

CHAPTER-V OTHER TAX RECEIPTS

A – STATE EXCISE

5.1 Tax administration

The Additional Chief Secretary to the Government (Excise), is the administrative head of the Excise Department at Government level. The Department is headed by the Excise Commissioner (EC). The Department is divided into three¹ zones, which are headed by the Joint Excise Commissioners (JEC), South, Central and North zone. The divisions at the district level are working under the Deputy Excise Commissioners (DEC). Besides, Excise Circle Inspectors (ECI) and Excise Inspectors (EI) under the control of the DEC of the respective districts are deputed to oversee collection of excise duties, licence fee, etc.

5.2 Internal audit

The Internal Audit Wing (IAW) in the State Excise Department is monitored by the Excise Commissioner (EC). The Wing consists of one Joint Commissioner of Excise assisted by one Assistant Excise Commissioner (AEC), three superintendents, three excise inspectors (EI) and six preventive officers. The priority for internal audit is given to auditee districts in which more vehicles have been seized, huge collectable arrears are pending and undue delay in collection was noticed in auditee offices.

The wing was to conduct inspections in the 311 sub offices annually. Out of the total 311 units to be audited, the wing planned and audited 46 units during 2016-17 as against 118 units audited during 2015-16. During the year, the Department cleared 924 paragraphs out of 1,808 paragraphs which was 51.11 *per cent* of the outstanding objections. The Department needs to cover up the shortfall in conduct of audit and to settle old outstanding objections.

5.3 Results of audit

In 2016-17, test check of the records relating to excise duty, license fee receipts, etc., of 25 offices under Excise Department showed non/short-realisation of excise duty/license fee/interest/penalty and other irregularities involving ₹ 1.20 crore in 15 cases, which fall under the following categories as given in **Table - 5.1**.

¹ South zone (Alappuzha, Kollam, Kottayam, Pathanamthitta and Thiruvananthapuram), Central zone (Ernakulam, Idukki, Palakkad and Thrissur) and North zone (Kannur, Kasargod, Kozhikode, Malappuram and Wayanad).

Table - 5.1

(₹ in crore)

Sl. No.	Categories	Number of cases	Amount
1	Non-levy of Excise Duty/License fee	4	0.13
2	Others	11	1.07
Total		15	1.20

During the course of the year, the Department accepted under-assessment and other deficiencies involving ₹ 1.04 crore in nine cases pointed out by Audit. The Department realised an amount of ₹ 0.38 crore in 15 cases during the year 2016-17.

In four cases involving ₹ 0.16 crore, the Department recovered the entire amount. One paragraph involving ₹ 0.40 crore is mentioned in the succeeding paragraph.

5.4 Unauthorised reconstitution of Board of Directors of companies/firms holding Foreign Liquor licences

As per Section 67(2) read with 67(3) of Abkari Act, as amended in 2014, the Excise Commissioner (EC) may impose a fine of Rupees three lakh each on any person or persons holding a license or permit for violation by reconstitution, alteration or modification without the permission of the EC of any deed on the strength of which any license is granted and the EC may regularise such irregular reconstitution on payment of fine and on application from the licensee. Under Rule 19(iii) of Foreign Liquor Rules, reconstitution of partnership/directors of a company may be allowed on payment of Rupees one lakh.

Audit cross verified the data on reconstitution of Board of Directors of companies in four offices² between October 2016 and March 2017 with the data in the Website of Ministry of Corporate Affairs, Government of India, which discloses the master data and signatory/director details of companies and observed that seven companies, who had neither applied for permission nor regularisation of reconstitution, had modified/reconstituted Board of Directors of companies on 10 occasions by addition/deletion of directors/partners as given in **Table - 5.2**.

Table - 5.2

Sl. No.	Name of Company	District in which licensee operates	No. of occasions
1	Hamara Hotels Pvt. Ltd.	Thrissur	1
2	Hotel Aramana (Samuel & Joseph Hotel Pvt. Ltd.)	Thrissur	2
3	Quality Hotels Pvt. Ltd.	Thrissur	2
4	Contour Holiday Resorts Pvt. Ltd.	Thrissur	1
5	Zuri Hotels & Resorts Pvt. Ltd.	Kottayam	2
6	Quilon Hotels & Resorts Pvt. Ltd.	Kollam	1
7	Hotel Souparnika Inn	Malappuram	1
Total			10

Non-imposition of fine by EC for unauthorised reconstitution and fee for regularisation resulted in non realisation of revenue of ₹ 40 lakh³ realisable from seven companies during the period from 2012-13 to 2015-16.

On this being pointed out (April 2017), Government replied (October 2017) that notices were issued in respect of all cases and ₹ 6.50 lakh was collected in respect of two cases. One case was pending before the Hon'ble High Court.

² Commissionerate of Excise, Thiruvananthapuram, Excise Division Office, Kasargode, Kollam and Malappuram.

³ 10 occasions x four lakh each (fee ₹ one lakh each and fine ₹ three lakh each).

B – STAMP DUTY AND REGISTRATION FEES

5.5 Tax administration

Receipts from stamp duty and registration fee are regulated under the Indian Stamp Act, 1899 (IS Act), Indian Registration Act, 1908 (IR Act) and the Rules framed there-under as applicable in Kerala and are administered at the Government level by the Secretary to Government, Taxes Department. The Inspector General of Registration (IGR) is the head of the Registration Department who is empowered with the superintendence and administration of registration work. He was assisted by the District Registrars (DR) and Sub-Registrars (SR).

5.6 Internal audit

Inspector General of Registration (IGR), Kerala monitors the functioning of the Internal Audit Wing (IAW) of the Registration Department. The sub-registry offices are audited annually. The total number of staff deputed for the internal audit work in the Department is 66. There is no separate manual for internal audit in the Department. The auditee offices are selected after giving special preference to those offices where the Registering Officer is due to retire shortly, which itself is a risk analysis aimed at avoiding revenue loss. During 2016-17, IAW audited 267 units out of 296 units planned for audit and pointed out 2,234 observations. During the year 2016-17, 4,386 audit observations could be cleared out of the 8,357 outstanding observations, which was 52.48 per cent of the outstanding observations.

5.7 Results of audit

The records of 69 offices relating to Registration Department were test checked during 2016-17. Non/short-levy of stamp duty and registration fee and other irregularities amounting to ₹ 1.70 crore were detected in 143 cases which fall under the following categories as given in **Table - 5.3**.

Table - 5.3

(₹ in crore)			
Sl. No.	Categories	No. of cases	Amount
1	Undervaluation of documents	102	1.63
2	Other lapses	41	0.07
Total		143	1.70

During the course of the year, the Department accepted under-valuation and other deficiencies involving ₹ 0.57 crore in 39 cases. An amount of ₹ 0.10 crore was realised in 35 cases during the year, of which, eight cases involving ₹ 0.02 crore pertained to 2016-17.

A few illustrative cases involving ₹ 0.39 crore are given in the following paragraphs.

5.8 Short collection of stamp duty and registration fee due to incorrect classification of landed properties

Government notified⁴ the fair value of land in Kerala by classifying entire land into 15 categories based on usage of land. Government issued instructions⁵ that when the instruments were brought for registration, if it was found that fair value has been omitted to be fixed in respect of the survey/resurvey/sub division numbers of the properties, the Sub Registrars should report the same to the District Collector as appeal for necessary action. Section 45A of the Kerala Stamp Act (KSA), 1959, stipulates that, the registering officer shall, while registering an instrument transferring any land, chargeable with duty, verify whether the value of land or the consideration set forth in the instrument is the fair value of that land. As per the Circular⁶ of Registration Department, if fair value was not fixed for a subsequent sub-division of a survey number, fair value of the mother sub-division matching with the classification by use whose fair value is already fixed can be taken for the subsequent sub-division.

- **Sub Registry Office, Kuttanellur**

In Sub Registry Office, Kuttanellur, scrutiny of documents (June 2016) revealed that a sale deed⁷ was registered conveying 178.88 Ares⁸ of land and one building for ₹ 4.82 crore⁹. As per the document, the property had access to *Panchayat* road. Audit conducted a joint physical inspection along with the Sub-Registrar and Village Officer and observed that the plot had access to the PWD Road. Fair value for plot with PWD road access in the said survey number was not fixed nor applied rate of similar survey number for the classification of land with PWD road access. Sub-Registrar did not report this to the District Collector for necessary action. The incorrect classification of land by Sub Registrar, Kuttanellur resulted in undervaluation of documents amounting to ₹ 3.13 crore and consequent short collection of stamp duty and registration fee of ₹ 25.02 lakh.

⁴ GO (P)/515 dated 6 March 2010.

⁵ GO (Ord) No. 77/10/TD dated 27 March 2010.

⁶ RR 9/20442/2014 dated 1 January 2015.

⁷ Doc. No. 1067/1/15 dated 13 April 2015.

⁸ Are is a unit of measurement of land 1 Are = 100 square metre, 100 Are = One hectare, 1Are = 2.471 cent, 247.1 cent = 1 hectare.

⁹ ₹ 4.6 crore for land and ₹ 0.22 crore for building.

On this being pointed out (March 2017), Government stated (September 2017) that *suo motu* action on document under section 45B(3) of Kerala Stamp Act, 1959, for suspected undervaluation was initiated.

- **Sub Registry Office, Kottapady**

In Sub-Registry Office, Kottapady, scrutiny of document (June 2016) revealed that a sale deed¹⁰ was registered conveying 21.045 Ares¹¹ of land for ₹ 87.50 lakh. According to the fair value register, the property was classified as a wet land. While scrutinising the documents, it was observed that there was a theatre in that plot. Audit conducted a joint physical inspection along with the Sub Registrar and Village Officer and observed that the plot was a commercially important one having access to PWD road. But fair value was not fixed for commercially important plot. Thus, the plot was misclassified by Sub Registrar, Kottapady as wet land instead of commercially important plot. Sub Registrar did not report this to the District Collector for necessary action. The incorrect classification of land resulted in undervaluation of document amounting to ₹ 27.23 lakh and consequent short collection of stamp duty and registration fee of ₹ 2.72 lakh.

On this being pointed out (March 2017), Government stated (September 2017) that *suo motu* action on document under section 45B(3) of Kerala Stamp Act, 1959, for suspected undervaluation was initiated.

5.9 Short collection of stamp duty and registration fee due to incorrect adoption of value of land

- **SRO, Chalakkudy**

Government notified¹² the fair value of land in Kerala by classifying entire land into 15 categories based on usage of land. Government issued instructions¹³ that when the instruments were brought for registration, if it was found that fair value has been omitted to be fixed in respect of the survey/resurvey/sub division numbers of the properties, the Sub-Registrars should report the same to the District Collector for necessary action. Section 45B (1) of KSA, 1959, stipulates that if the registering authority has reason to believe that the value of the property or the consideration was not truly set forth in the instrument 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 proper duty payable thereon. As per Section 45B (3) of the KSA, 1959, the District Collector may *suo motu* within two years from the date of registration of any instruments not already referred to him under sub section (1) above, call for and examine

¹⁰ Doc. No. 815/12 dated 12 April 2012.

¹¹ Are is a unit of measurement of land 1 Are = 100 square metre, 100 Are = One hectare, 1 Are = 2.471 cent, 247.1 cent = 1 hectare.

¹² GO (P)/515 dated 6 March 2010.

¹³ GO (Ord) No. 77/10/TD dated 27 March 2010.

the instrument and if he has reason to believe that the value or consideration has not been truly set forth in the instrument he may determine the value and the duty which shall be payable by the person liable to pay the duty.

Scrutiny of documents (October 2016) in Sub Registry Office, Chalakkudy, revealed that four sale deeds¹⁴ were registered in survey No.1827/2 on the same day (1 January 2013) conveying 148.89 Ares¹⁵ of land for ₹ 26.19 lakh to the same purchaser. Scrutiny of previous documents revealed that the present executants of the entire area of 148.89 Ares got possession and titles of the land from a single Document No. 6874/2005. Hence Audit conducted a joint physical inspection along with the Sub Registrar and Village Officer and observed that the entire area of 148.89 Ares lay in a single stretch of land having PWD road access. The registering authority collected stamp duty and registration fee at the rate applicable to land with PWD road access only for 4.05 Ares of land (Document No.41/2013) instead of for entire stretch of land. The fair value for residential plot with PWD road access in survey No.1827/2 was not fixed. The incorrect adoption of value of land resulted in undervaluation of the property to the tune of ₹ 1.23 crore. The Sub Registrar, Chalakkudy did not report the undervaluation to the District Collector as stipulated in the Act. This resulted in short collection of stamp duty and registration fee of ₹ 11.04 lakh.

On this being pointed out (March 2017), Government stated (September 2017) that *suo motu* action on document under section 45B(3) of Kerala Stamp Act, 1959, for suspected undervaluation was initiated.

5.10 Purchase of land in excess of the ceiling prescribed under Kerala Land Reforms Act, 1963

- **Sub Registry Office, Vellanad**

Section 82 (1) (d) of the Kerala Land Reforms Act (KLR Act), 1963, stipulates that, in the case of any person, other than a joint family, the ceiling area shall not be more than 15 acres in extent. Section 2(43) of KLR Act, 1963 defines that “person” shall include a company, family, joint family, association or other body of individuals, whether incorporated or not, and any institution capable of holding property. Section 83 of KLR Act, 1963, provides that no person shall be entitled to own or hold or to possess under a mortgage lands in the aggregate in excess of the above ceiling area. A person holding or owning land in excess of the ceiling area shall surrender such excess land to the Government as per Section 85(1) of KLR Act, 1963, and file a statement (ceiling statement) under Section 85(2) before the Land Board showing the total area owned or held including the area proposed for surrender. Section 82 (5) of the KLR Act, provides that the lands owned or

¹⁴ Doc. No. 39/2013, 40/2013, 41/2013 and 42/2013 dated 1 January 2013.

¹⁵ Are is a unit of measurement of land 1 Are = 100 square metre, 100 Are = One hectare, 1 Are = 2.471 cent, 247.1 cent = 1 hectare.

held by a private trust or a private institution shall be deemed to be lands owned or held by the person creating the trust or establishing the institution. Section 120 of KLR Act, provides that no document relating to any transfer of land shall be received for registration unless the transferor and transferee make separate declarations in writing as to the total extent of land held by him. Section 71 of the Registration Act, 1908, enables the Sub Registrar to refuse registration of a document after making an order of refusal and recording the reasons for such Order.

On behalf of a company, M/s Poabs Granites Private Ltd, Sri Joseph Jacob, the Director of the Company purchased a total land of 17.69 Acres (716.10 Ares) in Aruvikkara and Vellanad Villages in 25 separate sale deeds for a total consideration of ₹ 1.51 crore from various persons. Apart from that on behalf of the company, wife (Managing Partner of the company) of the individual also purchased total land of 2.17 Acres (88 Ares) in Aruvikkara Village in four separate sale deeds for a total consideration of ₹ 43 lakh from various persons. The company owns 19.86 Acres, which was in excess of the ceiling prescribed by Section 82 (1) (d) of KLR Act, 1963 to the extent of 4.86 Acres than the allowable limit of 15 Acres. Though the company registered various purchases, it did not disclose the extent of landed property owned at the time of such transactions. Registration Department did not comply with the provisions of the Act resulting in irregular purchase of excess land.

On this being pointed out (April 2017), Government replied (November 2017) that *suo motu* action was initiated against the company. Government also stated that strict instructions were issued to Registration Department to insist for the declaration regarding the extent of land holding at the time of registration.