

CHAPTER VII

OTHER TAX RECEIPTS

7.1 Tax administration

This chapter consists of receipts from Electricity Duty, Excise Duty and Profession Tax. The tax administration is governed by Acts and Rules framed separately for each Department. These taxes are administered by the Excise Department and the Finance (Revenue) Department headed by the Principal Secretary who is assisted by the concerned Directorates.

7.2 Results of audit

In 2016-17, test check of the records of 36 units relating to State Excise, Profession Tax, Amusement Tax and Electricity Duty showed non-realisation and other irregularities of different heads amounting to ₹ 358.84 crore in 226 cases, **Table 7.1**.

Table - 7.1
Results of audit

(₹ in crore)

Sl. No.	Categories	No. of cases	Amount
A. State Excise			
1.	Non/short levy of Excise Duty/Wastage Fee on chargeable wastage of Rectified Spirit/India Made Foreign Liquor	27	6.18
2.	Non/short realisation of licence fee/renewal fee/initial grant fee/pass fee etc.	22	3.43
3.	Non-realisation of fees for change in management	14	1.37
4.	Non-realisation of regulatory fees	14	0.35
5.	Non-realisation of fees for unaccounted Foreign Liquor/spirit	5	0.32
6.	Non-realisation of composition money	4	0.06
7.	Other cases	27	2.63
Total		113	14.34
B. Profession Tax			
1.	Non-realisation of profession tax due to non-enrolment	42	1.02
2.	Non-realisation of profession tax against enrolled certificate holders	6	0.43
3.	Other cases	4	0.01
Total		52	1.46
C. Amusement Tax			
1.	Non-initiation of recovery process of assessed dues of tax	4	7.36
2.	Blockage/loss of Government revenue	3	1.86
3.	Non/short/levy/realisation of Tax/interest/penalty	19	1.56
4.	Short levy of LT due to irregular allowance of internal sale	2	0.66
5.	Excess set off loss & consequent non-levy of agricultural Income Tax	3	0.09
6.	Other cases	7	0.06
Total		38	11.59

Sl. No.	Categories	No. of cases	Amount
D. Electricity Duty			
1.	Non-realisation of Electricity Duty with the interest	2	330.89
2.	Non-realisation of Electricity Duty/non-raising of demand	9	0.30
3.	Non-recovery of Electricity Duty/assessed dues	2	0.21
4.	Non-levy of fines for non-submission of returns and non-payment of Electricity Duty	7	0.05
5.	Shortage of closing balance in the cash book	1	0.004
6.	Non-maintenance of records/irregularities in Service book	2	0
	Total	23	331.45
	Grand Total	226	358.84

During the course of the year, the Department accepted non-realisation and other deficiencies of different tax heads in 65 cases of ₹ 2.73 crore, of which 37 cases involving ₹ 4.29 crore were pointed out during the year 2016-17 and the rest in earlier years. An amount of ₹ 3.27 crore was realised in 46 cases during the year.

A detailed compliance audit on “**Assessment and Collection of Electricity Duty**” having money value of ₹ 42.26 crore and an illustrative case of profession tax involving ₹ 52.44 lakh are discussed in the following paragraphs:

7.3 Detailed Compliance Audit on “Assessment and Collection of Electricity Duty”

7.3.1 Introduction

Electricity duty is levied by the State Government on consumption of electricity for domestic as well as industrial purposes. Assessment and collection of electricity duty within West Bengal is regulated by the Bengal Electricity Duty (BED) Act, 1935 and the Bengal Electricity Duty Rules, 1935 (BED Rules).

The BED Act, 1935 is administered by the Directorate of Electricity Duty (DED), West Bengal which is under the administrative control of Finance Department, Government of West Bengal. The overall control and superintendence of the Directorate is vested in the Director of Electricity Duty, West Bengal. He is assisted³⁰³ by one Chief Inspecting Officer, two Senior Inspecting Officers, nine Inspecting Officers, one Administrative Officer and nine Junior Inspecting Officers.

Under Sections 5 and 6 of the BED Act, every licensee³⁰⁴ has the statutory obligation to pay electricity duty collected from consumers to the State Government and furnish the returns within a prescribed time limit. Apart from that, a non-licensee³⁰⁵ is also liable to pay duty for generation and consumption of electrical energy.

³⁰³ Sanctioned strength as per Administrative Report of DED for the year 2015-16.

³⁰⁴ Licensee means any person who is granted a license or who is deemed to be a licensee under Section 14 of the Electricity Act, 2003. A licensee is engaged in transmission/ distribution/ trading of electricity to consumers.

³⁰⁵ Every person, other than a licensee, who has installed an electricity generating plant for own consumption.

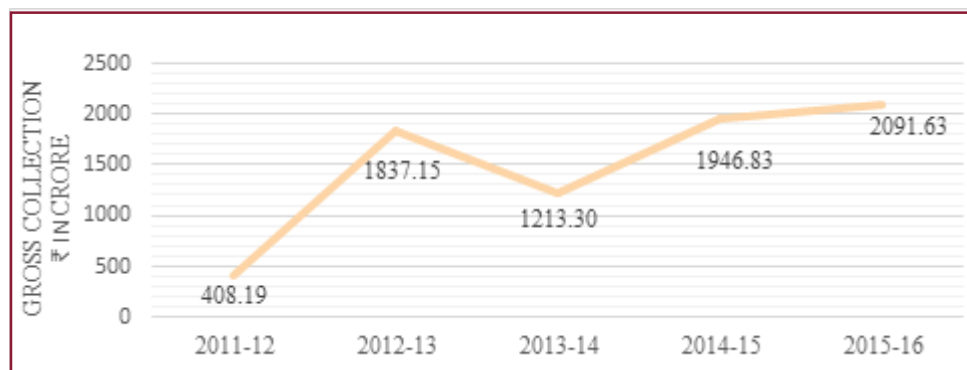
Under the provisions of the BED Act, 1935, the DED, the Electricity Duty officer³⁰⁶ and the authorised Deputy Magistrates have been entrusted with the work of assessment and collection of electricity duty. The authorities responsible for assessment and collection of duty in respect of licensees and non-licensees in West Bengal are shown in the following table:

Table - 7.2
Authorities responsible for assessment and collection of duty

Jurisdiction	Licensees	Non-licensees
Districts of North 24 Paraganas, South 24 Paraganas and area of supply of Calcutta Electric Supply Corporation (CESC)	Electricity Duty Officer (Agricultural Income Tax officer, Range-II) in Kolkata	Inspecting officers or Junior Inspecting officers
Other districts in West Bengal	Electricity duty officers and authorised Deputy Magistrates in respective districts	Inspecting officers or Junior Inspecting officers and authorised Deputy Magistrates in respective districts

Collection of electricity duty during the last five years is shown in **Chart 7.1**.

Chart 7.1: Collection of electricity duty during the last five years



During analysis of the trend of collection of revenue from 2011-12 to 2015-16, Audit observed that collection of revenue increased by 350.07 *per cent* during the year 2012-13 over collection in the year 2011-12.

7.3.2 Objectives, Scope and methodology of Audit

The detailed compliance audit was conducted to seek assurance that

- (i) Provisions of rules to safeguard revenue were adequate,
- (ii) Existing provisions on assessment and collection procedures under the Acts/ Rules were being followed by the Department and
- (iii) Internal controls were in place and effective.

³⁰⁶ Agricultural Income Tax Officer, Range-II at Kolkata is the person appointed by that designation by the State Government under sub-Section (1) of Section 7 of the BED Act, 1935.

The Audit was conducted during the period between January 2017 and June 2017 covering assessment periods from 2011-12 to 2015-16. Audit was conducted in the Directorate office at Kolkata, its two³⁰⁷ Zonal offices, and seven³⁰⁸ collectorates. In addition, office of the Electricity Duty Officer at Kolkata was also taken up for audit. During the course of audit, records of the Directorate, its subordinate offices and collectorates were scrutinised. Provisions of the BED Act, 1935, the BED Rules, 1935 and notifications and circulars issued by the Government of West Bengal were used as a source of criteria for the audit.

Audit findings

The audit revealed various system and compliance deficiencies as well as weaknesses in internal control mechanism in the Directorate. These have been discussed in the following paragraphs:

7.3.3 Adequacy and sufficiency of provisions of rules to safeguard Government revenue

During the course of audit, a number of inadequacies in the provisions of the various Sections of the BED Act, 1935 were observed. This resulted in leakage of revenue as discussed in following paragraphs:

7.3.3.1 Absence of a system of cross verification of data with other departments to identify and bring in potential assesseees into the tax net

Registration and renewal fee of ₹ 5.75 lakh could not be realised. This was due to absence of a system of cross verification of data with that of other departments to identify and bring in potential assesseees into tax net.

Under Section 7B (1) of the BED Act, 1935 and rules made thereunder, every person, who has installed or will install an electricity generating³⁰⁹ plant for his own consumption, shall, apply to the appropriate authority for registration of every such plant. The first schedule under Section 3 prescribes payment of electricity duty by such persons at the rate of 20 paise for each unit of energy consumed.

Further, under Section 21 of the Air (Prevention and Control of Pollution) Act, 1981, applications were to be made to the West Bengal Pollution Control Board (WBPCB) for obtaining consent to operate.

During the course of audit, information from WBPCB in respect of Diesel Generator (DG) set owners, who applied³¹⁰ for consent to operate DG sets, was cross-verified with the registration records of the DG set owners in the jurisdictional Zonal offices of Electricity Duty, Asansol, Jalpaiguri and the Directorate office in Kolkata. It was observed that 2,435 persons in 3,160 cases³¹¹, were not registered with the DED. In

³⁰⁷ Asansol zonal office which exercises jurisdiction over districts of Burdwan, Birbhum, Bankura and Purulia and Jalpaiguri zonal office which exercises jurisdiction over districts of Darjeeling, Cooch Behar, Jalpaiguri, Uttar Dinajpur and Dakshin Dinajpur.

³⁰⁸ Randomly selected collectorates of Bankura, Burdwan, Hooghly, Howrah, Jalpaiguri, Paschim Medinipur and Purba Medinipur.

³⁰⁹ Diesel based, coal based or waste gas based generation.

³¹⁰ During the period from 2011-12 to 2015-16.

³¹¹ One case=one DG set.

the absence of any system of cross verification of data available with other departments, DED failed to bring potential assessee into tax net. As a result, registration fee and renewal fee of ₹ 5.75 lakh³¹² could not be realised.

Further, as these cases were not detected, the actual consumption of electrical energy and the electricity duty leviable could not be ascertained by audit.

The Directorate office, Kolkata and the Zonal offices accepted the audit observation and stated that proceedings for registration of plants as pointed out by audit would be made shortly. The Directorate, however, remained silent about putting in place any mechanism for identifying such cases to safeguard its revenue prospects.

The Director, Electricity Duty stated (January 2018) that necessary measure would be taken to bring non-licences into the tax net after keeping in touch with WBPCB.

The matter was reported to the Government in August 2017; reply was awaited (February 2018).

7.3.3.2 Absence of provision to levy interest on delayed/unpaid Electricity duty in respect of non-licences

Interest of ₹ 82.48 lakh could not be levied due to absence of provision to levy interest on delayed/unpaid electricity duty in respect of non-licences.

As per Section 5A(1) of the BED Act, 1935 read with Rule 2 of the BED Rules, 1935, where a licensee fails to make payment³¹³ of electricity duty collected by him, he is liable to pay a simple interest at the rate of one *per cent* for each calendar month of default.

Further, Rule 11(1) of the BED Rules, 1935 stipulates that a non-licensee is required to pay the amount of electricity duty within 30 days after expiry of the month for which it is payable.

Assessment case records were scrutinised in six³¹⁴ collectorates and the DED, Kolkata during the course of audit. It was observed that 53 non-licences had either defaulted in payment or made delayed payment of electricity duty for various assessment periods³¹⁵. These cases were assessed by the Assessing Authorities (AAs) during the years 2011-12 to 2015-16. The electricity duty payable was assessed at ₹ 5.13 crore. No interest was levied by the AAs for default in payment of electricity duty by these non-licences. Unlike the provisions for levy of interest on irregular retention of electricity duty by the licensees, the extant rules did not provide for levy of any interest for default in payment of electricity duty by non-licences.

A non-licensee, who did not pay electricity duty in time, therefore, enjoyed undue benefit of retaining Government money for indefinite periods without payment of any

³¹² Including renewal fee of ₹ 5.60 lakh in those cases where more than three years had elapsed since the date of application to the WBPCB.

³¹³ Within 60 days after expiry of the month for which it is levied.

³¹⁴ Bankura, Burdwan, Hooghly, Jalpaiguri, Paschim Medinipur and Purba Medinipur.

³¹⁵ Between December 1994 and December 2015.

interest. An enabling provision in the Act would have augmented Government revenue by ₹ 82.48 lakh in the form of interest³¹⁶, with regard to the defaulters pointed out by Audit. This would also have acted as a deterrent against default in timely payment of electricity duty.

After Audit pointed this out between March and June 2017, six³¹⁷ collectorates and the DED, Kolkata stated that in the absence of enabling provisions, interest could not be levied.

The Director, Electricity Duty while maintaining (January 2018) that there was no provision for imposing interest for late payment/non-payment of Electricity Duty by the non-licensees, stated that a proposal in that regard had been sent to the Government.

The matter was reported to the Government in August 2017. Reply was awaited (February 2018).

Government may consider making provisions in the Act/Rule for levy of interest on retention of electricity duty by the non-licensees beyond prescribed due dates, similar to the lines of licensees.

7.3.3.3 Absence of time limit for initiation of certificate proceedings

Electricity duty and interest of ₹ 299.98 crore could not be realised due to absence of a time limit for initiation of certificate proceedings.

Under Section 5(1) of the BED Act, 1935 read with Rule 2 of the BED Rules, 1935, every licensee who supplies electricity to consumers is required to collect the electricity duty from consumers, together with his own monthly charges. He is also required to deposit the same in the Government account within 60 days. Similarly, as per Rule 11(1) of the BED Rules, 1935, a non-licensee shall pay the amount of duty within 30 days after expiry of the month for which it is payable. Section 8 of the BED Act, 1935 prescribes that any sum due on account of electricity duty or interest shall be recoverable as a public demand. The Bengal Public Demands Recovery (BPDR) Act, 1913 prescribes the manner of recovery of public demands and process of certificate proceedings³¹⁸.

During the course of audit, assessment case records in the offices of the Electricity Duty officer, Kolkata, the DED, Kolkata and five³¹⁹ collectorates were checked. It was observed that in 90 cases of licensees and non-licensees, the AAs raised demand

³¹⁶ Calculated at the rate of one *per cent* per month of default similar to licensees.

³¹⁷ Bankura, Burdwan, Hooghly, Jalpaiguri, Paschim Medinipur and Purba Medinipur.

³¹⁸ Under the BPDR Act, 1913, "Certificate proceedings" are proceedings to recover a public demand. When any public demand payable to any person other than the Collector is due, such person may send to the Certificate Officer a written requisition in the prescribed form. Also, when the Certificate Officer is satisfied that any public demand payable to the Collector is due, he may sign a certificate in the prescribed form, stating that the demand is due, and shall cause the certificate to be filed in his office. Subject to such conditions and limitations as may be prescribed, a Certificate Officer may order execution of the certificate (a) by attachment and sale, or by sale (without previous attachment), of any property, or (b) by attachment of any decree, or (c) by arresting the certificate-debtor and detaining him in the civil prison, or (d) by any two or all of the methods mentioned in clauses (a), (b) and (c).

³¹⁹ Bankura, Burdwan, Hooghly, Paschim Medinipur and Purba Medinipur.

of electricity duty and interest of ₹ 299.98 crore after assessments³²⁰. Audit further observed that none of the assessees paid the duty and/or interest raised in these demand notices, even after lapse of considerable periods ranging from nine to 67 months from the dates of assessment. The details are shown in the following table:

Table - 7.3

Delay in initiation of certificate proceeding

(₹ in crore)

Nature of assessees	Number of assessees	Period of assessments	Assessed between	Total tax and interest due	Amount realised	Delay in payment
Licensees	2 ³²¹	2008-09 to 2014-15	March 2013 and April 2016	298.92	Nil	9 to 46 months
Non-licensees	88	1997-98 to 2015-16	August 2011 and March 2016	1.06	Nil	12 to 67 months

The assessees did not prefer any appeal against the assessment orders. However, no action for recovery proceedings was initiated by the AAs to realise these dues. As a result, duty and interest of ₹ 299.98 crore remained unrealised.

Audit observed that the Government neither prescribed any time limit for initiation of certificate proceedings nor instituted a periodic review and monitoring mechanism to ensure its initiation in time.

After Audit pointed this out between February and June 2017, the Electricity Duty Officer and three³²² collectorates stated that necessary action would be taken in due course. Collectorate of Hooghly stated that non-licensees had been communicated to pay the duty. DED, Kolkata and collectorate of Bankura did not furnish specific reply.

The Director, Electricity Duty (January 2018) stated that there was no statutory provision for time limit about initiation of certificate proceedings and it was incumbent upon the AA to decide when the proceedings would be initiated considering merits of the cases and provisions of the law.

The matter was reported to the Government in August 2017. Reply was awaited (February 2018).

7.3.3.4 Multiplicity of departments for assessment and collection

The system of assessment and collection of revenues from electricity duty is quite complex, as it involves different departments of the State Government. Assessment and collection of electricity duty has been assigned to Agricultural Income Tax officer, Range-II (Designated as Electricity Duty Officer), Inspecting officers/Junior Inspecting Officers of the DED and authorised deputy magistrates in the districts, in their respective jurisdictional areas as detailed in Para 7.3.1. IOs/JIOs of the DED carry out inspections at the premises of the assessees and assessment proposals are forwarded to the authorised Deputy magistrates for final assessment and collection.

³²⁰ Between August 2011 and April 2016.

³²¹ CESC and WBSEDCL.

³²² Burdwan, Paschim Medinipur and Purba Medinipur.

The involvement of different departments of the State Government in assessment and collection of receipts from Electricity Duty led to lack of coordination, delay and mismanagement as described in the following sub-paragraphs:

1. Assessment proceedings not initiated on assessment proposals

Electricity duty of ₹ 22.76 lakh was not realised as assessment proceedings were not initiated.

During the course of audit, it was observed that the IOs/JIOs of Zonal Office of the DED at Jalpaiguri and DED, Kolkata sent assessment proposals of non-licensees to two³²³ district collectorates for final assessment and collection of duty. On test check of assessment proposals in those collectorates, it was observed that nine cases involving electricity duty of ₹ 22.76 lakh which were sent between August 2014 and September 2015, were not assessed by the concerned collectorates.

Audit further observed that even notice of assessment in Form D-1 was not issued in any of the cases. These assessment proposals were not attended to in the collectorates even after a lapse of 19 to 32 months from the dates of sending these proposals upto date of audit (May 2017). As a result, duty of ₹ 22.76 lakh involved in these cases remained unrealised. Further, as there was no scope to levy interest on the outstanding amount, delay in final assessment and raising of demand by the AAs was detrimental to the government revenue.

After Audit pointed this out between February and May 2017, the collectorates stated that demand notices were being issued shortly.

The Director, Electricity Duty stated (January 2018) that assessment of the cases had been completed by the concerned AAs. The Department, however remained silent on the recovery of revenue involved in these proposals.

The matter was reported to the Government in August 2017. Reply was awaited (February 2018).

2. Electricity duty not realised due to assessments barred by limitation of time

Electricity duty of ₹ 5.50 lakh in nine cases could not be realised as the assessments became time barred.

Section 3A(3) of the BED Act, 1935 prescribes that no assessment under Section 3A shall be made after expiry of four years from the end of the year³²⁴ comprising the period or periods in respect of which the assessment is made.

Information in respect of assessment proposals was collected from the Asansol Zonal Office and cross checked with the records of two³²⁵ collectorates. On test check of assessments proposed between May 2009 and March 2013, it was noticed that in nine cases involving electricity duty of ₹ 5.50 lakh, no action to finally assess and demand the electricity duty was taken by the collectorates within the prescribed time limit of four years. As a result, the assessments became barred by limitation of time causing a loss to the exchequer of ₹ 5.50 lakh.

³²³ Howrah and Jalpaiguri.

³²⁴ Year means the year commencing on the 1st day of April and ending on the last day of March.

³²⁵ Bankura and Burdwan.

Audit observed that there was lack of coordination between the Zonal offices which proposed assessments and the collectorates who were to finally assess and raise the demand. No follow-up action was taken by the proposing office to look into the outcome of the assessment proposals forwarded by it. Further, there was no system of sending monthly progress reports or action taken reports of assessment and collection by the collectorates to the Zonal offices or the DED.

After Audit pointed this out in April 2017, the collectorates did not furnish specific reply.

The Director, Electricity Duty did not furnish any reply.

The matter was reported to the Government in August 2017. Reply was awaited (February 2018).

7.3.4 Compliance with the existing provisions on assessment and collection procedures under the Act/Rules

During the course of audit, compliance to Rules and Regulations by AAs while carrying out assessments and collection procedures was examined and findings were as follows:

7.3.4.1 Irregular and excess rebate as the cost of collection

In violation of provisions of Government notification, cost of collection of ₹ 11.99 crore was allowed instead of ₹ 10.88 crore.

Section 5(1) of the BED Act, 1935 provides that where electrical energy is supplied by a licensee, the licensee shall collect and pay electricity duty to the State Government at the prescribed time and manner. Under Section 5(3), the licensee shall be entitled to a rebate on the amount of the duty collected and paid by him, for his cost of collection of the duty.

In a notification³²⁶ issued in March 1974, Government of West Bengal, Finance (Taxation) Department, made provision for rebate at a flat rate of one *per cent* of the amount of electricity duty collected and paid by West Bengal State Electricity Board (WBSEB) (now WBSEDCL) for its cost of collection of the duty. This was allowable provided that the duty was credited to the Government account within 30 days following the date on which the return under Rule 4 of the BED Rules, 1935, fell due. In addition, the notification prescribed the manner of claim of rebate on the cost of collection. It stated that the bills in respect of the amount of rebate claimed should be presented to the treasury/sub-treasury with whom the electricity duty collected was deposited by WBSEB (WBSEDCL). These dues, after verification, were to be debited to the concerned head of account.

Scrutiny of assessment case records of the licensee, WBSEDCL for the periods of assessment 2008-09, 2009-10 and 2011-12 was taken up for audit in the office of the Electricity Duty Officer, Kolkata. These cases were assessed by AAs between 2011-12 and 2015-16. Audit observed that the licensee had collected electricity duty of ₹ 1,169.34 crore. Of this, the licensee deposited ₹ 1,087.80 crore only into Government

³²⁶ No.1007 F.T. dated 21 March 1974.

account. According to the rules, licensee was eligible to get rebate towards cost of collection, on the amount actually deposited. Rebate allowable, therefore was ₹ 10.88 crore only, being one *per cent* of the total deposits. However, it was observed that during the course of the assessment, the AA allowed the licensee's entire claim of cost of collection of ₹ 11.99 crore. The AA while assessing the cases did not consider the fact that as per the notification, rebate was allowable on the amount deposited and not on the amount of duty collected. The action of the AA was violative of the provisions of the notification. This resulted in irregular and excess allowance of rebate of ₹ 1.11 crore.

After Audit pointed this out in February 2017, the Electricity Duty Officer stated that necessary action would be taken in due course.

The Director, Electricity Duty stated (January 2018) that the matter was being taken up with the Government as the assessee was also a Government entity.

The matter was reported to the Government in August 2017. Reply was awaited (February 2018).

7.3.4.2 Assessment of licensees not made

Electricity duty of ₹ 46.93 crore in respect of two licensees could not be realised as assessments had become time barred.

Under Section 3A (1) read with Section 6 of the BED Act, 1935, if no return in respect of any period is submitted by a licensee or if the return submitted is incorrect/incomplete, the authority shall³²⁷ resort to assess³²⁸, the amount of electricity duty payable under the Act by the licensee. Further, as per Section 3A(3), no assessment under this Section shall be made after expiry of four years from the end of the year comprising the period or periods in respect of which the assessment is made.

1. Audit scrutinised return folders in respect of high tension (HT) and low-tension (LT) supplies of a licensee, Durgapur Projects Limited, in the Burdwan collectorate for the period from April 2011 to April 2012. Audit observed that the licensee had collected electricity duty of ₹ 47.11 crore³²⁹ during the period. The licensee while disclosing these collections in his returns, paid electricity duty of ₹ 18.13 lakh only for the months of January and February 2012 in respect of LT supply, against duty payable of ₹ 47.11 crore. The licensee was, therefore, liable to be assessed under Section 3A of the BED Act. Audit observed that AAs did not assess the cases within the prescribed time limit of four years. As a result, electricity duty of ₹ 46.93 crore could not be realised due to assessments being barred by limitation of time.

After Audit pointed this out in April 2017, the collectorate office did not furnish specific reply.

The Director, Electricity Duty stated (January 2018) that the matter was being taken up with the Government as the assessee was Government entity for realisation of Electricity Duty.

³²⁷ After giving such licensee a reasonable opportunity of being heard.

³²⁸ To the best of his judgment.

³²⁹ ₹ 45.64 crore and ₹ 1.47 crore from HT and LT consumers respectively.

The matter was reported to the Government in August 2017 followed by a reminder issued in October 2017. Their reply has not been received (February 2018)

2. In terms of Section 6 of the BED Act, 1935 read with Rule 4 of the BED Rules, 1935, every licensee liable to pay Electricity Duty shall, unless he is exempt from payment of duty, keep books of accounts and submit monthly returns within 90 days following the month of return. The return should show the units of energy supplied, generated or consumed by him, and the amount of duty payable thereon and recovered or paid by him under Section 5.

Damodar Valley Corporation (DVC) is a deemed licensee³³⁰ under the Electricity Act, 2003. As a 'deemed licensee' under the Electricity Act, 2003 falls within the definition of 'licensee' in the BED Act, 1935, DVC was required to file returns and collect and pay electricity duty as prescribed in the BED Act.

Audit observed in Zonal Office, Asansol, Burdwan collectorate and DED, Kolkata that DVC, a licensee under the BED Act, 1935 did not furnish returns for the period from 2009-10 to 2015-16. DVC, however, made payments of electricity duty in respect of periods from 2010-11 to 2015-16. Audit also observed that AAs did not take any action to assess the actual electricity duty payable by DVC by way of examination of books of accounts for the period from 2009-10 to 2015-16. In the absence of assessments or verification of books of accounts, AAs could not ascertain the amount of electricity duty and/or interest payable thereon by the licensee.

After audit pointed this out in June 2017, the DED stated that necessary steps were being taken for checking of books of accounts and assessment of electricity duty.

The Director, Electricity Duty stated (January 2018) that checking and verification of requisite papers had already been started from financial year 2013-14 for completion of assessment. The Department, however, remained silent on assessments of the cases for the assessment periods between 2009-10 and 2012-13.

The matter was reported to the Government in August 2017. Reply was awaited (February 2018).

7.3.4.3 Electricity Duty not realised from return defaulters

Electricity duty of ₹ 4.52 lakh could not be realised due to non-initiation of assessment proceedings against the non-licencees who had defaulted in submission of returns.

As per Rule 11(1) of the BED Rules, 1935, a non-licensee shall pay the amount of duty within 30 days after expiry of the month for which it is payable. He shall also submit³³¹ a monthly return in Form-D by the 15th of the month next following the month to which the return relates. Under Section 3A(1) of the BED Act, 1935, if no return in respect of any period is submitted by a non-licensee as required or the return

³³⁰ Under Section 14 of the Electricity Act, 2003, Damodar Valley Corporation established under Section 3(1) of the Damodar Valley Corporation Act, 1948, is deemed to be a licensee under the Electricity Act, 2003.

³³¹ To the appropriate authority.

submitted by a non-licensee is found to be incomplete /incorrect, the AA shall³³² proceed to assess³³³ the amount of electricity duty payable under the Act. Under Section 3A(3), no assessment under this Section shall be made after expiry of four years from the end of the year comprising the period/periods in respect of which the assessment is made.

Audit observed from return registers in respect of non-licensees in the Jalpaiguri Zonal Office that 17 non-licensees did not furnish returns for different periods between May 2008 and March 2013. No returns were submitted after March 2013 in any of these cases. As such, all such cases were to be assessed by March 2017 as per provisions of the Act. The AAs however did not initiate assessment proceedings to assess the cases before expiry of four years. As a result, assessment of all such cases involving electricity duty of ₹ 4.52 lakh³³⁴ became barred by limitation of time.

After this was pointed out in April 2017, the Jalpaiguri Zonal Office did not furnish specific reply.

The Director, Electricity duty stated (January 2018) that the matter was being looked into for realisation of Electricity Duty.

The matter was reported to the Government in August 2017. Reply was awaited (February 2018).

7.3.4.4 Electricity Duty not realised in pending assessment proposal

Electricity duty of ₹ 2.22 lakh could not be realised as the final assessment was not made.

Under Section 3A(1) of the BED Act, 1935, if a non-licensee fails to furnish returns or submits incorrect/incomplete returns in respect of any period, the AA shall resort to assessment after giving such non-licensee a reasonable opportunity of being heard. Further, no assessment under this Section shall be made after expiry of four years from the end of the year comprising the period or periods in respect of which the assessment is made.

Audit noticed from records of a non-licensee, Banarhat tea estate in Jalpaiguri Zonal office that the non-licensee had not been paying electricity duty on industrial consumption of electricity since January 2005. The Inspecting officer (IO) assessed electricity duty at ₹ 2.22 lakh for the period from January 2005 to April 2012 and issued a notice in May 2012 to the non-licensee, giving him an opportunity of being heard. In the notice so issued, the IO stated that failing representation on receipt of the notice, the assessment proposal would be forwarded to appropriate authority for further action.

Audit observed from records that the non-licensee did not turn up for the hearing. The IO, however, did not forward the assessment proposal to the appropriate authority for further action. The non-licensee therefore, could not be finally assessed within the time limit prescribed under the Act. Thus, electricity duty of ₹ 2.22 lakh, could not be realised as the assessment became barred by limitation of time.

³³² After giving such non-licensee, a reasonable opportunity of being heard.

³³³ To the best of his judgment.

³³⁴ Calculated on the basis of previous return.

After this was pointed out in April 2017, the Jalpaiguri Zonal Office did not furnish specific reply.

The Director, Electricity Duty stated (January 2018) that the matter was being looked into for realisation of Electricity Duty.

The matter was reported to the Government in August 2017 followed by a reminder issued in October 2017. Their reply has not been received (February 2018).

7.3.4.5 Interest not levied on outstanding electricity duty

Interest of ₹ 38.67 crore was not levied on outstanding electricity duty of ₹ 66.32 crore.

As per Section 5A (1) of the BED Act, 1935, where a licensee fails to make payment of electricity duty collected by him by the prescribed date, he is liable to pay a simple interest at the rate of one *per cent* for each calendar month of default. The calculation of period of default³³⁵ is specified in the Section 5A(1) *ibid*.

Audit observed from assessment case records and returns of two³³⁶ licensees in Burdwan collectorate and the office of the Electricity duty officer at Kolkata, that the licensees collected electricity duty of ₹ 543.09 crore for the period from April 2011 to April 2012. However, the licensees deposited ₹ 476.77 crore only into Government Treasury, retaining ₹ 66.32 crore for a period from 42 to 69 months. As such, the licensees were liable to pay interest of ₹ 38.67 crore on unpaid electricity duty of ₹ 66.32 crore. Audit observed that the AAs did not take any action to realise the interest.

After Audit pointed this out in February 2017, the Burdwan collectorate and Electricity Duty Officer, Kolkata stated that necessary action would be taken in due course to realise the interest.

The Director, Electricity Duty stated (January 2018) that the matter was being taken up with the Government for realisation of Electricity Duty, as the assesses were Government entity.

The matter was reported to the Government in August 2017 followed by a reminder issued in October 2017. Their reply has not been received (February 2018).

7.3.4.6 Interest not levied on irregular retention of rebate

Interest of ₹ 1.54 crore was not levied on unauthorised retention of rebate.

Section 5(1) of the BED Act, 1935 provides that where electrical energy is supplied by a licensee, the licensee shall collect and pay electricity duty to the State Government at the prescribed time and manner. Under Section 5(3), the licensee shall be entitled to a rebate for his cost of collection of the duty on the amount of the duty collected and paid by him under Sub-section (1).

³³⁵ Calculated from the first day of the month immediately following the prescribed date of payment up to the month preceding the month of full payment, or up to the month prior to the month of assessment, whichever is earlier, upon the amount of unpaid duty at the end of each such month of default.

³³⁶ Durgapur Projects Limited and WBSEDCL.

Further, in terms of a notification³³⁷ issued by Government of West Bengal, Finance (Taxation) Department in July 1970, licensees should deposit the entire amount of collection of electricity duty to the Collector of the district. The amount of rebate admissible to the licensee at the prescribed rate has to be drawn by them by submission of bills to the concerned treasury. As per Section 5A(1) of the BED Act, where a licensee fails to make payment of electricity duty collected by him by the prescribed date, is liable to pay interest.

Audit observed from assessment case records of CESC for the period between 2011-12 and 2014-15 that CESC made collection of electricity duty of ₹ 1,708.21 crore. However, it was observed that CESC deposited ₹ 1,691.13 crore into the Government account, after making deduction towards rebate of ₹ 17.08 crore, with delays ranging from one to 16 months from the due dates.

Deduction of rebate before depositing it into Government account was not in conformity with the provisions of the Act and notification issued in this regard. These clearly prescribed that the rebate fell due only after deposit of entire amount into Government treasury and not before. As such, the rebate enjoyed by CESC should have been claimed only after payment of entire amount of electricity duty into the Government account. The licensee unauthorisedly retained duty of ₹ 17.08 crore for periods ranging from one to 16 months for which he was liable to pay interest of ₹ 1.54 crore. Audit further observed that the AA did not take any action to levy interest on such unauthorised retention of electricity duty.

After this was pointed out in February 2017, the Electricity Duty Officer stated that necessary action would be taken in due course.

The Director, Electricity Duty while accepting the audit observation (January 2018) stated that necessary action would be taken to realise interest.

The matter was reported to the Government in August 2017 followed by a reminder issued in October 2017. Their reply has not been received (February 2018).

7.3.4.7 Mistake in calculation during assessment

Electricity duty of ₹ 3.28 lakh was not realised due to mistake in calculation during assessment.

Under Section 3A of the BED Act, 1935, if a licensee or a non-licensee who is required to submit return fails to do so or files incomplete/incorrect return, the AA shall resort to assessment of the licensee/non-licensee to the best of his judgement.

Assessment case records in two³³⁸ collectorates as well as the DED, Kolkata were scrutinised. It was noticed that in assessing the cases of 10 non-licensees between July 2011 and July 2015, electricity duty payable was assessed at ₹ 12.98 lakh instead of ₹ 16.26 lakh due to mistake in computation. This resulted in short levy of electricity duty and consequent short-raising of demand of ₹ 3.28 lakh.

³³⁷ No. 4070 (15) F.T. dated 11 July 1970.

³³⁸ Burdwan and Hooghly.

After Audit pointed this out between March and June 2017, the collectorates of Burdwan and Hooghly accepted the audit observations and raised notice of demand whereas the DED Kolkata did not furnish specific reply.

The Director, Electricity Duty stated (January 2018) that the matter was being looked into.

The matter was reported to the Government in August 2017 followed by a reminder issued in October 2017. Their reply has not been received (February 2018).

7.3.4.8 Renewal fee not realised from Diesel generator set owners

Renewal fee of ₹ 2.98 lakh remained unrealised from diesel generator owners.

As per Rule 9D(3), the registration of every electricity generating plant shall be renewed before the expiry of three years from the date of registration of the plant on payment of a renewal fee of ₹ 100 for every plant up to 100 KVA and ₹ 500 for a plant exceeding 100 KVA.

Further, as per Rule 9D(8), if any such plant owner sells or otherwise disposes/discontinues/changes his name or place of business, or changes the nature of his consumption of energy³³⁹, he or in his case of death, his legal representative, shall inform the registering authority about such sale, disposal, discontinuance or change.

During the course of the audit, registers of registration in Form H-2 maintained in DED, Kolkata and two³⁴⁰ Zonal offices were taken up for scrutiny. It was observed that 435 DG set owners did not renew the registration of their 685 DG sets, expired between April 2011 and March 2016. The owners of such DG sets did not furnish any information in respect of sale, disposal, discontinuance or change in the DG sets to the Directorate /zonal offices. The Directorate /zonal offices also did not take any action to realise the renewal fee from such DG set owners. As a result, renewal fee of ₹ 2.98 lakh remained unrealised.

After Audit pointed this out between March and June 2017, the Zonal office, Jalpaiguri and DED, Kolkata stated that action would be taken to realise the fee, while the Zonal office, Asansol did not furnish any specific reply.

The Director, Electricity Duty stated (January 2018) that the matter was being sent to the Government for kind consideration.

The matter was reported to the Government in August 2017 followed by a reminder issued in October 2017. Their reply has not been received (February 2018).

7.3.5 Existence of sufficient internal controls in the Directorate

Internal control is an integral component of an organisation's management processes which is established in order to provide reasonable assurance that the organisation's operations are carried out effectively, economically and efficiently. It also ensures the accountability and compliance of rules and regulations and therefore safeguarding against loss.

³³⁹ Which is specified in his application of registration.

³⁴⁰ Asansol and Jalpaiguri.

Audit observed several internal control mechanism deficiencies in the administrative, operational and monitoring controls in the DED. Internal audit arrangements were found to be non-existent and did not provide complete assurance against irregularities. Deficiencies in the internal control mechanism are discussed in the following sub-paragraphs:

7.3.5.1 Internal Audit

There was no Internal Audit wing in the Directorate .

Internal Audit wing (IAW) of an organisation is a vital component of its internal control mechanism and is generally defined as the control of all controls to enable the organisation to assure itself that the prescribed system is functioning reasonably well.

Audit observed that there was no internal audit wing in the DED. An internal audit wing would have ensured evaluation of the systems, procedures and controls within the department. This permanent in-house mechanism would have scrutinised and detected irregularities in the assessment and collection of receipts from electricity duty and checked different records and registers in the Directorate to ascertain effectiveness of the internal control system. An effective IAW was more important in the DED as there was inadequacy of man-power in the directorate and the system of assessment and collection of revenue was complex. In absence of an IAW, revenue leakage therefore cannot be ruled out.

The Director, Electricity Duty stated (January 2018) that the matter was being looked into and effective steps would be taken accordingly.

7.3.5.2 Submission of returns not monitored

Submission of returns by the registered DG set owners was not monitored by the collectorates as no database of assessees was maintained.

As per Rule 11(1) of the BED Rules, 1935 a non-licensee shall pay the amount of duty within 30 days after expiry of the month for which it is payable. He shall also submit, to the appropriate authority, a monthly return in Form-D by the 15th of the month next after that following month to which the return relates. A database of registered DG Set owners is foremost to monitor timely filing of returns and appropriate monitoring of payment of electricity duty.

During the course of audit, it was noticed that no database of registered DG set owners was available in five³⁴¹ collectorates. In the absence of such database in the collectorate offices, submission of returns and/or payment of duty by the registered DG set owners could not be monitored by the collectorates.

³⁴¹ Hooghly, Howrah, Jalpaiguri, Paschim Medinipur and Purba Medinipur.

Further, in the offices taken up for audit, there was no system in place for scrutiny of returns submitted by the non-licensees. In the absence of any mechanism to scrutinise the returns submitted, arithmetical accuracy, verification of exemptions claimed and timely payment of duty by the return filers cannot be established by the appropriate assessing authorities.

The Director, Electricity Duty stated (January 2018) that the online system was being developed to monitor submission and scrutiny of returns.

7.3.5.3 Inadequate men in position

Section 7(1) of the BED Act, 1935 prescribes authorities to be appointed by the State Government to perform duties and exercise powers for the purpose of carrying out the provisions of the Act and Rules made thereunder. In the Directorate, officers in the ranks of Junior Inspecting Officers, Inspecting Officers, Senior Inspecting Officers and Chief Inspecting Officer are mainly responsible for operational functions of the DED and are entrusted with the work of assessment and collection of electricity duty. Adequate man power deployment in these positions is therefore, indispensable for optimum functioning of the DED.

During the course of audit, the sanctioned strength vis-a-vis corresponding men in position in the Directorate as well as in its two Zonal offices in the year 2013-14, 2014-15 and 2015-16 was analysed. It was noticed that men-in position had a downward trend during the years 2013-14, 2014-15 and 2015-16 and vacancies in the department were increasing constantly. It was observed that out of sanctioned posts of 23 officers, there was a vacancy of nine (39 per cent), 12 (52 per cent) and 14 officers (61 per cent) in the posts of JIO and above in the year 2013-14, 2014-15 and 2015-16 respectively. Shortage of man power at important positions was affecting the assessment and collection of revenue and hampering effective monitoring of duty payers. Inadequate man power in the DED, therefore, was detrimental to the Government revenue.

The Department stated (January 2018) that the matter had already been taken up with the Government.

The matter was reported to the Government in August 2017 followed by a reminder issued in October 2017. Their reply has not been received (February 2018).

7.3.6 Conclusion

The detailed compliance audit noticed various system deficiencies in assessment and collection of electricity duty as well as instances where extant rules and regulations were not complied with. The DED had no system in place to obtain and cross verify data available with other departments to tap potential assessees. In absence of any provision under the Act to levy interest for delay in payment of electricity duty, the non-licensees were enjoying undue benefit by way of retaining the Government money for indefinite periods, without payment of any interest. Certificate proceedings were

not initiated to recover outstanding dues. Also no time limit had been prescribed in the rules to initiate the certificate proceedings in cases where dues were not paid by the assessee even after expiry of due date of payment as specified in the demand notice. Irregular and excess cost of collection on account of rebate was claimed by the assessee and was allowed during assessments. There were weaknesses in internal control mechanism. Man power deployment in the operational positions in the DED was also found to be inadequate.

Other audit observation

Profession Tax

7.4 Profession Tax not realised

Profession Tax Officer (PTO) failed to detect that profession tax of ₹ 52.44 lakh had not been deducted by the employer on behalf of employees.

In terms of Section 3(2) of the West Bengal State Tax on Professions, Trades, Callings and Employments Act, 1979, every person earning salary shall be liable to pay profession tax to the State Government at the prescribed rates. Section 4 provides that the profession tax payable by any person shall be deducted by his employer from the salary payable, before such salary is paid. Further, the employer shall be liable to pay tax on behalf of all such persons.

Audit observed³⁴² that the Commandant, 2nd Battalion, National Disaster Response Force (NDRF) did not deduct profession tax from the salaries of the persons employed in two offices for the period 2013-16. Audit also observed³⁴³ in the office of the Profession Tax Officer (PTO), West Bengal, Central Unit, Krishnanagar, Nadia that the PTO failed to detect that the employer on behalf of employees did not deduct profession tax during 2013-16. This resulted in non-realisation of profession tax of ₹ 52.44 lakh as shown in **Table 7.4**.

Table - 7.4
Profession tax not realised

(₹ in lakh)

Year	Number of persons employed during the period	Profession tax not realised
2013-14	1,481	15.39
2014-15	1,036	16.66
2015-16	1,110	20.39
Total		52.44

³⁴² April-May 2016.

³⁴³ September 2016.

The PTO stated³⁴⁴ that action would be taken for realisation of profession tax from them at the earliest.

The matter was reported to the Government in June 2017. Reply was awaited (February 2018).



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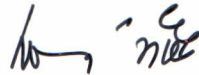
Kolkata

18 MAY 2018

Countersigned

New Delhi

22nd May, 2018



(RAJIV MEHRISHI)

Comptroller and Auditor General of India

³⁴⁴ September 2016.