

CHAPTER-VI: OTHER TAX RECEIPTS

6.1 Results of audit

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

(Rupees in crore)

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

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

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

6.2 Audit observations

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

ENTERTAINMENTS TAX

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

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

During test check of the records of two Collector offices⁸³ during March and May 2008, it was noticed that the proprietors of multiplexes had approached⁸⁴ the High Court of Gujarat in the matter of chargeability of tax on the amount of admission recovered by them. The High Court directed (October 2005) that 75 per cent of the tax demanded by the State Government be deposited and on such deposit, balance recovery would be stayed and the State would be restrained from taking any coercive action. Against this order, the proprietors of multiplexes approached the Supreme Court. Ultimately, the Supreme Court dismissed the petition on their submission dated 18 November 2005 that they would be approaching the High Court for clarification of its order with regard to the quantum. The High Court of Gujarat as per its order dated 30 November 2005 directed the proprietors of the multiplex cinema to pay 50 per cent of tax collected for availing of the order of stay. The Court ordered the multiplex proprietors to pay 20 per cent on or before 15 December 2005 and balance 30 per cent in monthly instalment of 10 per cent each by 15 January 2006, 15 February 2006 and 15 March 2006. The Court further clarified that the order shall lose its efficacy if 20 per cent of tax amount is not paid on or before 15 December 2005 and the State, through its officers, would take steps to recover the dues. It was noticed that the owners of the five multiplex theatres had not

⁸³ Ahmedabad and Jamnagar.

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

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

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

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

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

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

Audit observed that in the recent years, owners of multiplexes have been arranging dance parties and establishing discotheques⁸⁵ as an adjunct to their commercial activities; and have been availing of entertainments tax exemptions. Since dance parties and discotheques were not included in the item 2 of Schedule III to the aforesaid Act, exemption allowed was irregular and inadmissible. The department itself had noticed this anomaly and had estimated the annual revenue loss to Rs. 25 lakh considering entry fee ranging between Rs. 200 to Rs. 500 per person. It is pertinent to mention that in some other states, such as Maharashtra, entertainments tax is levied on discotheques. This resulted in foregoing of revenue of Rs. 50 lakh for the year 2007-08 and 2008-09.

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

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

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

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

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

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

During test check of the records of four collector offices⁸⁶ between May and August 2008, it was noticed that 84 cable operators did not pay the tax alongwith the returns, 43 cable operators paid the tax short and three cable operators had paid the tax belatedly, aggregating Rs. 23.03 lakh including interest of Rs. 3.13 lakh. The officials concerned did not initiate action to recover the tax and interest.

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

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

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

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

During test check of the records of three collector offices⁸⁷ and *Mamlatdars*, Choryasi (Surat) and Patan between February 2006 and June 2008, it was noticed that 205 owners of video parlour had paid less tax and nine owners of video parlour and one cinema owner had not paid any tax. The departmental officials did not initiate action to recover the tax. This resulted in non/short levy of tax of Rs. 15.17 lakh including interest of Rs. 2.31 lakh.

⁸⁶ Ahmedabad, Bharuch, Rajkot and Vadodara.

⁸⁷ Ahmedabad, Bhavnagar and Surat.

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

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

LUXURY TAX

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

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

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

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

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

ELECTRICITY DUTY

6.8 Irregular exemption of electricity duty

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

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

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

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

6.9 Non-realisation of inspection fee

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

During test check of the records of seven assistant electrical inspectors⁸⁸ between January and September 2008, it was noticed that in 346 cases, though the inspections had been carried out by the inspectors, inspection fee for the period 2003-04 to 2007-08 amounting to Rs. 19.65 lakh had not been recovered.

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

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

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