

CHAPTER VI

OTHER TAX RECEIPTS

6.1 Tax administration

This chapter consists of receipts from State Excise, Entertainments Duty, State Education Cess (EC), Employment Guarantee Cess (EGC), etc.. The administration is governed by Acts and Rules framed separately for each Department.

6.2 Results of audit

In 2014-15, test check of the records of 242 units relating to the Entertainments Duty, Taxes and Duties on Electricity, Education Cess/Employment Guarantee Cess, Profession Tax, Repair Cess etc. showed non/short credit of lapsed deposits into Government revenue account and other irregularities amounting to ₹ 143.16 crore in 642 observations, which fall under the following categories as indicated in **Table 6.2**.

Table 6.2

| (₹ in crore) | | | |
|--------------|---|---------------------|---------------|
| Sr. No. | Category | No. of observations | Amount |
| 1 | Performance Audit on “Levy and collection of Entertainments Duty” | 1 | 35.54 |
| 2 | State Excise | 151 | 3.83 |
| 3 | Entertainments Duty | 318 | 46.27 |
| 4 | Taxes and Duties on Electricity | 46 | 1.10 |
| 5 | Repair Cess | 19 | 8.44 |
| 6 | Education Cess and Employment Guarantee Cess | 49 | 46.98 |
| 7 | Maharashtra Tax on Buildings (with Larger Residential Premises) | 17 | 0.19 |
| 8 | Profession Tax | 41 | 0.81 |
| Total | | 642 | 143.16 |

In response to our audit observations pointed out during the year 2014-15 as well as earlier years, the concerned Department accepted underassessment, short levy, etc. and recovered ₹ 20.39 crore in 211 observations of which 25 observations involving ₹ 51.90 lakh related to 2014-15 and the rest to earlier years.

The department had recovered entire amount ₹ 10.63 lakh on account of additional fee from two 3 star hotels in Pune after it was pointed out by audit.

A Performance Audit on “**Levy and collection of Entertainments Duty**” with total financial effect of ₹ 35.54 crore and few audit observations involving ₹ 5.24 crore are included in the succeeding paragraphs.

6.3 Performance Audit on “Levy and collection of Entertainments Duty”

Highlights

There was lack of co-ordination between the Home Department, which issued licences through Commissioner of Police, Mumbai and the Revenue and Forests Department that collected Entertainments Duty (ED) for ascertaining the number of licences issued. In 211 entertainment centers, where licenses were issued by Commissioner of Police, Mumbai, ED was not being recovered by concerned Collectors.

(Paragraph 6.3.2.1)

The organizers of two events breached the conditions of exemption, prescribed in the GRs. They were liable to pay ED of ₹ 34 lakh, which was not collected by the Department.

(Paragraph 6.3.2.2)

There was short recovery of ED and surcharge amounting to ₹ 12.81 crore in case of amusement parks/water rides, which included an amount ₹ 11.35 crore from a single amusement park.

(Paragraph 6.3.2.3(b))

Non-recovery of ED amounting to ₹ 9.67 crore was noticed from 1,201 cases of cable operators and permit rooms/beer bars with live orchestra.

(Paragraph 6.3.2.3(c) and (d))

The Advisory Committee for grant of exemption of ED to cinemas was not formed despite a lapse of 12 years from the date of issue of GR.

(Paragraph 6.3.2.5)

There were shortfalls in inspections of entertainment centres and ED offices at district and taluka level by the Divisional flying squads as well as Divisional Dy. Commissioners.

(Paragraph 6.3.2.6)

The Department was not monitoring the compliance of conditions mentioned in the GR by the DTH service providers, like filing of CA approved returns, checking correctness of DTH connections and conducting surveys.

(Paragraph 6.3.2.7)

It was noticed that one hundred and fifty one cheques for payment of ED amounting to ₹ 65.48 lakh were dishonoured by the issuing banks, however, no action as per prescribed procedure was taken to recover the ED in cash.

(Paragraph 6.3.2.9)

Deposits amounting to ₹ 10.01 crore collected from organisers of events/performances were not forfeited and credited to the Government account as the organisers failed to submit the accounts in time. Further, demand drafts/cheques amounting to ₹ 47.41 lakh received on account of security deposits were not credited into the treasury in time which resulted in their being time-barred

(Paragraph 6.3.2.10(b))

6.3.1 Introduction

The levy and collection of Entertainments Duty (ED) is governed by the Maharashtra Entertainments Duty Act, 1923 (MED Act). As per the provisions of the Act and the Rules made there under, duty at prescribed rates is to be levied and paid to the Government on all payments for admission to any entertainment¹.

The levy and collection of ED comes under the jurisdiction of Revenue and Forests Department, however, the licensing of the entertainment centres in cities having a Police Commissionerate is done by the Home Department. In other areas, licences are issued by the respective District Collector.

The Act empowers the Government to exempt any entertainment or a class of entertainment from payment of ED by a general or special order. The District Collectors (DC) grant exemption to those entertainments which are organized for philanthropic or charitable purposes, educational or partly for educational purpose and partly for scientific purposes. The power to grant exemption by a general or special order to any entertainment or class of entertainment from liability to pay ED is exercised by the Revenue and Forests Department (R&FD).

Organisational set-up

The Principal Secretary to the Government of Maharashtra, Revenue and Forests Department, is responsible for the administration of the enactments in the whole of Maharashtra. He is assisted by six Divisional Commissioners at Konkan, Pune, Nashik, Aurangabad, Amravati and Nagpur, who in turn are assisted by the DCs and Taluka Magistrates (TMs) in Districts and Talukas respectively.

Levy, assessment and collection of ED: The DCs are assisted by Resident Deputy Collectors (RDCs), Taluka Magistrates (TMs), Entertainment Duty Officers (EDOs) and Entertainment Duty Inspectors (EDIs) for levy, assessment and collection of ED. They have to conduct periodic inspections of all the entertainment centres under their jurisdiction for correctness of the ED and evasion by new entertainment centres. Further, inspections of RDCs and TMs dealing with ED in the jurisdiction of any Division is carried out by Flying Squads under the supervision of the Divisional Deputy Commissioner (Entertainment Duty).

Audit objectives

The Performance Audit was conducted to ascertain whether:-

- levy, assessment and collection of Entertainments Duty was being done in accordance with the provisions of the Act and Rules issued thereunder
- the system of licensing was implemented efficiently and effectively and exemptions granted to any entertainment or class of entertainments were in conformity with the Act and Rules; and

¹ An entertainment includes any exhibition, performance, amusement, game or sport to which people are admitted on payment.

- an effective monitoring and internal control mechanism was in place to safeguard Government revenue .

Audit scope and methodology

Performance Audit of Entertainments Duty was conducted between January 2015 and May 2015 for the period 2010-11 to 2014-15 wherein records of nine² Collectorates, selected out of 35 Collectorates in the state on the basis of stratified random sampling, were test checked. The selection of districts was based on maximum revenue realisation and the geographical location of each district, in such a way that the sample represented the entire state.

Acknowledgement: An entry conference was conducted (March 2015) with the Principal Secretary, Revenue and Forest Department, Mantralaya, Mumbai wherein the scope of Audit, the audit objectives and criteria to be adopted was discussed for the conduct of the Performance Audit. The draft report was forwarded to the Government (July 2015). Thereafter an exit conference was conducted with the Secretary (November 2015) wherein the audit findings and the recommendations proposed by audit were discussed. The replies received during the exit conference and other points of time have been appropriately commented in the respective paras. Audit acknowledges the co-operation of the Department and subordinate offices for their assistance rendered during the audit.

Audit Criteria

Audit criteria adopted for ensuring the above audit objectives were:

- The Maharashtra Entertainments Duty Act, 1923
- The Bombay Entertainments Duty Rules, 1958
- The Collection of Entertainments Duty on Cable Television (Including Entertainments Duty Leviable on Direct-To-Home (DTH) Broadcasting Service) by Way of Public Auction Rules, 2003
- Maharashtra Treasury Rules, 1968
- Guidelines and instruction issued from time to time by State Government on levy and collection of ED
- General Financial Rules and other Statutory Acts and Rules in force.

6.3.1.1 Trend of revenue

Year-wise revenue collection for the period from 2010-11 to 2014-15 is shown in **Table 6.3.1.1**.

² Four (Mumbai City, Mumbai Suburban, Pune & Thane) districts having revenue more than ₹ 80 crore per year. Amravati, Bhandara, Latur, Nashik and Raigad were selected on the basis of geographical location.

Table 6.3.1.1

| (₹ in crore) | |
|--------------|--------------------|
| Year | Revenue collection |
| 2010-11 | 530.46 |
| 2011-12 | 594.97 |
| 2012-13 | 684.43 |
| 2013-14 | 735.62 |
| 2014-15 | 725.81 |

It could be seen from the above that during 2014-15 the increase in revenue collection was 36.83 per cent as compared to 2010-11 which is appreciable.

6.3.1.2 Arrears of revenue

As per information made available by the Department, as on 31 March 2014, an amount of ₹ 49.94 crore was outstanding for recovery from various entertainment centres in the State as shown in **Table 6.3.1.2(a)**.

Table 6.3.1.2(a)

| Sr. No. | Type of Entertainment Centre | Amount outstanding as on 31.03.2014 (₹ in crore) |
|--------------|------------------------------|--|
| 1 | Cable Operators | 43.21 |
| 2 | Theatres | 0.42 |
| 3 | Video Centres | 0.20 |
| 4 | Others | 6.11 |
| Total | | 49.94 |

Information as on 31 March 2015 was not available with the Department.

Section 9 of the MED Act stipulates that 'any sum due on account of entertainments duty shall be recoverable as an arrear of land revenue'.

Scrutiny of records in the office of Deputy Collector (BEDA), Zone-I, Mumbai revealed that the Department had issued demand notices between August 2010 and October 2010 to four pubs running in two five star hotels for payment of ED at the rates prescribed under Section 3(17) of the Act. The details are given in **Table 6.3.1.2(b)**.

Table 6.3.1.2(b)

| Name of Five Star Hotel | Name of the pubs | Period during which ED paid @ ₹ 50,000/- per month | Non-recovery (₹ in lakh) |
|---|------------------|--|--------------------------|
| The Indian Hotel Company Ltd. Taj Mahal Hotel, Mumbai | Zodiac Grill | 08/10 to 03/15 | 84.00 |
| | Sea Lounge | 08/10 to 03/15 | 84.00 |
| | Star Board Bar | 08/10 to 03/15 | 84.00 |
| The Oberoi, Mumbai | The Eau Bar | 08/10 to 03/13 | 48.00 |
| Total | | | 300.00 |

Despite a lapse of five years the amount has not been recovered so far. No action has been taken to recover the amount as arrears of land revenue under Section 9 of the MED Act.

During the exit conference, the Department accepted the fact and stated that recovery would be made.

Audit findings

6.3.2 Licencing of Entertainment Centres

6.3.2.1 Lack of coordination between Revenue and Forest Department and Home Department

The licencing of the entertainment centres in cities having a Police Commissionerate is done by the Home Department and is regulated under Rule 1 of the Rules³ framed under Bombay Police Act, 1951. In other areas, licences are issued by the respective District Collector. The levy and collection of ED of these entertainment centres comes under the jurisdiction of Revenue and Forests Department.

We called for the number of licences issued by the Commissioner of Police, Mumbai to entertainment centres in the City of Mumbai and compared it with the information available with the Collector, Mumbai and Collector, Mumbai Suburban District. Our comparison revealed that in case of video game parlours, discotheques and orchestra bars, the number of licences issued by the Commissioner of Police, Mumbai was more than the number of entertainment centres from which entertainment duty was being recovered, as mentioned in **Table 6.3.2.1**.

Table 6.3.2.1

| Sr. No. | Type of entertainment centres | Entertainment centres as per records of the Collector | | Total | No. of licences issued by Commissioner of Police, Mumbai | Difference |
|--------------|-------------------------------|---|-----------------|------------|--|------------|
| | | Mumbai City | Mumbai suburban | | | |
| 1 | Video Game Parlour | 77 | 191 | 268 | 392 | 124 |
| 2 | Discotheque | 8 | 11 | 19 | 40 | 21 |
| 3 | Orchestra Bar | 71 | 116 | 187 | 253 | 66 |
| Total | | | | 474 | 685 | 211 |

Thus, it may be seen from the above that in 211 entertainment centres where licenses had been issued by the Commissioner of Police, Mumbai the ED was not being collected by the respective DC's.

Our test check revealed that out of these 211 entertainment centres, nine entertainment centres (eight in Zone-I and 1 in Zone IX, Mumbai City) to whom licences issued by the Commissioner of Police, Mumbai were

³ The Rules for Licensing and Controlling Places of Public Amusement (other than cinemas) and Performances for Public Amusement under Bombay Police Act, 1951

conducting business but ED was not being recovered from these centres by Collector of Mumbai. After this was pointed out, the Collector issued notices to these units.

During the exit conference, the Department accepted that there was a difference between the issued licenses and the entertainment centres paying ED. This was due to the fact that though certain centres renew their licenses with the Police Department, these centres were not functioning. A list of such inactive centres would be provided by the Department. Further the Department assured that a mechanism would be put in place whereby the Home Department and Revenue Department would coordinate on these licenses.

The Government may direct the Revenue and Forests Department to evolve a system of coordinating with the Home Department, which is the licensing authority in the Police Commissionerate areas; so that all licensed entertainment centres are brought under the scope of ED.

6.3.2.2 Non-recovery of ED for breach of exemption conditions

As per the MED Act, any payment made by way of sponsorship⁴ amount for a programme which is organized only for invitees without selling tickets attracts ED. Further, as per Section 6(3) of the said Act the State Government may, by general or special order, exempt any entertainment or class of entertainments from liability to ED subject to such terms and conditions, if any, as may be specified in the order.

During the period 2010-11 to 2014-15, the Government of Maharashtra in Revenue and Forests Department granted exemption to five events, out of which two events were conducted in Mumbai by M/s. Mijwan Welfare Society (MWS) based in Azamgarh, Uttar Pradesh. The MWS raised sponsorships of ₹ 84.00 lakh in 2011 and ₹ 52 lakh in 2012.

We noticed that the conditions on which the exemption were granted were breached as mentioned in following paragraph:-

- MWS was required to deposit ₹ 21 lakh in 2011 and ₹ 13 lakh in 2012 being 25 per cent of the sponsorship amount as security deposit with the Additional Collector, MSD, Bandra. However, no security deposits were made by MWS with the Government
- The detailed accounts of both the shows held in 2011 and 2012 had to be submitted to Additional Collector, MSD, Bandra within one month from the date of event by MWS. We noticed that the documents were not submitted to the Additional Collector.
- The proceeds from the shows were to be spent only in the State of Maharashtra on student's education, computer centre's modernisation, higher studies for women, welfare activities, home science workshop, beauty parlour training, etc. However, as the accounts of the proceeds of the show have not been submitted, it could not be established that 100 per cent proceeds had been spent in Maharashtra.

⁴ Here, sponsorship amount means an amount paid to the organiser of an entertainment programme by the sponsor in lieu of advertisement of sponsors product or his brand name etc.

- The Department had not taken appropriate steps to recover the ED, in spite of MWS not adhering to the conditions mentioned in the GRs. ED had to be recovered to the extent of ₹ 34 lakh for both the events.

During the exit conference, the Department stated that notice had been served on MWS and appropriate action would be taken to recover the ED.

6.3.2.3 Non/short recovery of ED

(a) Multi-dimensional entertainment centres

Multi-dimensional⁵ entertainment centres functioning in Mumbai and surrounding areas are to be levied ED as per Section 3 (1) (b) of MED Act on the payment for admission fixed by the proprietor at the prescribed rates.

It was noticed that five such entertainment centres comprising of 47 chairs were being treated as video centre and paying ED at ₹ 1,100 per chair per month instead of multi-dimensional entertainment centres. A few cases where multi-dimensional entertainment centres were not paying ED as per Section 3(1)(b) are listed in **Table 6.3.2.3(a)**.

Table 6.3.2.3(a)

| Sr. No. | Name of entertainment centre | Office | No. of chairs/ seats |
|---------|---|---------------------------------|----------------------|
| 1 | M/s. Max 9D Interactive Cinema, Little World Mall, Kharghar , Navi Mumbai | TM, Panvel | 8 |
| 2 | Velocity 7D cinema by M/s. Vogue Entertainment, Raghuleela Mall, Kandivali (West), Mumbai | TM, Borivali, Zone VII | 8 |
| 3 | 9D theatre by M/s. Smaash Entertainment Private Limited, Kamla Mill Compound at Lower Parel, Mumbai | Dy. Collector (ED), Mumbai City | 9 |
| 4 | “7D movie” by M/s. Helion Entertainment at Growels Mall, Kandivali (East) | TM, Borivali, Zone VI | 16 |
| 5 | “7D adventures” at Viviana Mall, Thane | TM, Thane | 6 |

In absence of the information regarding actual number of tickets sold for these attractions, the amount of loss of ED could not be quantified.

- Audit scrutiny of the TM Kurla at Mulund, Zone XI revealed that in one multi-dimensional entertainment centre (6D Theatre at R-City Mall, Ghatkopar) ED of ₹ 11.80 lakh was required to be paid at the rate of 25 *per cent* of the admission fees on ₹ 47.19 lakh for the year 2013-14 in accordance with Section 3(1)(b) of the Act, however the proprietor had paid only ₹ 6.16 lakh. This resulted in short recovery of ED of ₹ 5.64 lakh.

⁵ The type of entertainment presentation system called 4D film which combines a 3D film with physical effects that occur in the theatre in synchronization with the film. Such films, also called 5D/6D/7D/8D/9D films have special effects.

It could be seen from the above that there is a recurring loss of revenue due to application of incorrect rate of ED which needs to be plugged in respect of all such similar centres.

During the exit conference, Department accepted the audit observation and stated that these multi-dimensional centres would be charged ED on the admission rates fixed by these centres in accordance with Section 3 (1) (b) and recovery would be made.

The Government may direct the Revenue and Forests Department to strengthen its system for identifying multi-dimensional centres and levy ED as per the Act.

(b) Amusement parks/water parks/water rides

As per 2nd proviso to Section 3(b) of the MED Act, with effect from 21 December 2010, the ED is leviable at the rate of 15 *per cent* of the payment made for admission to the amusement park and water sports activity, including payment made for admission for games and rides, whether charged separately or not.

As per sub-section (a-1) of Section 3AA of the MED Act, with effect from 21 December 2010, surcharge is leviable at the rate of 10 *per cent* on the ED payable under the third proviso to clause 3(1)(b) in respect of water sports activity. Besides, as per Section 9(b) of the Act where the proprietor failed to pay duty payable under the act, he was liable to be charged interest at the rate prescribed in the Act.

Scrutiny of records of six amusement parks and 23 water parks in seven out of nine districts selected for the Performance Audit revealed as follows:

(i) Non-initiation of recovery proceedings: Our scrutiny of records in the office of the TM, Borivali, Zone-VII revealed that M/s Pan India Paryatan Private Limited, proprietors of amusement park called Essel World and water park called Water Kingdom, had paid ED amounting to ₹ 25.83 crore at the rate of 15 *per cent* during the period 13 January 1995 to 15 March 2007. In March 2007, the Bombay High Court observed that the company were liable to pay only ₹ 12.92 crore for the period at the rate of 7.5 *per cent* only. Thus, the company was entitled for refund of ₹ 12.91 crore. The Department has filed special leave petition against the judgement of High Court with the Supreme Court in 2008. Despite a lapse of seven years the case is still pending decision. The Department did not furnish any information regarding the status of the case, hearings held, etc.

The company is submitting weekly returns showing the liability of ED at the rate of 7.5 *per cent*, however no payment is being made by them since 1st July 2008. The Department has been issuing notices for payment of ED at the rate of 7.5 *per cent* as decided by the High Court. However, no further action under Section 9 of the MED Act to recover the money as arrears of revenue has been taken. Audit observed that as per the B forms submitted by the Company, the ED payable by the company during the period from 1 July 2008 to 2 April 2015 at 7.5 *per cent*, amounted to ₹ 24.26 crore. Even after allowing this against the refund of ₹ 12.91 crore, the company was liable to pay ₹ 11.35 crore. In addition to this, interest was also leviable.

With the passage of time chances of recovery of this accumulated due would become remote. As such the ED may be collected promptly and in case it is not paid, it may be recovered as arrears of Land Revenue under the Act.

In the exit conference, Secretary R&FD stated that suitable action would be taken to levy ED.

(ii) ED on paid rides in Amusement park not assessed: As per Section 4(2) of the MED Act, every proprietor of the entertainment in respect of which the ED is payable under Section 3, shall apply to prescribed officer who shall allow him to run the business subject to filing of periodical returns and payment of ED.

Scrutiny of recovery register and other records in the office of the TM Borivali, Zone-VII, revealed that ED was being recovered on entry tickets at Essel World. Tickets for a number of paid attractions⁶ inside Essel World were being issued separately, however, proprietors of these paid attractions have neither applied for 4(2) permission nor paid ED on these. As per records, though it was in the knowledge of the Department since November 2011, no efforts were made to collect ED on these paid attractions. In absence of the information regarding actual number of tickets sold for these attractions, the amount of loss could not be quantified.

In the exit conference, Secretary R&FD stated that suitable action would be taken to levy ED on them.

(iii) Short recovery of ED from amusement/water park: Test check of records in the offices of EDO Zone “O” Pune, and EDO Zone “A”, Pune revealed that in case of two amusement parks/water park, ED was being recovered at the rate of 10 *per cent* instead of 15 *per cent* which resulted in short recovery of ED of ₹ 8.33 lakh as shown in **Table 6.3.2.3(b)(iii)**.

Table 6.3.2.3(b)(iii)

| (₹ in lakh) | | | | | |
|--------------|---------------------------------------|-----------------------------|--|--------------|-------------------|
| Sr. No. | Name of the amusement park/water park | Period of default | ED recoverable @ 15 <i>per cent</i> + surcharge, if applicable | ED recovered | ED short recovery |
| 1 | Fariya’s Resorts Lonavala | December 2010 to March 2014 | 15.89 | 10.59 | 5.40 |
| 2 | Pushpak Amusements, Nigdi, Pune | 2013-14 to 2014-15 | 9.22 | 6.15 | 2.93 |
| Total | | | | | 8.33 |

In the exit conference, Secretary R&FD stated that suitable action would be taken to levy ED.

⁶ 7D Masti Theatre, Arctic Circle, Cricket Zone, Derby Racer, Laser Tag, Riki’s Rocking Alley (including bowling, coin games and crazy shuttle), Rock climbing, Virtual world and Trampoline

(iv) **Under Assessment of ED on Amusement Park:** During test check of records in the Office of the Collector, Raigad, we noticed that M/s Panoramic Resort, Karnala had paid ED amounting to ₹ 7.50 lakh in October 2014 for the period from 18 June 2012 to 17 June 2014 (during which exemption of 50 per cent was available to the resort) on a total of 1,37,852 tickets sold. The ED was calculated by considering the rate of admission ticket at ₹ 75. The demand so raised was paid by the resort in October 2014. However, as per information available on the website of Panoramic Resort and other allied websites, the rate of admission was ₹ 525 for weekdays and ₹ 570 for weekends during 2012-13 and 2013-14. Considering minimum rate of ticket at ₹ 525, the under assessment of ED worked out to ₹ 46.53 lakh as shown in **Table 6.3.2.3(b)(iv)**

Table 6.3.2.3(b)(iv).

| Particulars | As per Department | As per Audit |
|--|-------------------|---------------|
| Number of tickets sold during the period from 18 June 2012 to 17 June 2014 | 1,37,852 | 1,37,852 |
| Entry Fee leviable | ₹ 75 | ₹ 525 |
| Total Amount | ₹ 1,03,38,900 | ₹ 7,23,72,300 |
| ED Payable @ 50 % of 15 % i.e.7.5% | ₹ 7,75,417 | ₹ 54,27,923 |
| Less: ED Paid | ₹ 7,75,417 | ₹ 7,75,417 |
| Balance payable | ₹ 0 | ₹ 46,52,506 |

In the exit conference, Secretary R&FD stated that suitable action would be taken to levy ED.

(v) **Non-levy of surcharge:**

We observed that surcharge at the rate of ten percent of ED as per Section 3AA of the MED Act was not recovered in three water parks/water sports activity centres as shown in **Table 6.3.2.3(b)(v)**.

Table 6.3.2.3(b)(v)

| Sr. No. | Name of Unit | Name of Water Park | Period | Gross ED (₹ in lakh) | Surcharge to be levied @ 10% of ED (₹ in lakh) |
|--------------|--------------------------------------|---------------------|----------------------|----------------------|--|
| 1 | TM, Borivali, Zone VII | Water Kingdom | 21.12.10 to 31.12.15 | 815.69 | 81.57 |
| 2 | TM Panvel | Panoramic Resort | 18.06.12 to 17.06.14 | 54.28 | 5.43 |
| 3 | Dy. Collector, Mumbai City, Zone III | Drishiti Adventures | 2012-13 to 2014-15 | 38.04 | 3.80 |
| Total | | | | | 90.80 |

In the exit conference, Secretary R&FD stated that suitable action would be taken to levy surcharge.

(vi) Non-levy of ED on Amusement Park/Boat rides:

Audit observed that ED was not being levied on the proprietors running amusement park and boat rides as shown in **Table 6.3.2.3(b)(vi)**.

Table 6.3.2.3(b)(vi)

| Sr. No. | Unit Audited | Type of Entertainment centre | Rates of admission fee |
|---------|-------------------------------|--|------------------------|
| 1 | EDO Thane | Wonder Park, Nerul run by NMMC | ₹ 25/- to ₹ 35/- |
| 2 | EDO Thane | Masunda Lake, Thane | ₹ 15/- to ₹ 40/- |
| 3 | Dy. Collector, Zone I, Mumbai | Boating Centre at Gateway of India, Mumbai | NA |

In the absence of information regarding the number of tickets sold, the amount of fees on which ED was leviable could not be worked out.

In the exit conference, Secretary R&FD stated that suitable action would be taken to levy ED.

(c) Cable Operators

As per Section 3(4) of the MED Act, there shall be levied and paid by the proprietor to the State Government, the ED at the rate specified from time to time.

Test check of records of 59 units in nine districts revealed that ED amounting to ₹ 6.64 crore was not paid by 1,090 cable operators out of test-checked 5,979 cable operators during various period between 2011-12 and 2014-15. The demands were not raised by the concerned collectors resulting in non-realisation of ED to that extent.

During exit conference, the Department stated that recovery was in progress.

(d) Permit rooms/beer bars with live orchestra

As per Section 3 (11A) of the MED Act there shall be levied and paid in advance by the tenth of every calendar month by the proprietor of every permit room or beer bar with live orchestra, the ED in respect of entertainment in such permit room or beer bar with live orchestra, to the State Government, at the rates of ₹ 50,000 per month in case of areas within the limit of Municipal Corporations.

During test check of records of 20 offices in five⁷ districts, it was noticed that ED amounting to ₹ 3.03 crore was not paid by the proprietors of 111 permit room/beer bars during various periods between 2011-12 and 2014-15. The demands were also not raised by the respective prescribed officers against these permit rooms/beer bars resulting in non-recovery of ED of ₹ 3.03 crore.

During exit conference, the Department stated that the recovery was in progress.

⁷ Mumbai City, Mumbai Suburban, Pune, Raigad and Thane

6.3.2.4 Non-recovery of penal interest on delayed payment of ED

As per Section 9B of the MED Act, if the proprietor who provides the entertainment fails to pay the amount of ED due under Section 3 or composition sum so fixed under Section 9A within prescribed period, he shall be liable to pay to the State Government in addition to the amount of ED or composition sum so payable, a penal interest @ 18 per cent per annum for the delay of first 30 days and @ 24 per cent per annum thereafter on such amount became or becomes payable till the amount and interest is fully paid.

During test check of records of 66 units we noticed in 17 units that there were delays ranging from two days to 1,535 days in the payment of ED by the proprietors of various entertainment centres to the Government, however, penal interest was not levied on account of the delays. The penal interest on the amount paid with delay worked out to ₹ 1.02 crore.

During exit conference, the Department stated recovery would be carried out as per the provisions of the Act.

6.3.2.5 Non-formation of Advisory Committee for grant of exemption to cinemas

As per the provisions of Section 6(3) of MED Act, the State Government can exempt any entertainment or class of entertainments from liability to entertainments duty subject, to such terms and conditions as may be specified in the order. Further, Rule 24 of Bombay Entertainments Duty Rules, specifies the following criteria for qualification of various classes of cinema for exemption:

- Cinema which has been awarded the President's Gold Medal, or
- Cinema which the State Government on a recommendation made by the Advisory Committee appointed by the State Government for the purpose considers as fulfilling an educational, cultural or social purpose of a high order.

Government issued a GR (September 2002) which laid down the following conditions for the formation of Advisory Committee:

- The Committee had to be formed under the Chairmanship of Principal Secretary (Revenue and Forest).
- The Committee would consist of five Government Officials and five non-Government members from the film fraternity viz., story writers, Directors, Music Directors, Choreographers and Cinematographers. A panel of 25 members had to be appointed and from these 25, five members by rotation would be in the Committee for a period of three years on honorary basis without any remuneration.
- The Committee had to process the requests for exemption of ED by examining the films so put up. In these proceedings it was compulsory for the five Government Officials and at least three non-Government persons appointed to be present. The Committee after deliberating on the merits/demerits of the film had to decide on granting or non-granting of the exemption of ED on a majority decision.

We called for records regarding the formation of the advisory committee. However, it was stated (November 2014) by the Department that the file containing correspondence regarding formation of the advisory committee was destroyed in the fire in Mantralaya in 2012. As per information obtained from Revenue and Forest Department, 18 films were granted exemption from payment of ED for periods ranging from two months to one year during the period 2008-09 to 2013-14 by the ad-hoc committee.

Thus, even after lapse of a period of 12 years since the issue of the GR, Advisory Committee required to be formed as per the GR (2002) has not been formed till date shows that the decisions on the exemptions were being taken by the ad-hoc committee which was improper.

Internal control

6.3.2.6 Shortfall in inspection by divisional flying squads, Dy. Commissioner (ED) and non-submission of quarterly returns to Government

- As per Government of Maharashtra in Revenue and Forest Department circular dated 24 April 1997, the divisional flying squads formed under the supervision of Deputy Commissioner (ED) at divisional level shall undertake detailed inspection of at least 12 entertainment centres in a month. Similarly, the Deputy Commissioner (ED) at divisional level shall conduct detailed inspection of at least one entertainment branch of the Collector office of minimum one district and entertainment branch of minimum two Talukas in a month.

The targets of inspections by flying squads and of Dy. Commissioner Office of the six divisions and the achievements against them during the years 2010-11 to 2014-15 are shown in the following tables:

Table 6.3.2.6 (a)-Inspections by Flying squad

| Year | Target | Achievement | Short fall (in %) |
|-------------|------------------|--------------------|--------------------------|
| 2010-11 | 864 ⁸ | 582 | 32.64 |
| 2011-12 | 864 | 844 | 2.31 |
| 2012-13 | 864 | 800 | 7.41 |
| 2013-14 | 864 | 756 | 12.50 |
| 2014-15 | 864 | 635 | 26.50 |

⁸ 12 months x 12 entertainment centres x 6 Divisions

Table 6.3.2.6 (b)-Inspections of Collector's Office by Dy. Commissioner (ED)

| Years | Target | Achievement | Short fall (in %) |
|---------|-----------------|-------------|-------------------|
| 2010-11 | 72 ⁹ | 27 | 62.50 |
| 2011-12 | 72 | 23 | 68.05 |
| 2012-13 | 72 | 16 | 77.77 |
| 2013-14 | 72 | 23 | 68.05 |
| 2014-15 | 72 | 16 | 77.77 |

Table 6.3.2.6(c)- Inspections of TMs offices by Dy. Commissioner (ED)

| Years | Target | Achievement | Short fall (in%) |
|---------|-------------------|-------------|------------------|
| 2010-11 | 144 ¹⁰ | 87 | 39.58 |
| 2011-12 | 144 | 124 | 13.88 |
| 2012-13 | 144 | 87 | 39.58 |
| 2013-14 | 144 | 89 | 38.19 |
| 2014-15 | 144 | 47 | 67.36 |

From the above tables it can be seen that there was shortfall in inspections ranging from 2.31 per cent to 77.77 per cent.

- **Non-maintenance of registers:** We noticed that the registers as required in circular dated 24 April 1997 issued by R&FD to monitor conducting of the inspections and action taken thereafter were not maintained in two divisions¹¹ out of the six divisions test checked. The defaulting offices stated that the registers will be maintained henceforth.
- **Non-submission of quarterly reports:** We noticed that the quarterly report required to be sent as per circular dated 24 April 1997 were not being submitted to the Government by five¹² divisions out of the six divisions test checked.

Thus, the shortfalls in inspections in the ED branches of Collector and Taluka Offices and non-maintenance/submission of registers/returns is a matter of serious concern as these are vital internal controls for safeguarding the Government Revenue and need to be strengthened.

During exit conference, the Secretary accepted the facts and stated that the issues would be addressed.

6.3.2.7 Lack of control in monitoring the DTH service providers

The Government of Maharashtra vide Revenue and Forest Department GR dated 4 September 2008, declared the Collector, Mumbai City as prescribed officer for registration/grant of permission, levy and collection of ED from

⁹ 12 months x 6 Divisions

¹⁰ 12 months x 2 Talukas x 6 Divisions

¹¹ Nagpur and Nashik

¹² Amravati, Aurangabad, Nashik, Nagpur, Konkan

DTH service providers in the entire state of Maharashtra. As per clause 3(1) of the above said GR, DTH service providers are required to furnish district-wise details of connections and the ED payable thereon in Annexure V, duly certified by a chartered accountant, at the time of making centralized payments of ED.

Our scrutiny of the records relating to levy and collection of ED from the six¹³ DTH service providers in the State, revealed that none of the service providers have submitted details in Annexure V duly certified by chartered accountant.

Further, as per clause 5 of the aforementioned GR, the following actions were required to be taken by every District Collector for effective control over levy and collection of ED from DTH service providers

- Each DC has to obtain the copy of permission in form 4(2)(b) issued by Collector of Mumbai City in respect of each service provider and maintain independent registers and records of payment of ED and accountal thereof in respect of his District.
- Each DC has to check the correctness of ED paid on the basis of total connections mentioned in the statement of returns furnished to Collector, Mumbai City every month in respect of each DTH service provider.
- Each DC has to undertake periodical local survey of DTH connections in respect of each service provider in his District and compare the connections with the connections declared by the each service provider in the monthly returns prescribed and if any discrepancies were noticed he should bring the same to the notice of the Collector, Mumbai City.

Test check of records at nine Collectorates revealed that only the permissions in form 4(2)(b) were on record and other requirements were not complied with. Further, as no reports regarding survey of DTH connections were available on record, it could not be ascertained whether the concerned inspectors were undertaking local surveys. In absence of certified returns, the correctness of ED paid by the DTH service providers could not be verified in audit.

During the exit conference, the Department stated that the monitoring and control of the DTH service providers would be carried out as per GR in future.

The Government may direct the Department to take effective steps to ensure submission of returns duly certified by CA, by the DTH service providers and to conduct surveys to ascertain the correctness of these returns.

6.3.2.8 Non-levy of penalty for non-submission of returns

As per provisions contained in Section 4B(4) of the MED Act, if a proprietor of entertainment centre does not furnish returns in respect of any entertainment within the time prescribed in that behalf, the prescribed officer,

¹³ 1.Dish TV Ltd. 2.Tata Sky Ltd. 3.Bharati Telemedia Ltd. (Airtel) 4.M/s Reliance Big TV Ltd. 5.M/s Sun Direct TV Ltd. 6.M/s Bharat Business Channel Ltd. (Videocon).

shall levy by way of penalty, in addition to the amount of duty so assessed a sum not exceeding one and a half times that amount of the ED leviable.

Test check of records of EDO, Pune and TM, Panvel revealed that proprietors of following water parks/amusement centres, though regularly submitting copies of challan as proof for payments for ED, have neither submitted prescribed returns in Form B¹⁴ and Form E¹⁵ nor the prescribed officers have levied penalty, in addition to the amount of duty payable, as per the provisions of the Act.

- M/s. MTDC, Karla, Tal-Maval, Dist-Pune
- M/s. Kumar Resort and Water park, Lonavla, Tal-Maval, Dist-Pune
- M/s. Fariyas Resort, Lonavla, Tal-Maval, Dist-Pune
- M/s. Della Adventures (amusement park), Dist-Pune
- M/s. Amby Valley, Sahara City, Tal-Mulshi, Dist-Pune
- M/s. Lakeshore Water sport, Mulshi (Lavasa), Dist-Pune
- M/s. Panoramic Resort (Water and Amusement Park), Dist-Raigad
- M/s. Krushnai Water Park and Resorts, Pune

Non-submission of returns by the proprietors is fraught with the risk of leakage of revenue. Therefore, the option of assessment under best judgement should be exercised in such cases, so that the proprietors submit the prescribed returns henceforth.

During the exit conference, the Department stated that action would be initiated on the eight centres as per the provisions of the Act.

6.3.2.9 Non-recovery of ED on account of dishonoured cheques

As per provision under Section 138 of Negotiable Instruments (Amended) Act, 1988, if any cheque issued by any party is dishonoured for reason of insufficient funds etc., it is to be dealt with as criminal offence and in addition the amount should be recovered in cash against the dishonoured cheque.

Scrutiny of dishonoured cheque register in the test-checked offices revealed that in 24 units, 151 cheques amounting to ₹ 65.48 lakh for the period from 2012-13 to 2014-15 were dishonoured, however, the Department had not initiated any action under Section 138 of the Negotiable Instruments (Amended) Act, 1988 for recovery of ED.

The Government may direct the Department to take prompt action in cases of dishonour of cheques, so that the interest of revenue was protected.

During the exit conference, the Department stated that recovery would be carried out as per the provisions of the Act.

6.3.2.10 Security deposits

(a) Non-payment of security deposit by the service providers: As per Rule 14 (1) of Bombay Entertainments Duty Rules, 1958 every proprietor

¹⁴ Form B- Statement of tickets and the ED payable

¹⁵ Form E- Return of complementary tickets

shall furnish such security to the prescribed officer as that officer may require. In the case of DTH service providers the Collector Mumbai is the prescribed officer for fixing the amount of security deposit. However, the District Collector Mumbai while issuing licenses every year to the six DTH service providers does not fix the amount of security deposit. In every licence issued by the Collector, it is mentioned in condition no. 16 that the proprietor shall furnish 10 *per cent* security deposit in the form of bank guarantee for the respective calendar year on its approval by the Government.

We noticed that the Government's approval to the proposal was not received till date in any case and no security deposits had been obtained from DTH service providers. The submission of the proposal to the Government was not correct as the Collector was himself empowered to fix the amount of security deposit under the Act. This is fraught with the risk of non-realisation of Government revenue in case the service providers default in payment of revenue.

(b) Non-forfeiture of security deposit: As per Rule 14(2) if a proprietor fails to submit any returns as required by Rule 16 or 21 or to pay within the period prescribed by the District Collector, he may, after giving the proprietor a week's notice direct that the security shall be forfeited to the State Government.

- Personal Ledger Accounts (PLA) are being maintained only in the offices of Dy. Collector (ED), Mumbai City and Addl. Collector (Mumbai Suburban District) for transactions pertaining to security deposits obtained in respect of special events. This practice is not followed in other districts. During the test check of the PLAs and cash books of these two offices, we noticed that security deposits of ₹ 5.86 crore and ₹ 4.15 crore collected from organisers of 328 and 347 events during 2013-14 and 2014-15 respectively were still lying in PLA, outside the consolidated fund of the State. Despite the failure on the part of the proprietors to submit return and accounts within the stipulated time period after the date of entertainment, the concerned officers had not issued notices for forfeiture of security deposits.
- In the office of EDO, Thane, we noticed that during 2012-13, 2013-14 and 2014-15, cheques amounting to ₹ 42.26 lakh were received as security deposit from organisers of 84 events. However, there was nothing on record to indicate that the amount had been credited to Government account as security deposit. The columns indicating the date of credit thereof into the Government account by way of challans or otherwise in the register of cheques were kept blank against the entry numbers of the cheques.
- In addition, nine cheques amounting to ₹ 6.48 lakh (in EDO, Thane) received from nine organisers of events as security deposit during the year 2013-14 and 2014-15, were not deposited till date and had become time-barred.

(c) Non-transfer of security deposit to Government Account: In the office of the Deputy Collector (ED), Mumbai City, in 40 cases out of ₹ 13.03 lakh kept in PLA for the year 2013-14 on account of ED, ₹ 3.80 lakh was

refunded to organisers. The remaining amount of ₹ 9.23 lakh was required to be credited to the Government account which was not done till date.

(d) Delay in remittance of ED to the Government Account: During the scrutiny of files in the office of EDO, Pune, relating to one day international match between India and Australia held at the Subroto Roy Sahara Stadium, Maval, Pune, on 13 October 2013, which was organised by the Maharashtra Cricket Association (MCA), we noticed that the organiser had deposited two demand drafts for ₹ 10.20 lakh and ₹ 30.73 lakh for advance ED. We noticed that the demand drafts were not en-cashed and amount was not credited to the Government account. The demand drafts had remained unattended for a period of one and a half year and had become time-barred. Thus, the amount of ₹ 40.93 lakh remained unrealised.

During exit conference, the Secretary stated that the amount has been credited to the government account after being pointed out by audit.

6.3.2.11 Non-conducting of spot verification of events and non-submission of Inspection Reports by EDOs /AEDOs

As per provisions of MED Act, events where admission tickets are issued, ED is levied on the cost of admission tickets and in case of unticketed events which had sponsors, ED is recoverable at the rate of 25 per cent of the sponsorship amount, otherwise no ED is recoverable. The Department, however has to verify the correctness of the facts furnished by the organisers prescribed under the GR dated 5 January 2006.

Test check of records at Deputy Collector, Mumbai City (Exemption) revealed that 882 and 790 un-ticketed events were conducted during 2013-14 and 2014-15 respectively. All these events were conducted without receipt of any sponsorship. It was observed that not a single spot verification report was available on record but exemptions were allowed in all cases. In absence of this information, it could not be ascertained whether the Department had granted the exemptions correctly. The chances of grant of incorrect exemption cannot be ruled out as is evident from the following case.

- A perusal of invitation cards available in the office files of the Department revealed that, the event “9th Renault Star Guild Award Function” was sponsored by automobile company “Renault” as was evident from the logo of the company printed on the back side of the invitation card.

During the exit conference, the Department stated that instructions would be issued and spot verification would be diligently instituted.

Non-verification of the contents of the affidavit could result in possible loss of revenue as the possibility of other sponsored functions escaping ED as un-sponsored functions could not be ruled out.

6.3.2.12 Non-submission and non-scrutiny of Service Charge Accounts

As per provisions of Section 2(b) of the MED Act, the proprietor of theatres shall submit by 30th September of every year to the concerned Collector, the audited accounts of Service Charges collected and spent by him towards

maintenance and providing facilities and safety measures as provided in the Act. Further, the audited accounts regarding utilization of service charges received from the proprietors should be scrutinized up to 31st December every year.

Test check of records of five units in four districts revealed that proprietors of 112 theatres/multiplexes had not submitted their service charge accounts for 2011-12 to 2013-14. Similarly, in 23 units in eight districts, we noticed that service charge account of 391 theatres/multiplexes for 2011-12 to 2013-14 were pending for scrutiny and approval by the Department. We could not ascertain how the Department verified the correctness of the utilisation of service charges.

On this being pointed out, the Department stated that verification was in process and audit would be intimated in due course.

6.3.2.13 Non-reconciliation of Personal Ledger Account with RBI and Difference in PLA Abstract

Deputy Collector, Mumbai City (Exemption), Mumbai has been maintaining a Personal Ledger Account (PLA) with RBI for depositing Security Deposit received from the proprietors of special events. ED received in advance as security deposit is first credited to this account and after receipt of the accounts and returns on the completion of the event, the amounts are either credited to Government account or refunded back to proprietors as per return.

Scrutiny of the records of the Deputy Collector, Mumbai City, Mumbai and RBI scrolls¹⁶ revealed that:

- The closing balance in the cash book as on 31 March 2015 was ₹ 4.11 crore, whereas the balance shown in the RBI scroll as on 31 March 2015 was ₹ 4.81 crore. The difference of ₹ 0.70 crore was not reconciled till date of audit.
- The closing balance as per the PLA Cash Book as on 30 September 2014 was ₹ 17.65 crore, whereas total of the abstract prepared for the details of the closing balance was ₹ 19.21 crore as on 30 September 2014. Thereafter the abstract has not been prepared by the Department. Thus, there was a huge difference of ₹ 1.56 crore which required reconciliation.

Non-reconciliation of the PLA with cash book exposed the Department to the risk of mismanagement of cash.

During the exit conference, the Department stated that reconciliation of the PLA account with the RBI would be carried out.

6.3.3 Conclusions and Recommendations

The Performance Audit indicated that the departmental machinery was not able to effectively enforce the provisions of the MED Act and Rules made thereunder in the levy and collection of ED, resulting in various cases of non-recovery, short recovery, incorrect grant of exemption, etc. The Department also did not take prompt remedial action in cases of non-submission of returns

¹⁶RBI monthly statement of credits and debit in the PLA

by proprietors of entertainments centres as well as dishonour of cheques received for payment of ED by the entertainment centres. Non-adherence to prescribed procedures were also noticed, wherein prescribed returns were not being furnished by the concerned officers. Also, no watch on receipt of such returns was kept in the higher offices, which showed lack of internal control.

There was no co-ordination between the Revenue and Forests Department and the Home Department. The Revenue & Forests Department was ignorant of the number of licenses issued by the Commissioner of Police, Home Department with the result that number of licensees remained outside the net of ED.

- **The Government may direct the Revenue and Forests Department to evolve a system of coordinating with the Home Department, which is the licensing authority in the Police Commissionerate areas, so that all licensed entertainment centres are brought under the scope of ED.**

There were a number of cases where the provisions of the Act/GRs were not followed, returns/registers were not maintained, shortfall in conducting inspections were also noticed, surveys were not being conducted and correctness of the returns was not ascertained in case of DTH service providers.

- **The Government may direct the Department to take effective steps to ensure submission of returns duly certified by CA by the DTH service providers and to conduct surveys to ascertain the correctness of these returns.**

Multi-dimensional entertainment centres could not be identified by the Department, ED on these new areas though provided in the Act was not levied correctly as these were treated as video game parlours.

- **The Government may direct the Department to strengthen its system for identifying multi-dimensional entertainment centres and levy ED as per the Act.**

Other audit observations

6.4 Non/short recovery of Entertainments Duty (ED) from cable operators

Resident Deputy Collector: Nanded, Taluka Magistrates: Ambajogai, Kalmeshwar, Kinwat and Saoner

ED amounting to ₹ 14.06 lakh was not paid by 57 cable operators

As per Section 3(4) of the MED Act, there shall be levied and paid by the proprietor to the State Government, the entertainments duty at the rate specified from time to time.

Test check of records of five offices in August 2013, revealed that ED amounting to ₹ 14.06 lakh was not paid by 57 cable operators during different periods between April 2010 and March 2013. The demands were not raised by the concerned collectors resulting in non-realisation of ED to that extent.

After we pointed out these cases, the TM Kinwat stated that demand notice would be issued after due verification and recovery details would be communicated. The remaining four officers accepted the observation and stated that recoveries would be effected. A report on recovery has not been received.

We reported the matter to the Government in April 2015; their reply has not been received (February 2016).

6.5 Short remittance of State Education Cess and Employment Guarantee Cess

Dy Commissioner of Tax, Bhiwandi Nizampur City Municipal Corporation, Bhiwandi

Amounted collected on account of Education Cess and Employment Guarantee Cess was short remitted by ₹ 5.10 crore

As per the provisions under Sections 4 and 6(b) of the Maharashtra Education and Employment Guarantee (Cess) Act read with rule 4 of Education (Cess) Tax on Lands and Buildings (Collection and Refund) Rules, 1962, amount of cess and penalty collected by any Municipal Corporation (MC) during any calendar week is required to be credited into the Government account before the expiry of the following week. If any MC defaults in payment of any sum under the Act, Government may, after holding such enquiry as it thinks fit, fix a period for the payment of such sum. The Act also empowers the Government to direct the bank/treasury in which the earnings of the MC are deposited, to pay such sum from the bank account to the Government. There is no provision in the Act to levy interest or penalty on delayed remittances of Government revenue by the MC.

During the scrutiny (January 2014) of the Tax Collection Registers of the Bhiwandi-Nizampur City Municipal Corporation, Bhiwandi, we noticed that the MC had remitted an amount of ₹ 11.70 crore out of ₹ 16.80 crore collected as Education Cess and Employment Guarantee Cess during the years 2010-11, 2011-12 and 2012-13, thereby resulting in short-remittance of ₹ 5.10 crore.

After this was brought to notice, the Corporation stated that due to poor financial condition of the Corporation, amount was not credited to the Government account.

The matter was also brought to the notice of the Department in August 2014. However, details of action taken by the Department have not been received.

We reported the matter to the Government in July 2015; their reply has not been received (February 2016).