

CHAPTER V : OTHER TAX RECEIPTS

5.1 Results of audit

Test check of the records relating to electricity duty, profession tax, entertainment duty, tax on buildings (with larger residential premises), State education cess and employment guarantee cess conducted during 2006-07, revealed short realisation or loss of revenue amounting to Rs. 130.23 crore in 5,850 cases as mentioned below:

(Rupees in crore)

Sl. no.	Nature of receipt	No. of cases	Amount
1.	Levy and collection of electricity duty, tax and fees (A review)	1	100.91
2.	Electricity duty, tax and fees	417	1.29
3.	Profession tax	3,529	0.72
4.	Entertainment duty	870	1.32
5.	State education cess and employment guarantee cess	684	23.76
6.	Tax on buildings (with larger residential premises)	349	2.23
	Total	5,850	130.23

During 2006-07, the concerned departments accepted under assessments, short levy etc., in 3,159 cases and recovered Rs. 3.59 crore, of which 515 cases involving Rs. 43 lakh related to 2006-07 and the rest to earlier years.

A review of "**Levy and collection of electricity duty, tax and fees**" involving a total financial effect of Rs. 100.91 crore and a few illustrative cases involving Rs. 385.03 crore are included in the following paragraphs against which an amount of Rs. 26.54 lakh had been recovered upto October 2007.

**SECTION A
ELECTRICITY DUTY**

5.2 Levy and collection of electricity duty, tax and fees

Highlights

Non-maintenance of records for monitoring the receipt of returns in form 'A', 'B' & 'C' led to non-levy and consequent non-realisation of revenue of Rs. 87.72 crore.

(Paragraph 5.2.6.1)

Failure of the department to link the Government notification of April 2001 with the date of installation of the windmills led to short payment of electricity duty of Rs. 88.99 lakh.

(Paragraph 5.2.6.2)

Failure of the department to scrutinise the returns in form 'B' & 'C' led to short levy of electricity duty of Rs. 2.72 crore.

(Paragraph 5.2.6.3)

Failure of the department to correlate the information vide form 'A' & 'C' led to short realisation of revenue of Rs. 1.29 crore.

(Paragraph 5.2.6.4)

Failure to carry out inspections of lifts and electrical installations resulted in non-realisation of inspection fees, totalling Rs. 7.44 crore.

(Paragraph 5.2.8.1 and 5.2.8.2)

Interest of Rs. 85.14 lakh was not levied for delayed payments of duty by six consumers.

(Paragraph 5.2.11)

5.2.1 Introduction

Levy and collection of taxes and duties on electricity are governed by the Bombay Electricity Duty (BED) Act, 1958 (for consumption and sale of electricity), the Maharashtra Tax on Sale of Electricity (MTSE) Act, 1963 (for sale of electricity), the Bombay Lifts Act, 1939 (for inspection of lifts and collection of fees) and the Rules made thereunder. Under the Indian Electricity Act, 1910, which is a Central Act, and the Indian Electricity Rules, 1956, fees for inspection of electrical installations are levied and collected.

Every licensee, licensed to sell electricity, is responsible for collecting electricity duty (ED) from the consumers and crediting it to the Government by the prescribed dates. The duty is also required to be paid by persons for captive consumption of energy generated by them. Electricity generating licences are required to pay tax on every unit of energy sold by them.

A review on the levy and collection of ED and fees was included in the Report of the Comptroller and Auditor General of India for the year

ended 31 March 2002. The current review of the same subject has revealed a number of system and compliance deficiencies which have been discussed in the subsequent paragraphs.

5.2.2 Organisational set up

The Chief Engineer (Electrical), Maharashtra (CE), under the administrative control of the Industries, Energy and Labour Department, is responsible for the administration of the Acts and Rules. He is assisted by four¹ Superintending Engineers (SE), 13 Electrical Inspectors² (EI) and an Inspector of Lifts at Mumbai.

5.2.3 Scope of audit

The review of the efficacy of the system of levy and collection of ED and fees during 2001-02 to 2005-06 was conducted in the offices of the CE, Inspector of Lifts and all the EIs in the State between October 2006 and March 2007.

5.2.4 Audit objectives

The review was conducted with a view to:

- assess the efficiency and effectiveness of the system of levy and collection of duty, tax and interest;
- ascertain whether statutory inspections of lifts and electrical installations were being carried out and fees for inspections were being realised; and
- assess whether an adequate internal control mechanism existed to ensure proper realisation of duty, tax, interest and fees.

5.2.5 Acknowledgement

The Indian Audit and Accounts Department acknowledges the co-operation of the Industries, Energy and Labour Department in providing necessary information and records for audit. The draft review report was forwarded to the Government and department in June 2007 and was discussed in the Audit Review Committee meeting held in August 2007. Principal Secretary, Industry, Energy and Labour Department represented the Government while the Chief Engineer (Electrical) represented the department. Views of the Government/department have been incorporated in relevant paragraphs.

Audit findings

System deficiencies

5.2.6 Levy of electricity duty and tax on sale of electricity

All licencees and units other than licencees who hold registration numbers³ are required to file quarterly returns in form 'A' showing the units of energy sold

¹ Aurangabad, Mumbai, Nagpur and Pune

² Ahmednagar, Aurangabad and Nashik (Aurangabad region); Mumbai (2) (Mumbai region); Amravati, Nagpur and Wardha (Nagpur region) and Kolhapur, Miraj, Pune and Thane (2) (Pune region).

³ A person who intends to generate energy or intends to continue generation of energy exclusively for his own use has to be registered with the department under the BED Act and the Rules made thereunder.

as well as the tax payable and paid. They are also required to file quarterly returns in form 'C' and 'B' respectively, showing the units of energy supplied to consumers/consumed and the duty payable and paid.

Audit scrutiny revealed that the department had failed to effectively scrutinise the receipt of the prescribed returns and the correctness of duty and taxes payable as per the returns. The omissions are discussed below:

5.2.6.1 Non-levy of electricity duty and tax on sale of electricity payable by units generating electricity through windmills

Cross verification of the records in the offices of three EIs with information collected from four⁴ SEs of MSEB revealed that 146 units generating electricity through windmills (windmill units) permitted to sell electricity and 98 windmill units permitted to generate and utilise the energy for their own use neither paid ED nor filed prescribed returns during the period from April 2001 to March 2006 and April 2005 respectively. These units sold/generated 18,833.90 lakh units on which ED of Rs. 56.50 crore, tax of Rs. 2.47 crore and interest of Rs. 28.75 crore were leviable. **As no records were maintained by the EIs to monitor the receipt of returns, neither could any notices of demand be issued nor could these outstanding dues be processed for recovery as arrears of land revenue.** This resulted in non-realisation of revenue of Rs. 87.72 crore.

After the cases were pointed out, the department accepted the observation and stated (September 2007) that action for recovery was in progress.

5.2.6.2 Short payment of duty due to ignoring the correct rate

Under a notification of April 2001, ED at the rate of 15 paise per unit was payable with effect from 1 April 2000 on the consumption of energy which was generated in a generating station by a person carrying on an industry and consumed by himself for such industry, provided the generating station was installed prior to 1 April 2000. If the generating station had been installed after 1 April 2000, duty was payable at 30 paise per unit of electricity generated and consumed.

Audit scrutiny of the records of EIs, Pune and Thane revealed that two electricity generating units for captive consumption of electricity had been installed after April 2000. These units generated and consumed 593.37 lakh units of electricity between March 2002 and April 2005 on which ED of Rs. 1.78 crore was payable, against which, only Rs. 89.01 lakh was paid. **Failure of the department to link the notification with the date of installation led to short realisation of ED of Rs. 88.99 lakh.**

After the cases were pointed out, the department stated that under the Government's resolution (GR) of September 1999, captive consumption of electricity by hydro-electric projects had been exempted from duty. The reply is not tenable as the BED Act provided for an enabling notification to be issued to give effect to the GR which was not issued and the notification of April 2001 did not provide for such an exemption. Moreover the department itself had accepted ED at the rate of 15 paise per unit of electricity generated and consumed.

⁴ Ahmednagar, Nashik, Sangli and Satara

5.2.6.3 Short levy of duty payable by licencees/consumers due to incorrect computation

Under the BED Act, duty at the rates specified in the Schedule to the Act is to be levied and paid to the Government on the energy consumed, depending on the purpose for which it was consumed.

Scrutiny of form 'C' and 'B' returns of eight licencees/consumers and five electricity generating units revealed that as against the duty of Rs. 63.84 crore payable, duty of Rs. 61.12 crore was paid due to incorrect computation. **Failure of the department to detect mistakes in the returns resulted in short levy of duty of Rs. 2.72 crore as detailed in Annexure-II.**

After the cases were pointed out, the department accepted the observation and raised demands totalling Rs. 1.36 crore in seven cases. The report of recovery and action taken in the remaining cases had not been received (October 2007).

5.2.6.4 Short levy of tax on sale of electricity

Under a notification of May 2004, the Government specified the rates of tax leviable from 6 April 2004 on every unit of electricity sold by licencees for sale of electricity. In areas granted under licence to Tata Power Company, Reliance Energy Limited and BEST, the rate of tax was 19 paisa per unit for sale of electricity to industrial or commercial consumers. In respect of other consumers, the rate of tax was 15 paisa per unit. In all other areas in the State, the rate of tax payable on sale of electricity to industrial or commercial consumers was four paisa per unit, while it was 'nil' in respect of other consumers.

Audit scrutiny of the returns submitted in form 'A' and 'C' by three licencees⁵ to the EIs, Mumbai and Thane revealed that in five cases, the licencees had recovered and paid tax on sale of electricity on 78,053.24 lakh units instead of 80,127.18 lakh units. The short levy of tax on 2,073.94 lakh units amounted to Rs. 1.41 crore. **This escaped the notice of the department as it had not correlated the information furnished vide the two returns.**

After the cases were pointed out, the department accepted the observation and raised demands totalling Rs. 1.29 crore in three cases. A report on recovery and action taken in the remaining two cases had not been received (October 2007).

The Government may consider prescribing a system for linkages of various information/returns at the level of EIs to check short remittance of tax on sale of electricity.

5.2.7 Collection of electricity duty and tax on sale of electricity

5.2.7.1 Arrears pending collection

Under the BED Rules, where any licencee or other person/consumer fails to pay any ED recovered by him from his consumers to the Government account within the prescribed period, the EI can issue a notice of 30 days in writing for payment of the dues, together with the interest thereon. If the licencee still

⁵ MSEB (7,221.63 lakh units - 5,676.37 lakh units = 1,545.26 lakh units) M/s Reliance Energy Ltd and Tata Power Co. (72,905.55 lakh units - 72,376.87 lakh units = 528.68 lakh units).

fails to pay the dues, the EI has to report the matter to the Government for recovery of the dues as arrears of land revenue. **No time limit for reporting the matter to the Government has, however, been prescribed under the Act.**

Further, under the provisions of the BED Act, every licensee which supplies electricity to consumers is required to collect duty from the consumers and credit it, together with its own charges, if any, to the Government account by the prescribed date. In cases of default, interest at the rate of 18 *per cent* per annum for the first three months and 24 *per cent* per annum thereafter is chargeable on the amounts of duty remaining unpaid till the date of payment.

Scrutiny of the records revealed that there was delay either in raising the demands or reporting the matter for recovery of dues as arrears of land revenue. This resulted in accumulation of arrears totalling Rs. 1,022.65 crore in cases of five licensees as on 31 March 2006 as mentioned below :

(Rupees in crore)

Name of licensee	Arrears upto 2005-06	Interest upto 2005-06	Total	Cases	Remarks
MSEB	138.40	667.74	806.14	--	As on 31 March 2006, duty of Rs. 138.40 crore and interest of Rs. 667.74 crore was payable. Although the matter had been commented upon in the ARs for the years 1999-2000 to 2005-06, the CE raised a demand for the outstanding duty of Rs. 138.40 crore and the interest of Rs. 667.74 crore payable only in July 2006. No action had been taken by the Government either to recover the amount or adjust the duty and the interest against the subsidy payable (October 2007).
Sugar factories	4.59	17.59	22.18	40	The proposal for recovery of dues as arrears of land revenue was sent to the Government by the CE in June 2006. Orders of the Government had not been received (October 2007).
Captive consumers	101.71	84.56	186.27	25	Recoveries in respect of all the 25 captive consumers were pending at the level of EIs.
Textile mills	0.91	6.02	6.93	3	Necessary action to recover the arrears of duty as arrears of land revenue was pending at the level of the CE.
Other factories	0.63	0.50	1.13	3	
Total	246.24	776.41	1,022.65	71	

Except for MSEB for which the pendency of dues was from 2001-02, in all the other cases, the amounts shown were pending for recovery from 1978-79 onwards.

Failure of the department to effectively monitor the recovery of dues led to arrears of revenue accumulating to Rs. 1,022.65 crore.

The Government may therefore consider prescribing a time limit for reporting the cases of defaulting licencees/consumers to enable it to pursue the arrears of dues under the Maharashtra Land Revenue Code.

5.2.7.2 Non-reconciliation of figures of revenue collected

The department requisitions monthly revenue figures from the Accounts branch of the MSEB circle and these figures are regularly reported by it to the Government but, there is no system of reconciliation between these figures and the figures available with the department as per form 'C'.

Audit scrutiny of MSEB's return in form 'C' revealed that they had collected electricity duty amounting to Rs. 716.78 crore during 2005-06. The department had, however, reported to the Government that the revenue collected was Rs. 704.32 crore, based on the information collected from the Accounts branch of MSEB. The difference of Rs. 12.46 crore in the figures of the return in form 'C' and the figures obtained from the Accounts branch of MSEB had not been reconciled.

After this was pointed out, the CE stated that reconciliation would be carried out.

The Government may consider instituting a system for carrying out periodic reconciliation of the figures reported by the department.

5.2.7.3 Irregular refund of electricity duty collected

Under the Maharashtra Treasury Rules, 1968, every refund is required to be noted against the original credit in the departmental accounts or other documents in which the money received is entered in detail and a certificate of such a note having been made is required to be given in all the vouchers for refunds.

Scrutiny of the refund cases in the office of the CE in respect of the duty collected by MSEB from its consumers revealed that in three cases of Aurangabad, duty of Rs. 45.86 lakh paid between May 2003 and June 2004 was refunded by MSEB by adjustments in the energy bills issued between June 2004 and January 2005. Audit scrutiny revealed that MSEB had actually credited the amount to the Government account between December 2004 and March 2005. In three other cases of Aurangabad and Ahmednagar, duty of Rs. 81,000 paid in March 2004 was adjusted between September 2004 and September 2005 though the amount had not been credited to the Government account by MSEB as of 31 March 2007. **The CE, thus, failed to follow the procedures prescribed for refund of the revenue and refunded the amount even before it had been credited to the Government.**

After the cases were pointed out, the CE stated in August 2007 that the irregularity pointed out would be strictly avoided in future. The reply was silent about the reasons for the irregularities committed.

5.2.8 Inspection of lifts and electrical installations and levy of fees

5.2.8.1 Inspection of lifts and levy of fees

As per the Bombay Lifts Act, every lift is required to be inspected at least once in six months by an authorised officer of the Government and an annual fee at the prescribed rate (the minimum rate being Rs. 300 per inspection) is to be charged for such inspection.

Audit scrutiny revealed that there were substantial shortfalls in conducting of inspections, as mentioned hereunder:

	2001-02	2002-03	2003-04	2004-05	2005-06	Total
No. of lifts to be inspected	34,908	38,439	42,985	47,667	53,142	2,17,141
No. of lifts actually inspected	21,776	20,671	19,744	22,861	17,951	1,03,003
No. of lifts not inspected	13,132	17,768	23,241	24,806	35,191	1,14,138
No. of lifts inspected 2 nd time	Nil	Nil	Nil	Nil	Nil	Nil
Percentage of lifts not inspected	37.62	46.22	54.07	52.04	66.22	52.56

During the period 2001-02 to 2005-06, the percentage of lifts not inspected varied between 37 and 66 *per cent*. None of the lifts was inspected twice in a year as prescribed. Failure to inspect the lifts resulted in non-realisation of inspection fees of Rs. 3.42 crore (calculated at the minimum rate).

After the cases were pointed out, the department stated that considering the available staff strength, there had been no shortfall in the inspections of lifts. The reply is not tenable as it is the responsibility of the department to carry out inspections as laid down in the Act. This should also be seen in the context of safety of the users and the management of risks associated with leaving the lifts uninspected.

5.2.8.2 Inspection of electrical installations and levy of fees

Under the Indian Electricity Rules, to ensure public safety, installations which are connected to the supply systems of suppliers, are to be periodically inspected at intervals not exceeding five years, either by inspectors or by the suppliers as may be directed by the State Government. The minimum rate of fee is Rs. 20 per inspection.

Scrutiny of the records in 13 divisions revealed that out of 50.35 lakh electrical installations required to be inspected, only 30.24 lakh were inspected by the department during the period 2001-02 to 2005-06, leaving a shortfall of 20.11 lakh installations. The year-wise break-up was as follows:

Name of the division	2001-02	2002-03	2003-04	2004-05	2005-06	Grand total	
	<u>Due Done</u>	<u>Due Done</u>	<u>Due Done</u>	<u>Due Done</u>	<u>Due Done</u>	<u>Due Done</u>	Balance
Nashik	<u>1,03,808</u> 69,160	<u>1,04,226</u> 64,141	<u>1,04,228</u> 71,257	<u>1,04,228</u> 67,155	<u>1,04,612</u> 76,978	<u>5,21,102</u> 3,48,691	1,72,411
Nagpur	<u>61,960</u> 17,644	<u>61,960</u> 12,709	<u>61,960</u> 14,228	<u>61,960</u> 17,236	<u>61,960</u> 15,920	<u>3,09,800</u> 77,737	2,32,063
Mumbai (Santacruz)	<u>1,40,953</u> 82,230	<u>1,47,160</u> 85,512	<u>1,43,966</u> 89,513	<u>1,45,566</u> 1,06,808	<u>1,45,566</u> 98,541	<u>7,23,211</u> 4,62,604	2,60,607
Ahmednagar	<u>67,340</u> 49,694	<u>66,050</u> 45,489	<u>66,710</u> 50,601	<u>69,919</u> 58,736	<u>70,936</u> 53,761	<u>3,40,955</u> 2,58,281	82,674
Kolhapur	<u>50,328</u> 27,964	<u>50,394</u> 35,684	<u>33,677</u> 33,677	<u>28,107</u> 28,107	<u>29,259</u> 29,259	<u>1,91,765</u> 1,54,691	37,074
Sangli	<u>53,667</u> 31,497	<u>52,659</u> 33,655	<u>51,685</u> 31,711	<u>51,625</u> 25,931	<u>52,026</u> 16,024	<u>2,61,662</u> 1,38,818	1,22,844
Pune	<u>80,691</u> 70,833	<u>82,303</u> 60,018	<u>75,277</u> 59,086	<u>76,500</u> 53,825	<u>86,389</u> 55,937	<u>4,01,160</u> 2,99,699	1,01,461
Mumbai (Tardeo)	<u>98,740</u> 62,985	<u>98,740</u> 46,343	<u>98,740</u> 55,888	<u>98,740</u> 51,561	<u>98,740</u> 50,323	<u>4,93,700</u> 2,67,100	2,26,600
Amravati	<u>1,06,577</u> 46,565	<u>1,06,577</u> 44,653	<u>1,06,851</u> 63,277	<u>1,06,851</u> 49,063	<u>1,21,487</u> 34,868	<u>5,48,343</u> 2,38,426	3,09,917
Wardha	<u>59,235</u> 16,178	<u>59,403</u> 15,996	<u>59,939</u> 16,557	<u>60,442</u> 16,603	<u>60,896</u> 16,247	<u>2,99,912</u> 81,581	2,18,334
Aurangabad	<u>67,611</u> 36,745	<u>67,767</u> 36,251	<u>67,763</u> 32,428	<u>67,778</u> 38,801	<u>68,329</u> 37,277	<u>3,39,248</u> 1,81,502	1,57,746
Thane-I	<u>61,254</u> 56,073	<u>66,476</u> 55,693	<u>66,476</u> 54,139	<u>66,910</u> 53,353	<u>66,910</u> 52,278	<u>3,28,026</u> 2,71,536	56,490
Thane-II	<u>54,498</u> 50,702	<u>54,500</u> 50,414	<u>55,769</u> 52,966	<u>55,769</u> 54,730	<u>55,769</u> 34,670	<u>2,76,305</u> 2,43,482	32,823
Total	<u>10,06,662</u> 6,18,270	<u>10,18,215</u> 5,86,558	<u>9,93,041</u> 6,25,328	<u>9,94,395</u> 6,21,909	<u>10,22,879</u> 5,72,083	<u>50,35,192</u> 30,24,148	20,11,044

Failure to carry out the inspections resulted in non-realisation of inspection fees of Rs. 4.02 crore (calculated at the minimum rate).

After the cases were pointed out, the department stated that considering the available staff strength, there had been no shortfall in inspections of electrical installations. The reply is not tenable as it is the responsibility of the department to carry out inspections as laid down in the Act. This must also be seen in the context of safety and the management of risks associated with leaving the installations uninspected.

5.2.9 Weak internal controls

5.2.9.1 Supervisory checks

Annual administrative inspections of the offices of EIs were carried out by CE/SEs in respect of levy and collection of electricity duty and tax on sale of electricity. **However, percentage checks of the work of the EIs to doubly ensure the correctness of levy and collection of electricity duty and tax on sale of electricity had not been prescribed for the supervisory officers.**

5.2.9.2 Improper maintenance of records

- Scrutiny of refund registers maintained in the offices of EIs revealed that complete details were not being entered into. Besides, the upkeep of the registers was not upto date.
- No record was being maintained by the department to ensure that tax on sale of electricity was being recovered in respect of all consumers exempted from payment of duty but not from tax on sale of electricity. Consequently, it was not possible for Audit to ascertain whether tax on sale of electricity was being recovered from all consumers who had been exempted from payment of duty.

After this was pointed out, the CE accepted the observation and stated that instructions were being issued to the EIs for maintenance of proper and updated records.

5.2.10 Internal audit

The 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 systems are functioning reasonably well. **However, it was observed that IAW was not functioning in the department, leaving it vulnerable to the risk of control failure.**

The Government may consider setting up of an IAW to monitor the levy and correctness of ED/fees paid.

Compliance deficiencies

5.2.11 Non-levy of interest

Under the BED Act, any sum due on account of electricity duty, if not paid within the time and in the manner prescribed, is deemed to be in arrears and interest is payable on the sum at the prescribed rates till the sum is paid.

Scrutiny of returns in form 'C' and the related records of four EIs⁶ revealed that six⁷ consumers had delayed payment of Rs. 14.81 crore towards duty and tax for periods varying between 3 and 1,793 days during the years April 2001 to March 2006. The department failed to levy interest as required under the provisions of the Act, resulting in non-recovery of interest amounting to

⁶ Kolhapur, Mumbai, Pune, and Thane.

⁷ Dy. Engineer (Agricultural Construction Division) Aarey Colony, Shree Warna Sahakari Dudh Utpadak Prakriya Sangh Kolhapur, Tata Power, Vindhyachal Hydro Power Co. Pune, Vindhyachal Hydro Power Co. Ltd, Thane and Western Railway.

Rs. 85.14 lakh, of which an amount of Rs. 14.31 lakh pertained to the last five years.

After the cases were pointed out, the department accepted the observation and raised demands for Rs. 84.37 lakh against which one consumer paid Rs. 1.69 lakh. A report on recovery and action taken in the remaining cases had not been received (October 2007).

5.2.12 Conclusion

The Act provides for filing of quarterly returns by the licencees which are an important internal control measure to monitor the payment of ED and its correctness. The department had failed to effectively scrutinise the receipt of the prescribed returns and the correctness of duty and taxes payable as per the returns. This led to leakage of revenue. No time limit has been prescribed for reporting the cases of defaulting licencees/consumers to the Government resulting in non/delayed pursuance of dues. The system of reconciliation of figures of the revenue collected was practically non-existent, leading to incorrect reporting of the same to the Government. Failure of the department to carry out inspections of lifts/electrical installations led to non-realisation of inspection fees. The internal control mechanism of the department was abysmally weak as is evidenced by the absence of an internal audit wing which is the control of all internal controls and a management tool for plugging leakages of revenue and non-prescription of percentage of checks by the supervisory officers over the work of EIs.

5.2.13 Summary of recommendations

The Government may consider:

- prescribing a system for linkages of various information/returns at the level of EIs to check short remittance of tax on sale of electricity,
- prescribing a time limit for reporting the cases of defaulting licencees/consumers to enable it to pursue the arrears of dues under the Maharashtra Land Revenue Code,
- instituting a system for carrying out periodic reconciliation of the figures reported by the department; and
- setting up of an IAW to monitor the levy and correctness of ED/fees paid.

SECTION B PROFESSION TAX

5.3 Non-realisation of profession tax

Under the provisions of the Profession Tax Act, every person liable to pay tax is required to obtain an enrolment certificate and pay tax annually at the rates specified in Schedule I to the Act. Section 5(5) of the Act provides that, if a person liable for enrolment failed to apply for such certificate, a penalty of Rs. 2 per day is leviable.

In order to ascertain whether all persons liable to be covered under certain categories specified in Schedule I to the Act are brought under the purview of the Act, details were collected from the Transport Commissioner's office in respect of holders of permits for transport vehicles, the Income Tax Department in respect of self employed persons from the motion picture industry, the Labour Commissioner's office in respect of shops/establishments covered under the Bombay Shops and Establishment Act, 1948 and the Royal Western India Turf Club Ltd, in respect of bookmakers, trainers and jockeys licensed by it.

On the details being cross checked with the number of enrolments in the Profession Tax Department, it was revealed that 30,76,059 persons had not been enrolled. The amount of revenue involved in these cases amounted to Rs. 345.80 crore as mentioned below:

Sl. no.	Entry No. of Schedule I to the Act	Categories of professionals	Period	No. of persons as per the departments/ institutions	No. of persons enrolled as per the PT Department	No. of persons not enrolled	Rate of PT per annum (Rs.)	Amount of potential revenue (Rs. in crore)
1.	13	Holders of permits granted under the Motor Vehicles Act for transport vehicles, used for hire.	2001-02 to 2005-06	27,88,159	9,23,639	18,64,520	750	139.84
2.	7	Self-employed persons in the motion picture industry.	2002-03 to 2005-06	23,787	8,051	15,736	1,700	2.68
3.	6	Bookmakers, trainers and jockeys licensed by the Royal Western India Turf Club.	2001-02 to 2005-06	1,197	816	381	1,700	0.06
4.	8, 9, 10, 11, 12, 14, 16 and 18	Owners of shops and establishments covered under the Bombay Shops and Establishments Act, 1948.	2005	19,23,871	7,28,449	11,95,422	1,700	203.22
		Total				30,76,059		345.80

After the cases were pointed out, the Principal Secretary, Finance Department accepted the data regarding non-enrolment in respect of persons listed under Sl. nos. 2, 3 and 4. In respect of holders of permits for transport vehicles, the department stated that there could have been more than one permit with the holder and hence the number of such enrolment cases may be less. The Principal Secretary directed the Joint Commissioner of Sales Tax (PT) in July 2007 to get the figures reconciled with the Transport Commissioner. Further report had not been received (October 2007).

5.4 Non-levy of penalty

Under the provisions of Profession Tax Act, every employer or person engaged in any profession is required to apply for registration or enrolment within 30 days of his becoming liable to pay tax to the prescribed authority. For failure to apply within the stipulated time, the prescribed authority, after giving him reasonable opportunity of being heard, can impose penalty at the rate of Rs. 5 per day in the case of an employer and Rs. 2 per day in case of a person liable for enrolment.

Scrutiny of registration/enrolment records pertaining to the period 2001-02 to 2005-06 in 23 profession tax offices⁸ revealed that in 515 cases, there were delays ranging from 66 to 9,487 days in applying for registration/enrolment. However, penalty was either not levied or was levied at lower rates. As against the penalty of Rs. 20.30 lakh leviable, penalty of only Rs. 91,000 was levied. This resulted in non/short levy of penalty of Rs. 19.39 lakh.

After the cases were pointed out, the department stated that the Profession Tax Officers had been directed to take necessary action for recovery of penalty. A report on recovery had not been received (October 2007).

SECTION C ENTERTAINMENT DUTY

5.5 Non-recovery of entertainment duty from cable operators

Under the provisions of the Bombay Entertainments Duty (BED) Act, 1923, entertainment duty (ED) is payable with effect from 1 May 2000 by cable operators at flat rates of Rs. 30, Rs. 20 or Rs. 10 per television set per month, depending on whether the area is a municipal corporation (MC), A and B class municipality or other area. Further, ED is payable on or before the 10th of the subsequent month to which it relates, failing which interest at the rate of 18 *per cent* per annum for the first 30 days and 24 *per cent* thereafter, is leviable.

Test check of the records of 12 units⁹ in six¹⁰ districts between December 2003 and August 2005 revealed that ED amounting to Rs. 41.51 lakh was not paid by 251 cable operators during various periods between 2002-03 and 2004-05. Demands were also not raised by the Resident Deputy Collectors/Taluka Magistrates against the operators. This resulted in non-recovery of ED of Rs. 41.51 lakh. Besides, interest at the prescribed rates was also leviable.

After the cases were pointed out, the department, between January 2004 and July 2007, recovered ED amounting to Rs. 21.10 lakh, along with interest of

⁸ Ahmednagar, Akola, Amravati, Dhule, Jalna, Mumbai (8), Nashik, Palghar, Pune (5), Raigad, Satara and Solapur.

⁹ Resident Dy. Collector: Akola, Aurangabad, Jalgaon, Mumbai Zone VII, VIII, Taluka Magistrate: Andheri Zone I, Kurla IX, Vasai at Thane
Entertainment Duty Officer: Pune Zone A, H, K, I

¹⁰ Akola, Aurangabad, Jalgaon, Mumbai, Pune and Thane.

Rs. 26,000, from 131 cable operators. A report on recovery of the balance amount had not been received (October 2007).

The matter was reported to the Government in April and May 2007; their reply had not been received (October 2007).

SECTION D
STATE EDUCATION CESS AND EMPLOYMENT
GUARANTEE CESS

5.6 Non/short remittance of cess

Under the provisions of the Maharashtra Education and Employment Guarantee (Cess) Act, 1962 and Rules made thereunder, cess and penalty recovered by the MCs during a calendar week are required to be credited to the Government account before the expiry of the following week. If any MC defaults in payment to the State Government of any sum under the Act, the State 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 State Government.

During test check of the three MCs¹¹ between May 2006 and October 2006, it was noticed that the MCs did not remit the revenue amounting to Rs. 36.68 crore relating to the State education cess (SEC) and employment guarantee cess (EGC) collected during 2005-06. The State Government also did not direct the bank to pay the amount due from the bank accounts of the MCs. It was also noticed that there was no provision for furnishing of the details of cess collected and remitted to the Government account. This showed that no internal control existed in the Revenue and Forests Department over the receipts and deposits of revenue by the MCs.

After the cases were pointed out, MCs, Mumbai and Jalgaon stated (June 2006) that orders for adjustment of the amount against the grants due to them were awaited. MC, Nagpur stated in August 2006, that the amount would be credited to the Government account. The replies are not tenable as the rules provide for the remittance of cess before the expiry of the following week during which it is collected.

The matter was reported to the Government in April 2007; their reply had not been received (October 2007).

5.7 Irregular grant of refund

Under the provisions of the Cess Act, refund of SEC and EGC is admissible, if refund of property tax (i.e. general tax) is permissible under any municipal law. The Government, vide an ordinance dated 2 March 1998, abolished the provision for refund of property tax on account of vacant properties.

¹¹ Jalgaon, Mumbai and Nagpur.

Scrutiny of the records in three¹² wards of Brihan Mumbai Municipal Corporation (BMC) during February and March 2003 revealed that the department continued to refund SEC and EGC during 2003-04, though the provision for refund of property tax on vacant properties had been abolished in March 1998. This resulted in irregular refund of Rs. 20.37 lakh (SEC: Rs. 17.21 lakh and EGC: Rs. 3.16 lakh) in respect of 353 vacant properties.

After the cases were pointed out, BMC, between August 2005 and May 2006, issued supplementary bills and recovered Rs. 3.75 lakh in respect of 159 properties. A report on recovery of the balance amount of Rs. 16.62 lakh had not been received (October 2007).

The matter was reported to the Government in April 2007; their reply had not been received (October 2007).

SECTION E
TAX ON BUILDINGS
(with larger residential premises)

5.8 Non-remittance of tax

Under the provisions of the Maharashtra Tax on Buildings (with Larger Residential Premises) (Re-enacted) Act, 1979, tax recovered by an MC on behalf of the State Government is to be credited to the Consolidated Fund of the State within 30 days from the date of its recovery. If any MC defaults in payment to the State Government of any sum due under the Act, the State Government can, after holding such enquiry as it thinks fit, fix a period for 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 State Government.

During test check of the records of three MCs¹³ between June and September 2006, it was noticed that the MCs did not remit revenue amounting to Rs. 1.73 crore collected on account of tax on buildings (with larger residential premises) during the year 2005-06. In none of the cases was the bank/treasury directed to pay the sum to the State Government. This resulted in non-remittance of tax of Rs. 1.73 crore.

After the cases were pointed out, the MC, Mumbai stated in June 2006 that remittance of tax collected was held up for want of an administrative decision on adjustment of the amount of tax from the grant receivable from the Government. The MCs, Solapur and Pune stated in July and September 2006 respectively, that tax would be remitted into the Government account. The replies are not tenable as the tax collected was required to be deposited into the Government account within 30 days from the date of recovery.

The matter was reported to the Government in April 2007; their reply had not been received (October 2007).

¹² M (East), N and P/South wards of Brihan Mumbai Municipal Corporation.

¹³ Mumbai, Pune and Solapur.