner includes a person entitled to receive the rent of the building.

We noticed from the building tax assessment register that the *Tahsildar*, Kannur assessed the building tax assessment of a building having plinth area of 23492 m^2 for ₹ 42.01 lakh. The assessment was in the name of the Secretary of the Kannur Municipality. The Municipality was exempted from levy of tax under Section 3(1) (a) of the Act. The building was in the possession of the contractor who constructed the building under Build, Operate and Transfer (BOT) basis. He was entitled to receive rent of the building for 29 years and 3 months and hence was the owner of the building as per the definition of 'owner' and was liable to pay building tax. The municipality failed to bring these facts to the notice of the *Tahasildar* for assessing building tax. The *Taluk* office also did not take efforts to identify the correct owner of the building for levying tax. The irregular assessment of building tax on the Municipality instead of on the owner resulted in non levy of tax of ₹ 42.01 lakh.

After we pointed out (March 2011) the omission, the *Tahsildar* Kannur stated that the matter would be examined. We reported (April 2011) the case to the Government. We have not received reply from them (December 2011).

We recommend that the Government may modify the KBT Act to ensure that the buildings constructed on BOT basis by the municipalities are not eligible for exemption under section 3(1).

6.7.5 Short-assessment of building tax

(Four *Taluk* offices[6]; between August 2010 and February 2011)

The Kerala Building Tax Act, 1975, provides for levy of building tax at the rate specified in the Schedule to the Act on every building, constructed on or after 10 February 1992 and plinth area of which exceeds 100 sq. m. in the case of residential buildings and 50 sq. m. in the case of other buildings. As per Circular[7] instruction given by Secretary, Local Self Government (N) Department in April 2002 Plinth area of structures appurtenant to the building for more beneficial enjoyment of the main building should be added to the plinth area for assessment.

We noticed from the building tax assessment register that in *taluk* office Nedumangad and Kozhencheri, while finalising the assessments of three commercial buildings and a hospital complex, the buildings appurtenant to the main buildings were assessed as separate units. In *taluk* offices Palakkad and Kottayam, tax was assessed for an area less than the actual plinth area of the completed portion of seven buildings. Further, in *taluk* office Palakkad, a building used for non-residential purpose was assessed to tax at the rate applicable to buildings used for residential purpose. These lapses in assessments resulted in short levy of tax of ₹ 8.90 lakh.

After we pointed out the matter to the Department between August 2010 and February 2011, the Department stated that steps would be taken to realise the amount. We have not received further information (December 2011).

We reported the matter to the Government in March 2011. We have not received further information (December 2011).

[6] *Taluk* Offices: Kottayam, Kozhencheri, Nedumangad and Palakkad.
[7] No. 2184/N3/2002 LSG dated 5 April 2002 from LSG (N) Department.

6.7.6 Non-levy of interest

(Five *Taluk* offices[8]; between June 2010 and February 2011)

The Kerala Building Tax Act 1975 as amended by the Finance Act, 1999, stipulates that luxury tax at the rate of ₹ 2,000 is leviable each year on all residential buildings having a plinth area of 278.7 square metres or more and completed on or after 1 April 1999. The Act further stipulates that the luxury tax is to be collected in advance on or before 31 March every year. Section 19 of the Act provides that when luxury tax is not paid on the due date, the arrear of tax shall bear interest at the rate of six *per cent* per annum from the date of default.

We noticed from the luxury tax register that the Department did not levy interest on belated payment of luxury tax in 942 cases in five *taluk* offices. This resulted in non-levy of interest of ₹ 3.45 lakh.

After we pointed out the matter to the Department between June 2010 and February 2011, the Department stated that directions were issued to the Village Officers concerned to collect the interest from the concerned assessees.

We reported the matter to the Government in March 2011. We have not received further information from them (December 2011).

[8] *Taluk* Offices: Ernad, Kasargod, Kottarakkara, Kottayam and Thiruvananthapuram.

EXECUTIVE SUMMARY

Decreasing tax collection and huge short fall compared to budget estimates	Collection of electricity duty decreased for a second year continuously and was at the lowest during 2010-11 in the past five years. Further, during the past five years the actual revenue collection has been persistently short of the budget estimates.
Results of audit	In 2010-11, we test checked the records of five units relating to Power Department and detected under assessment/short levy of tax involving ₹ 3,747.11 crore in six cases. The Department accepted underassessment and other deficiencies of ₹ 2.25 lakh in four cases, of which one case involving ₹ 0.27 lakh was pointed out by us during the year 2010-11 and the rest in earlier years. The Department realised an amount of ₹ 0.86 lakh during the year 2010-11.
What we have highlighted in this Chapter	In this Chapter we present illustrative cases of ₹ 1,108.76 crore selected from observations noticed during our test check of records relating to Electrical Inspectorates where we found that the provisions of the Acts /Rules were not complied with. We noticed that though Kerala State Electricity Board (KSEB) collected electricity duty and other State levies amounting to ₹ 938.14 crore during 2006-10, it did not remit the same to the Government. We consider that such retention of Government revenue was irregular as this action led to significant understatement of revenue from electricity duty in Government accounts.
Our conclusion	We recommend that the Government must take a firm stand on collection of revenue due from KSEB and other paras about the Thrissur Municipal Corporation so as to facilitate preparation of realistic budget estimates and collection.

CHAPTER-VII: OTHER TAX RECEIPTS

7.1 Tax administration

The Kerala Electricity Duty Act, 1963 and Rules made thereunder govern the levy of duty on the sale and consumption of electrical energy. Power Department is under the control of the Secretary (Power) at the Government level and the Chief Electrical Inspector administers the Act with the assistance of Additional Chief Electrical Inspector, Dy. Chief Electrical Inspectors, Electrical Inspectors, Dy. Electrical Inspectors and Asst. Electrical Inspectors on technical matters in Headquarters office. There are 15 Electrical Inspectors out of which 14 are in charge of District offices and one is in charge of the Meter Testing and Standards Laboratory.

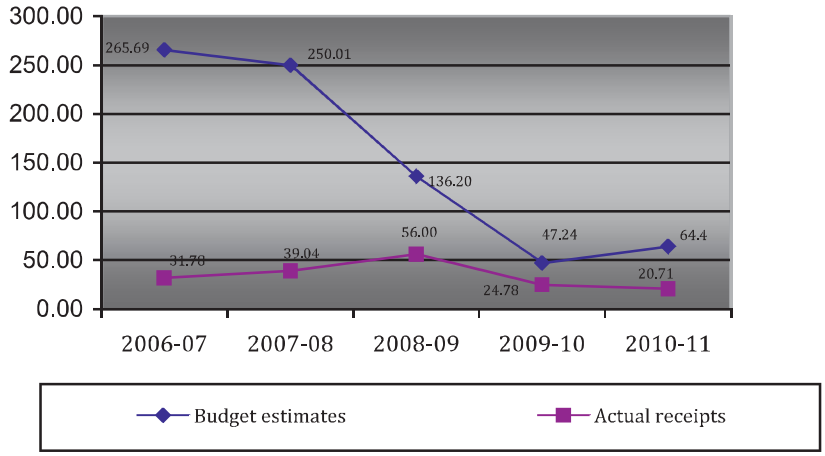
7.2 Trend of receipts

Actual receipts from electricity duty during the last five years (2006-07 to 2010-11) along with the budget estimates during the same period is exhibited in the following table and graph.

(₹ in crore)

Year	Budget estimates	Actual receipts	Variation	Percentage of variation	Total tax receipts of the State	Percentage of actual receipts vis-à-vis total tax receipts	Percentage of growth
2006-07	265.69	31.78	(-) 233.91	(-) 88.04	11,941.82	0.26	0.82
2007-08	250.01	39.04	(-) 210.97	(-) 84.38	13,668.95	0.28	22.84
2008-09	136.20	56.00	(-) 80.20	(-) 58.88	15,990.18	0.35	43.44
2009-10	47.24	24.78	(-) 22.46	(-) 47.54	17,625.02	0.14	(-) 55.75
2010-11	64.40	20.71	(-) 43.69	(-) 67.84	21,721.69	0.09	(-) 16.42

Budget estimates and actual receipts



The actual receipts from electricity duty was less than the budget estimate during the last five years. The receipts during 2010-11 was ₹ 20.71 crore which was the lowest in the past five years. The Department may analyse the reason for the declining trend in revenue and fix realistic targets.

7.3 Results of audit

In 2010-11 we test checked the records of five units relating to Power Department. We detected under assessment/short levy of tax involving ₹ 3,747.11 crore in six cases which fall under the following categories :

(₹ in crore)

Sl. No.	Categories	No. of cases	Amount
1	Short /Non-levy of tax	5	3747.09
2	Other lapses	1	0.02
	Total	**6**	**3747.11**

The Department accepted underassessment and other deficiencies of ₹ 2.25 lakh in four cases, of which one case involving ₹ 0.27 lakh was pointed out by us during the year 2010-11 and the rest in earlier years. The Department realised an amount of ₹ 0.86 lakh during the year 2010-11.

A few illustrative cases involving ₹ 1,108.76 crore are mentioned in the following paragraphs.

7.4 Audit observations

Scrutiny of the records of various Electrical Inspectorates and Commercial Tax Offices revealed several cases of non-compliance of the provisions of the Kerala Electricity Duty Act, 1963 and Kerala Tax on Luxuries Act, 1976, and other cases as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on a test check carried out in audit. Such omissions on the part of the Electrical Inspectors/CTOs are pointed out by us repeatedly but not only the irregularities persist; these remain undetected till an audit is conducted. There is need for the Government to improve the internal control system.

A. Taxes and Duties on Electricity

Non-observance of the provisions of the Kerala Electricity Duty Act and Surcharge Act resulted in non-collection of electricity duty.

7.5 Irregular retention of electricity duty by KSEB and resultant under budgeting

(Chief Electrical Inspectorate, Thiruvananthapuram; January 2011)

The Kerala Electricity Duty Act, 1963 authorises licensees to collect and pay to the Government electricity duty under Section 4 and under item number 5 of the schedule to Section 5. The Kerala State Electricity Surcharge Act 1989 empowers the licensees to collect and pay the surcharge duty to Government. Further, the Act provides for payment of interest of not more than 18 *per cent* in case the dues are not paid in time.

We conducted a review on electricity duty during 2003 and pointed out that electricity duty collected by the Kerala State Electricity Board (KSEB) was not paid to the Government. In response, the Government resolved (November 2006) that electricity duty collected by KSEB till March 2006 would be adjusted against claims due to KSEB, and the electricity duty collected from April 2006 should be promptly paid to Government.

However, we noticed that though KSEB collected electricity duty and other State levies amounting to ₹ 938.14 crore for the years 2006-07 to 2009-10, it did not remit the same to Government. Instead, it retained this amount and provided an additional amount of ₹ 168.91crore as interest payable at nine *per cent* in its accounts. Thus the total dues of KSEB at the end of 2009-10 was ₹ 1,107.05 crore. The retention of Government revenue was irregular; as such an action led to significant understatement of revenue from electricity duty in Government accounts. We noticed that even though more than ₹ 300 crore was due as electricity duty, the estimate for budget from electricity duty was reduced year

after year which does not give correct picture of revenue realisable under the head of account.

The improper procedure was pointed out to the Department in January 2011. The Department stated that Government has constituted a committee to consider the issue.

We pointed out the case to the Government in May 2011; their reply has not been received (December 2011).

7.6 Loss of revenue due to non-collection of inspection fee

(Electrical Inspectorate, Thrissur; September 2009)

Cable TV operators were permitted to draw their net work through utility poles of the Kerala State Electricity Board. The Inspectors in the Electrical Inspectorate should inspect the network and issue a safety certificate based on an application by the operator. The application shall be filed along with a fee of ₹ five per pole. The fee fixed for inspection was ₹ five per pole per year which should be paid in advance.

We scrutinised the records of the District Electrical Inspectorate, Thrissur and found that inspection fee of ₹ 11.96 lakh was not collected in respect of 46 cable TV operators for the period 2002-03 to 2008-09.

We pointed out the case in September 2009. The Department (October 2010) stated that they had collected ₹ 8.70 lakh as per their records, against ₹ 11.96 lakh pointed out by audit. Further reply in respect of collection of the balance amount is awaited.

We pointed out the case to the Government in May 2011; their reply has not been received (December 2011).

7.7 Non-remittance of interest on belated payment of Electricity Duty by Thrissur Municipal Corporation

(Chief Electrical Inspectorate, Thiruvananthapuram; January 2011)

Section 8 of the Kerala Electricity Duty Act, 1963 provides that if any sum due on electricity duty is not paid within the time allowed under Rule 3 of the Kerala Electricity Duty Rule, it shall be treated as arrears. Arrears with interest not exceeding 18 *per cent* per annum shall be recoverable either through a Civil Court or as an arrear of land revenue.

We noticed that Thrissur Municipal Corporation was liable to pay electricity duty for the period from April 2009 to March 2010 aggregating ₹ 4.15 crore. They paid ₹ 2.84 crore with a delay ranging from 45 to 150 days, leaving a balance of ₹ 1.31 crore. We also found that the

interest[1] leviable on the belated remittance of ₹ 2.84 crore worked out to ₹ 9.41 lakh and on the balance amount of ₹ 1.32 crore (for the period April 2010 to January 2011) the interest worked out to ₹ 9.86 lakh. However, the CEI had not initiated any action to recover the arrear amount of ₹ 1.31 crore and the total interest of ₹ 19.28 lakh from the Corporation.

We pointed this out to the Department and reported it to the Government in February 2011. We have not received further information (December 2011).

B. LUXURY TAX

Non-observance of the provisions of Luxury Tax Act by the assessing officers resulted in short collection of luxury tax of ₹ 7.63 lakh as mentioned in paragraphs 7.8 and 7.9

7.8 Application of incorrect rate of tax

(CTO, LT, Thiruvananthapuram; March 2011)

Section 4(2)(a) of the Kerala Tax on Luxuries Act, 1976 provides that if gross charges of accommodation for residence and other amenities provided in a hotel exceeds ₹ 500 per day per room, luxury tax leviable is 15 *per cent* with effect from July 2006.

We noticed that while completing the luxury tax assessment of a hotel for the year 2006-07 charging rent exceeding ₹ 500 per room, luxury tax on the turnover of ₹ 1.02 crore for the period from July 2006 to March 2007 was assessed to tax at 10 *per cent* instead of at the correct rate of 15 *per cent*. This resulted in short levy of tax of ₹ 5.11 lakh.

We pointed out the matter to the Department in March 2011 and reported to the Government in May 2011. We have not received further information (December 2011).

7.9 Incorrect computation of tax

(CTO (LT), Thiruvananthapuram; March 2010)

The Kerala Tax on Luxuries Act, 1976, stipulates that where the rate of charges for accommodation for residence and other amenities and services are not more than ₹ 500 per day per room luxury tax is leviable at 10 *per cent*.

We noticed from the records that luxury tax of a hotel on a turnover of ₹ 28.03 lakh was wrongly assessed (October 2008) as ₹ 28,027 instead of ₹ 2.80 lakh. This clerical mistake resulted in short levy of tax of ₹ 2.52 lakh.

[1] At the rate of nine *per cent* for delayed payment as worked out in para no. 7.5

We pointed out the matter to the Department (March 2010) and the Government in May 2011. The Government stated (November 2011) that the assessment has been modified (August 2011) and demand notice issued. We have not received further information (December 2011).

CHAPTER-VIII: NON-TAX RECEIPTS

8.1 Tax administration of Forest Department

The Forest Department is under the control of the Principal Secretary (Forest) at Government level and the Principal Chief Conservator of Forest is the head of the Department. The Kerala Forest Act, 1961 contains provisions relating to protection and management of forests in the State. The receipts of the Department include receipt from the sale of timber and other forest produce, royalty on raw materials supplied, lease rent, licence fee etc.

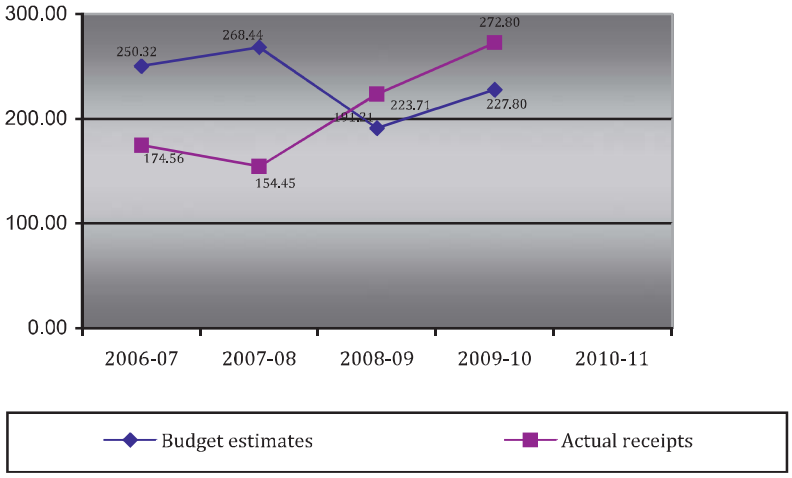
8.2 Trend of receipts

Actual receipts from Forest during the years 2006-07 to 2010-11 along with the budget estimates during the same period is exhibited in the following table and graph.

(₹ in crore)

Year	Budget estimates	Actual receipts	Variation	Percentage of variation	Total non-tax receipts of the State	Percentage of actual receipts vis-à-vis total non-tax receipts	Percentage of growth
2006-07	250.32	174.56	(-) 75.76	(-) 30.27	844.51	20.67	(-) 7.93
2007-08	268.44	154.45	(-) 113.99	(-) 42.46	1,078.00	14.33	(-) 11.52
2008-09	191.21	223.71	(+) 32.50	(+) 17.00	1,390.00	16.09	44.84
2009-10	227.80	272.80	(+) 45.00	(+) 19.82	1,633.22	16.70	21.94
2010-11	360.11	274.10	(-) 86.01	(-) 23.88	1,739.58	15.75	0.47

Budget estimates and actual receipts



We noticed that though actual receipts increased marginally during 2010-11, further, they were less than the budget estimates by 23.88 *per cent.*

8.3 Results of audit

In 2010-11 we test checked records of 43 units relating to the Forest Department and noticed underassessment of tax and other irregularities involving ₹ 3.83 crore in nine cases which fall under the following categories:

(₹ in crore)

Sl. No.	Categories	No. of cases	Amount
1	Non-realisation of revenue due to inordinate delay in taking decision by the High Power Committee	1	2.63
2	Blocking up of revenue on account of surrender of raw materials allotted	1	0.71
3	others	7	0.49
Total		**9**	**3.83**

The Department accepted and recovered underassessment and other deficiencies of ₹ 45.34 lakh in 12 cases, related to earlier years.

A few illustrative cases involving ₹ 10.03 crore are mentioned in the following paragraphs.

8.4 Audit observations

Scrutiny of the records of Police Department and Forest Department revealed cases of non-compliance of the provisions and other cases as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on a test check carried out in audit. Such omissions on the part of the Departmental officers are pointed out in audit each year but not only the irregularities persist; these remain undetected till an audit is conducted. There is need for Government to improve the internal control system including strengthening of the internal audit

A. POLICE RECEIPTS

Non-observance of the instruction of Director General of Police (DGP) had resulted in non-realisation of incentive of ₹ 6.63 crore from the Government of India.

8.5 Loss of revenue due to delayed submission of passport verification report

(Office of the Director General of Police, Thiruvananthapuram)

Government of India (GOI) launched a scheme of decentralisation of passport services at the district level in June 2002. In order to encourage the police authorities to submit Passport Verification Reports (PVRs) in time, the Government introduced an incentive scheme in October 2003. The scheme was revised in September 2005. It envisages that incentive of ₹ 100 would be reimbursed for all PVRs received within 20 days and ₹ 25 for all PVRs received after 21 days. Police Department had given specific direction (June 2009 and April 2010) to all Commissioners/Superintendents of Police to forward all passport verification reports within 20 days so as to avoid hardship to the common man and avoid loss of revenue to Government.

We noticed that during 2008 to 2010 the Department received 10,37,796 passport applications from the Regional Passport Office for verification. But the Department, after verification had forwarded only 1,53,657 applications within 20 days which is only 15 *per cent* of the total applications received. Delay in forwarding the remaining 85 *per cent* PVRs resulted in revenue loss of ₹ 6.63 crore.

We pointed out the matter to the Department in June 2011. We have not received their replies.

We pointed this out to the Government in August 2011; their reply has not been received (December 2011).

B. FOREST RECEIPTS

Non-observance of the provisions of penal interest and seignorage rate of forest produce resulted in short/non-levy of ₹ 3.40 crore as mentioned in paragraph 8.6 and 8.7

8.6 Non-levy of penal interest on belated payment of lease rent

(DFO, Punalur; November 2010).

Government leases out forest land to various PSUs for cultivating rubber or other crops. The Department levies lease rent at the rates prescribed by the Government from time to time. The lease rent payable was ₹ 1,300 per hectare from 1992-93 onwards. The lease rent shall be payable for each financial year. The conditions of agreement of lease stipulates that interest at compound rate of nine *per cent* shall be payable on all defaulted payments.

We scrutinised the records of the Divisional Forest Office (DFO), Punalur and noticed that during the period between 1993-94 and 2003-04, the State Farming Corporation of Kerala (SFCK) Ltd. paid lease rent at the rate of ₹ 400 per hectare on 2,345.775 Ha of forest land instead of at the correct rate of ₹ 1,300 per hectare resulting in short payment of lease rent of ₹ 2.05 crore. The short payment of lease rent attracts levy of interest at the prescribed rates. The DFO did not levy interest of ₹ 3.07 crore on defaulted lease rent from 1993-94 to 2009-10.

After we pointed out, the Department stated that a countersigned chalan for the amount would be sent to SFCK soon after reporting the matter to the Government.

We reported the matter to the Government in December 2010. We have not received any further information from them.

8.7 Short collection of seigniorage in receipt of sand sold

(DFO, Thiruvananthapuram; October 2010).

Seigniorage rate is the rate fixed as the minimum amount that must be assured to Government by sale of trees and other forest produce collected from within the forest. The Government revised the seigniorage rate of timber and other forest produce in May 2010. The rates applicable for sand was revised from ₹ 78 per cub. metre to ₹ 1,000 per cub. metre.

We noticed in the Divisional Office, Thiruvananthapuram, that the Range Officer adopted seigniorage rate between ₹ 78 per cub. metre and ₹ 958 per cub. metre on 4,210 cub. metre of sand lifted from two places at Kulathupuzha range during the period from May 2010 to September 2010. The Department did not collect seigniorage at the revised rate of ₹ 1,000 per cub. metre which resulted in short collection of revenue of ₹ 32.62 lakh including VAT and cess.

We pointed out the mistake to the Department in October 2010 and the Department stated that reply would be furnished.

We reported the matter to the Government in December 2010. We have not received a reply from them.

Thiruvananthapuram,
The

(K.S. SUBRAMANIAN)
Accountant General (WF&RA)
Kerala

Countersigned

New Delhi,
The

(VINOD RAI)
Comptroller and Auditor General of India

ANNEXURE

(Para 4.6.17)

Sl. No.	Name of Company	Value of shares issued including premium (₹ in lakh)	Realisable revenue (0.1 *per cent* of the value of shares issued) (₹ in lakh)
1.	M/s. V-Guard Industries Ltd.	6,800 (IPO in 2008) 1,884.75 (2005-06 to 2007) Total **8,684.75**	8.68
2.	M/s.South Indian Bank Ltd	32,600 (24-9-08) 2,260.12 (25-10-08) 15,000 (28-2-06) Total **49,860.12**	49.86
3.	M/s. Catholic Syrian Bank Ltd.	19,600 (2007 to 1/2010)	19.60
4.	M/s. Muthoot Finance Ltd.	37,099.60 (2005 to 2010)	37.10
5.	M/s. Apollo Tyres Ltd	25,000 (27-10-2006) 2,637 (26-10-2007) 879 (7-11-2007) 4,564.94 (18-4-2008) Total **33,080.89**	33.08
6	Joy Alukkas Traders India P Ltd.	3,500	3.50
		(Excluding premium)	Details of premium not available.
7	Accel transmatic Limited	776	0.776
8	Aspinwall & Co. Ltd	19.57	0.019
9	BPL Ltd.	20.82	0.020
10	Dhanalakshmi Bank	2,953.05	2.953
11	Geojith BNP Paribas FSL	2,138.18	2.138
12.	GTN Textiles Ltd.	326.84	0.327
13.	JRG Securities	320.96	0.321
14.	Manappuram General Finance	739.12	0.739
15.	Southern Ispat & Energy Limited	449.58	0.450
16.	Sree Shakti Paper mills	674.92	0.675
17	Federal Bank	8,182.15	8.182
		GRAND TOTAL	**168.42**