

## CHAPTER VI : OTHER TAX RECEIPTS

### 6.1 Results of audit

Test check of the records relating to entertainment duty, electricity duty, State education cess, employment guarantee cess, tax on buildings (with larger residential premises), repair cess and profession tax conducted during the year 2008-09 indicated short levy, loss of revenue etc., amounting to Rs. 522.86 crore in 2,521 cases as mentioned below :

(Rupees in crore)

Sl. no.	Nature of receipts	No. of cases	Amount
1.	Levy and collection of entertainment duty (A review)	1	375.37
2.	Electricity duty, tax and fees	321	135.25
3.	Entertainment duty	1,146	3.77
4.	State education cess, employment guarantee cess	56	3.32
5.	Tax on buildings (with larger residential premises)	2	2.22
6.	Repair cess	20	2.60
7.	Profession tax	975	0.33
	<b>Total</b>	<b>2,521</b>	<b>522.86</b>

In response to the observations made in the local audit reports during the year 2008-09 as well as during earlier years, the concerned departments accepted underassessment, short levy, etc. and recovered Rs. 133.81 crore, in 2,166 cases of which 349 cases involving Rs. 127.67 crore related to 2008-09 and the rest to earlier years.

A review on "**Levy and collection of entertainment duty**" involving a total financial effect of Rs. 375.37 crore and a few audit observations involving Rs. 422.84 crore are included in the following paragraphs against which Rs. 83.17 crore alongwith interest of Rs. 33,967 had been recovered upto November 2009.

**SECTION A**  
**ENTERTAINMENTS DUTY**

**6.2 Review on “Levy and collection of entertainment duty”**

**Highlights**

Incorrect grant of exemption of Rs. 160.40 crore to Multiplex Theatre Complexes on account of non-fulfillment of prescribed conditions.

**(Paragraph 6.2.7)**

Absence of a provision in the Act led to unjust enrichment of Rs. 1.16 crore.

**(Paragraph 6.2.8)**

Absence of survey and non-raising of demand of Rs. 201.27 crore for recovery of entertainment duty from 1,350 cable operators.

**(Paragraph 6.2.9)**

Non-levy of entertainment duty of a minimum of Rs. 4.99 crore on Indian Premier League cricket matches held in Mumbai.

**(Paragraph 6.2.10)**

Non/short levy of surcharge of Rs. 8.13 crore in respect of eight water parks.

**(Paragraph 6.2.17)**

Incorrect exemption of entertainment duty of Rs. 2.26 crore granted to seven films.

**(Paragraph 6.2.18)**

Non-forfeiture of security deposit of Rs. 1.87 crore collected from organisers of special events/performances.

**(Paragraph 6.2.19)**

**6.2.1. Introduction**

The levy and collection of entertainment duty (ED) is governed by the Bombay Entertainments Duty Act (Act), 1923. As per the provisions of the Act and the Rules made thereunder, duty at prescribed rates is to be levied and paid to the Government on all payments for admission to any entertainment<sup>1</sup>.

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

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

### 6.2.2. Organisational set-up

The Additional Chief Secretary, R&FD, is responsible for the administration of the Act. He is assisted by six Divisional Commissioners at Konkan<sup>2</sup>, Pune<sup>3</sup>, Nashik<sup>4</sup>, Aurangabad<sup>5</sup>, Amravati<sup>6</sup> and Nagpur<sup>7</sup>. The Act is administered by the DCs and Taluka Magistrates (TMs) in Districts and Talukas, respectively. The implementation of the Act involves identification of new entertainment centres, issue of licences, assessment and collection of duty, compilation and reconciliation of revenue figures, exemption of duty to entertainments etc. The Commissioner of Police is the licensing authority in his jurisdiction and the DC is the licensing authority in other areas. The DC is responsible for levy, assessment and collection of duty in both the cases. The DC is assisted by Deputy Collectors, Entertainment Duty Officers and Entertainment Duty Inspectors (EDI) for identification/inspection of entertainment centers, levy and collection of ED, imposing penalty or disciplinary action on evasion of duty etc.

### 6.2.3 Scope of Audit

Test check of records for the period 2003-04 to 2007-08 was conducted between September 2008 and June 2009. Eleven offices<sup>8</sup> out of 35 DC were selected for audit on the basis of application of statistical sampling technique (Probability proportional to size). The district-wise revenue collection figures of entertainment duty receipts were considered as the basis for selection of districts for test check of records with a view to verify the adequacy of the systems and procedures in respect of levy and collection of entertainment duty.

### 6.2.4 Audit objectives

The review was conducted to ascertain whether:

- all entertainment centres have been registered and their licences have been renewed periodically by the competent authority;
- the Multiplex Theatre Complexes to which exemptions have been granted have fulfilled the conditions prescribed for grant of exemption;
- survey is being conducted regularly by the department to check any evasion of entertainment duty by the proprietors/operators running entertainment centres;
- an internal control mechanism exists to ensure timely realisation of duty, payment/renewal of the licence fees, etc.;

<sup>2</sup> For the districts Mumbai City, Mumbai Suburban, Raigad, Ratnagiri, Sindhudurg and Thane.

<sup>3</sup> For the districts Kolhapur, Pune, Sangli, Satara and Solapur.

<sup>4</sup> For the district Ahmednagar, Dhule, Jalgaon, Nandurbar and Nashik.

<sup>5</sup> For the districts Aurnagabad, Beed, Hingoli, Jalna, Latur, Nanded, Osmanabad and Parbhani.

<sup>6</sup> For the districts Akola, Amravati, Buldhana, Washim and Yavatmal.

<sup>7</sup> For the districts Bhandara, Chandrapur, Gadchiroli, Gondia, Nagpur and Wardha.

<sup>8</sup> Amravati, Hingoli, Mumbai City, Mumbai Suburban, Nagpur, Pune, Ratnagiri, Sangli, Solapur, Thane and Wardha.

- internal audits are conducted regularly to ensure that the systems and procedures laid down are followed properly; and
- in view of the changing economic activities in the state wherein the ambit of entertainment has widened, the department has brought these entertainment activities within the ambit of the Act.

### 6.2.5 Acknowledgement

Indian Audit and Accounts Department acknowledges the co-operation of the Revenue and Forests Department and its subordinate offices for providing necessary information and records for audit. An entry conference to explain the audit objective, scope and methodology could not be held due to lack of response from the Department despite request from audit. The draft Review Report was forwarded to the Government and the department in July 2009. No reply was received. The exit conference to discuss the audit conclusions and recommendations also could not be held despite several requests between September and November 2009.

### 6.2.6 Trend of revenue

As per the Maharashtra Budget Manual, budget estimates should be prepared to achieve as close an approximation to the actuals as possible based on the collection of entertainment duty of the previous year, any recognisable regularity in the figures of the past years, amount outstanding at the end of the current year and amount likely to be collected in the next financial year out of the next revenue year's demand. The budget estimate and revenue realised by the department for various years between 2003-04 and 2007-08 were as under:

(Rupees in crore)

Year	Budget estimates	Actuals	Variation excess(+) shortfall(-)	Percentage of variation
2003-04	233.00	293.07	(+) 60.07	25.78
2004-05	361.48	246.48	(-) 115.00	31.81
2005-06	500.00	244.84	(-) 255.16	51.03
2006-07	339.99	327.94	(-) 12.05	3.54
2007-08	355.00	409.74	(+) 54.74	15.42

It would be seen from the above table that the budget estimates were more than the actuals of the previous years except for the year 2003-04<sup>9</sup>.

After this was pointed out, the Government stated (July 2009) that the budget estimates are prepared by increasing the estimates of the previous year by 20 per cent.

The reply itself indicates that the budget estimates were not being prepared on scientific basis. The regularity in figures of the past years and anticipated collection out of the demands to be raised in the subsequent financial years were not being taken into consideration. Also, the reasons for the sharp variations between the budget estimates and actuals were not being analysed to factor them into frame the budget estimates in a realistic manner.

<sup>9</sup> Actuals for the year 2002-03 was Rs. 279.15 crore.

**Audit findings****System deficiencies****6.2.7 Incorrect grant of exemptions to Multiplex Theatre Complexes on account of non-fulfillment of prescribed conditions**

Under the provisions of the Act, Multiplex Theatre Complexes (MTC) which are issued Eligibility Certificates (ECs) are exempt from payment of ED for the first three years from the date of issue of ECs. ED is payable at the rate of 25 *per cent* for the subsequent two years and from the sixth year onwards ED is payable at the full rate. The exemptions/ concessions granted are subject to fulfillment of conditions as specified in the notification issued in August, 2001. However, the Government did not prescribe any mechanism to ensure that the conditions prescribed in the notification are fulfilled subsequent to sanction of the EC.

In order to ascertain whether the MTCs had fulfilled the conditions prescribed in the notification, a joint team comprising officers of the Department and Audit visited the MTCs in six<sup>10</sup> out of 11 selected districts under the jurisdiction of respective Collectors. The irregularities are discussed below:

**6.2.7.1 Non-providing of obligatory facilities**

As per sub-section 13 of Section 3 of the Act, the exemptions/ concessions granted are subject to fulfillment of conditions specified in the notification issued in August, 2001, for providing obligatory facilities such as Art Gallery, Exhibition Centre, Entertainment Centre, etc. These facilities are not to be discontinued or curtailed without prior permission of the Government. In case of violation of these conditions, the exemptions/ concessions granted were liable to be withdrawn and ED was to be levied and collected at full rate along with interest from the date of commencement of business.

Joint-visits to 10 MTCs<sup>11</sup> which had availed exemptions for periods between January 2002 and March 2008 indicated that, these MTCs had not provided the obligatory facilities specified in the notification. This resulted in irregular grant of exemption of ED of Rs. 102.40 crore in respect of 10 MTCs.

**6.2.7.2 Non-exhibition of Marathi cinema for the prescribed period of one month in one screen of the MTC**

As per clause (b) (ii) of sub-section 13 of Section 3 of the Act, one screen in the MTC has to be reserved for a period of one month in a year exclusively for exhibition of Marathi cinema.

<sup>10</sup> Mumbai City, Mumbai Suburban, Nagpur, Pune, Sangli and Thane.

<sup>11</sup> 24 Carot, Jogeshwari; Fame Adlab, Kandivali; Fame Adlab, Malad; Huma Adlabs, Kanjur Marg; I-Max Adlab, Wadala; Movie Time, Goregaon; PVR, Mulund; R Adlabs Cinema, Mulund in Mumbai Suburban; Cine Prime, Mira Road and Meghraj, Vashi in Thane District.

During the joint-visits to the MTCs falling under the jurisdiction of the Collectors at Mumbai Suburban, Thane and Pune districts, it was found from the books of accounts of the MTCs that, 14 MTCs<sup>12</sup> had availed exemptions/concessions of Rs. 100.72 crore during the periods between 2003-04 and 2007-08 but did not fulfill the conditions of reserving one screen for one month in a year for exhibition of Marathi cinema. In these theatres Marathi cinemas were exhibited in different screens ranging from eight to 152 shows as against the requirement of 150 to 210 shows depending on number of shows exhibited in a theatre per day. Except issue of notices to these MTCs, the department has not initiated any action to recover the amount of ED exempted.

After this was pointed out by audit, the Government stated (May 2009) that instructions had been issued to the Divisional Commissioners for action as per the provisions of the Act.

#### **6.2.7.3 Minimum rate of admission (entry ticket) fixed by the Collector not observed**

As per clause b(i) of sub-section 13(a) of section 3 of the Act, during the exemption/concession period, the proprietor of the MTC should not charge an admission rate lesser than the prevailing highest rate for admission at any given time in any of the single screen cinema theatres in the district in which the MTC is situated. The DC communicates this minimum rate for admission to the MTC from time to time.

- Test check of records in the office of the Collector, Mumbai Suburban District, indicated that one MTC<sup>13</sup> had availed of concession of Rs. 4.60 crore between July 2006 and March 2008. In this MTC, the proprietor had charged Rs. 100 as admission rate for regular show as against the minimum rate of Rs. 110 fixed by the Collector during this period.

On this being pointed out, the department stated (June 2009) that an amount of Rs. 1.17 crore for the period February 2007 to December 2008 had been recovered in March 2009.

The action of the department to recover the ED from February 2007 was not adequate as the proprietor did not comply with the condition of the EC from July 2006 onwards resulting in irregular grant of exemption/concession of Rs. 4.60 crore.

- In another case, joint visit to an MTC<sup>14</sup>, in Thane district indicated that, the MTC had availed of concession of Rs. 4.27 crore. In this case, the scheme of concession in ticket “buy two, get one free” was introduced by the proprietor during the period October 2004 to March 2008, which resulted in lower rate of admission of Rs. 73. As the Collector had fixed the minimum rate of admission of Rs. 100, charging lower rate of Rs. 73 resulted in irregular grant of exemption/concession of Rs. 4.27 crore.

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<sup>12</sup> 24 Carot, Jogeshwari; Cinemax, Kandivali; Cinemax, Versova; Fame Adlab, Andheri; Fame Adlab, Kandivali; Fame, Malad; Fun Republic, Andheri; Huma Adlab, Kanjur Marg; Movie Time, Goregaon; PVR, Mulund; PVR, Juhu; R Adlab, Mulund in MSD, Mumbai; Gold Adlab, Pune; Cine Prime, Mira Road in Thane District.

<sup>13</sup> G-7, Bandra; Mumbai Suburban.

<sup>14</sup> Cine Prime, Mira Road; Thane District.

After this was pointed out, the department stated (September 2008) that show-cause-notice had been issued. Further developments are awaited (November 2009).

#### **6.2.7.4 Non-observance of conditions specified in the Conditional Letter of Intent**

As per the condition No.21 of the conditional letter of intent (CLI) issued to the MTC (M/s.Nirmal Lifestyle Ltd., Mumbai) in August 2005, it should make provision for minimum seating capacity of 1,855 and eight screens. Further, in case of non-fulfillment of the conditions, the CLI was liable to be cancelled.

- Test check of records in the office of the Collector, Mumbai Suburban District indicated that as against the mandatory requirement of eight screens and 1,855 seats, M/s. Nirmal Lifestyle Ltd. had provided for six screens and 1,815 seats. Thus, as the conditions of the CLI were not fulfilled, the exemption of ED of Rs. 5.91 crore availed during the period August 2006 to March 2008 was irregular.

After this was pointed out, the department stated (June 2009) that guidelines in this regard will be obtained from the Government.

As specified in the revised Government resolution (GR) issued on 4 January 2003, the CLI issued to the applicant for construction of MTC is non-transferable. The exemption/concession from payment of ED is available to those persons who had applied between 17 August 2001 and 16 August 2002. The benefit of exemption from payment of ED was exclusively admissible only to the applicants.

- Test check of records of the R&FD indicated that in respect of one<sup>15</sup> multiplex in Mumbai Suburban District, the Additional Collector (ED) had transferred the CLI in April 2006 to another person. Further, in Aurangabad and Latur districts the R&FD had transferred the CLIs in two<sup>16</sup> cases in September 2006. The proprietors of these MTCs had availed of exemptions of Rs. 5.78 crore, Rs. 1.25 crore and Rs. 1.03 crore respectively during the periods between September 2006 and March 2008. As the CLIs were not transferable, it resulted in irregular grant of exemption aggregating Rs. 8.06 crore.

After these cases were pointed out, the Government stated (April 2009) that there is no provision in the Act regarding non-transferability of CLI.

The reply is not tenable as the exemptions from payment of ED were availed of by the proprietors of MTCs who had not applied for exemptions/concessions within the stipulated period as specified in the GR. Further, the GR specifically states that the CLI issued to the proprietor of the MTC is non-transferable.

#### **6.2.7.5 Incorrect availing of benefit due to transfer of ownership**

As per the condition No 5(b)(i) of the GR dated 4 January 2003, the applicant of MTC has to submit the documents of purchase of land/registered agreement of developing the land to the DC within three months of issue of CLI. Thus,

<sup>15</sup> Fame, Kandivli, Mumbai.

<sup>16</sup> PVR, Aurangabad and PVR, Latur.

only the land owners have the exclusive right to develop the property and run the MTC. In case of contravention of terms and conditions, the CLI and eligibility certificate issued was liable to be cancelled.

Scrutiny of the books of accounts during joint visit to the MTCs in Mumbai Suburban district indicated that two<sup>17</sup> applicants to whom ECs were granted in November 2005 and October 2006 had given their lands on lease for running MTCs during October 2004 and March 2008. As these MTCs were not run by the owners to whom exemptions were granted, it resulted in irregular exemption of ED of Rs. 9.32 crore.

The matter was reported to the department and the Government between February and July 2009; their reply has not been received (November 2009).

In another case, the proprietor of an MTC<sup>18</sup> had sold his total share holdings to another person in December 2007 which resulted in change of ownership. Violation of the prescribed condition of the GR resulted in irregular exemption of ED of Rs. 10.32 crore during the period from June 2003 to March 2008.

After the case was pointed out, the Government accepted (March 2009) the observation and sought reasons for non-cancellation of the EC of the MTC owner from the Collector, Mumbai Suburban district. Further report in the matter is awaited (November 2009)

#### **6.2.7.6 Non-executing of agreement for creating charge on sole property right on the land**

As per Clause 5(b)(5) of the GR dated 4 January 2003, before issue of eligibility certificate, an agreement is to be made between the DC and the owner of the MTC for creating charge on sole property right on the land for 10 years from the date of starting of MTC. Further, the Government issued a corrigendum on 30 June 2005 that in the absence of the agreement, a security deposit is to be taken from the owner for continuous running of the MTC in the same place for at least 10 years.

Test check of records of the Collector, Mumbai Suburban indicated that in case of seven MTCs<sup>19</sup> the agreements were not executed. In the absence of agreements, deposits were to be obtained in all these cases.

After the case was pointed out, the department stated that wherever the agreements were not executed, the deposits could not be obtained from the owners of such MTCs.

Absence of a system in the department to periodically watch the fulfillment of the conditions mentioned in the EC resulted in claims of incorrect exemptions aggregating Rs. 160.40 crore<sup>20</sup> as shown in **Annexure V**. This was also

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<sup>17</sup> Cinemax Growel, Kandivali and Huma Adlab, Kanjurmarg.

<sup>18</sup> R-Adlab, Mulund.

<sup>19</sup> Imax Adlab, Chembur; Fun Republic, Andheri; Fame, Malad; Movie Time, Goregaon; Huma Adlabs, Kanjurmarg; Cinemax, Versova and PVR, Mulund.

<sup>20</sup> Rs. 245.63 crore for all the six sub-paras less Rs. 85.23 crore (relating to multiple observations in respect of same MTC regarding non-fulfillment of more than one specified condition in sub-paragraphs 6.2.7.1 to 6.2.7.5) = Rs. 160.40 crore



substantiated by joint visits which revealed that 19 MTCs had failed to comply with one or more of the specified conditions of the GR.

**The Government may consider evolving appropriate control mechanisms for enforcing the prescribed conditions for grant of exemptions/concessions to Multiplex Theatre Complexes.**

### **6.2.8 Absence of provision in the Act in case of ‘unjust enrichment’**

Under the provisions of the Act, entertainment duty on MTCs who had been issued the ECs were exempted from payment of duty for the first three years from the date of issue of the ECs. For the subsequent two years, ED at the rate of 25 *per cent* was applicable and from the sixth year onwards ED was payable at full rate. The Government had not prescribed any upper limit for the cost of admission ticket but had barred the multiplexes from charging an amount lower than that of single screen cinemas in the district.

Test check of records in the office of the Collector, Mumbai indicated that M/s. Swanstone Multiplex Pvt. Ltd., the proprietor of M/s. Fame Adlab, Mumbai, had charged admission rate of Rs. 135 per ticket. The full rate of ED at the rate of 45 *per cent* of the admission rate was Rs. 41.95 per ticket. The proprietor was permitted to collect ED on the tickets at the rate of 25 *per cent* of ED only i.e. Rs. 10.46 per ticket with effect from 7 June 2005. However, the proprietor had charged the entire 45 *per cent* from the customers and collected total ED of Rs. 1.46 crore against the permissible ED of Rs. 30 lakh. Calling it an “unjust enrichment”, the State Government served Fame Adlabs a notice in January 2006 asking the MTC to remit the excess ED amounting to Rs. 1.16 crore collected from customers. The notice was subsequently challenged by the proprietor in the Bombay High Court.

The court accepted the submission of M/s. Swanstone Multiplex Pvt. Ltd. that the relief was provided to MTC and not to patrons. The High Court ruled that the Government was not entitled to collect ED in excess of the specified 25 *per cent* for the two years irrespective of the duty amount printed on the ticket.

In the absence of a provision in the BED Act to forfeit the ED, where no ED was leviable but collected or ED was collected in excess of the amount leviable, the Government could not present the case in favour of revenue.

On this being pointed out, the department stated that the High Court had decided in October 2008 that the proprietor can retain excess recovery and the Government has no right to demand excess revenue collected. The Government had appealed against this decision in the Supreme Court in March 2009 which held that absence of a statutory provision does not mean that a person can claim or retain undue benefit. Hence, the State Government was directed to realise the amount to the extent the company had unjustly enriched itself and pay the same to a voluntary or charitable organisation.

**The Government may consider including a provision in the Act for forfeiting the excess amount of ED collected by the entertainment centres in order to avoid litigation in future.**

**6.2.9 Absence of survey and non-raising of demand for realisation of entertainment duty in case of cable operators**

Mention was made in paragraph 5.2.7 of the report of the Comptroller and Auditor General of India (Revenue Receipts for the year ended 31 March 2004) regarding the absence of periodical, comprehensive and organised survey to check evasion of duty by cable operators and the need to evolve some more practical alternative for computing duty.

Audit scrutiny indicated that except for Mumbai City, Mumbai Suburban and Thane districts, none of the other districts had conducted any survey on cable connections.

The Divisional Commissioner, Konkan region had organised a survey through private agencies in Mumbai City, Mumbai Suburban and Thane districts between May and December 2006 to detect cases of non-registration and under-reporting of cable connections by cable operators. The survey indicated that there was non/under reporting of 10,23,588 cable connections by 3,512 cable operators which also included 889 unregistered cable operators.

In a meeting organised by the Divisional Commissioner, Konkan Region with Collectors' of Mumbai City, Mumbai Suburban and Thane districts on 9 April 2008 and 17 December 2008, it was decided that ED as applicable along with a penalty at the rate of one and half times of the ED would be recovered from the defaulting cable operators.

In respect of 10,23,588 un-reported cable connections in respect of 3,512 cable operators in the districts where the survey was conducted, ED of Rs. 101.33 crore and penalty of Rs. 152.00 crore totaling Rs. 253.33 crore was recoverable upto March 2008. Against this, the department had raised demand of Rs. 52.06 crore upto October 2008 without considering penalty in respect of 2,162 cable operators and recovered Rs. 7.45 crore upto November 2008. Demands for recovery of Rs. 201.27 crore in respect of remaining 1,350 cable operators were not issued till January 2009 even after a lapse of 25 months from the date of completion of survey. This resulted in non realisation of revenue of Rs. 201.27 crore.

In view of the fact that the survey in three districts has indicated more than 10 lakh un-reported cable connections with revenue potential of Rs. 253.33 crore, the department should realise the full revenue potential by conducting surveys in all the districts of the State.

**The Government may consider conducting an extensive survey, in co-ordination with other departments to bring evaders of duty within the fold of the Act to augment the State revenue.**

**6.2.10 Non-levy of entertainment duty of Rs. 4.99 crore on Indian Premier League Cricket Matches held in Mumbai**

As per the GR issued in May 1964, all sports meetings (excluding race meetings) are exempted from payment of ED. Accordingly, cricket matches held in various stadia of the State are exempted from payment of ED.

The Indian Premier League (IPL) organised a T-20 cricket tournament in April and May 2008 in which 10 matches were played in Mumbai, six in Wankhede stadium and four in D.Y. Patil stadium, Navi Mumbai. M/s. India Win sports (Pvt.) Ltd., Mumbai was entrusted with the work of sale of tickets for these matches. However, ED was not levied on the admission fee to these IPL Matches.

The IPL matches were of a purely commercial nature and the franchisee owners of the eight teams comprising business tycoons and film stars spent crores of rupees to buy the teams and players from all cricket playing nations for the world's richest cricket tournament. The IPL was conceptualised as an entertainment spectacle and was also pitched as the ultimate destination of TV entertainment. It is thus obvious that the main objective of IPL was to provide entertainment and hence merited levy of ED on sale of tickets. It is also pertinent to mention that the Government of Delhi has treated the IPL as a commercial venture and has accordingly decided to impose ED on the sale of tickets.

Information regarding rates of tickets and number of tickets sold for different matches was called for from the department to estimate the amount of ED forgone. The department has not furnished information regarding number of tickets sold and aggregate amount of admission fees collected for these matches. The department had called for this information from the franchisee, but the franchisee did not make the information available stating that these cricket matches were exempted from payment of ED. On the basis of information in respect of seating capacity of the stadiums, collected independently by audit and considering the minimum rate of admission fee of Rs. 500 (as against the range from Rs. 500 to Rs. 10,000), amount of ED forgone is calculated at Rs. 4.99 crore.

Since the IPL matches are purely commercial in nature having considerable revenue potential, the Government may consider the levy of ED on the sale of tickets for IPL matches. Moreover, legislative sanction needs to be obtained, if at all exemptions are to be given to such type of commercial activities and blanket exemptions should not be granted merely on the basis of a GR which was issued much before the IPL was visualised.

**The Government may consider levying entertainment duty on commercialised sports activities such as IPL matches having considerable revenue potential. Further, legislative sanction may be obtained for granting exemption from payment of entertainment duty rather than giving exemption on the basis of GR alone.**

#### **6.2.11 Non-registration of tourist buses with video facility**

As per the provisions of the Act, with effect from May 2002, ED is payable in advance on or before 15 January of every calendar year by the operators of tourist buses having video facility at the rate of Rs. 1,000 per annum. In addition, surcharge at the rate of 10 *per cent* of ED is also payable. No system has been evolved by the department to assess and collect entertainment duty from the buses having video facility. The department had also not approached the Motor Vehicle Department by asking them to register the tourist buses with video facility as a separate category and to pass on the information to the

respective DCs, so that ED can be collected from all the bus operators by bringing them into the tax net.

Test check of records of the R&FD and Collector, Amravati, Mumbai City, Mumbai Suburban, Nagpur, Pune and Thane indicated that the offices did not have the information regarding number of tourist buses having video facilities running in their respective jurisdictions. Though the activity was treated as entertainment and provision was made in the Act to bring the tourist buses with video facility under the tax net, there was no mechanism in the Act/Rules for implementation of the said provisions. In the absence of reliable data, the department could not levy and collect ED on this entertainment activity.

**The Government may consider evolving a system for sharing of information of buses with video facility between the Motor Vehicles Department and the R&FD.**

#### **6.2.12 Internal control**

Every department is required to institute appropriate internal control for its efficient and cost effective functioning by ensuring proper enforcement of laws, rules and departmental instructions. The internal controls also help in creation of reliable financial and management information system for adequate safeguards against non/short collection or evasion of taxes. The internal controls should also be reviewed and updated from time to time to keep it effective. Deficiencies noticed in the internal control mechanism have been commented in the succeeding paragraphs.

##### **6.2.12.1 Non-submission of reports**

As per the Government circular dated 20 September 2001, three months from the date of commencement of the MTC, the DC is required to submit a report regarding the effect of the MTC, especially the revenue aspect, on other theatres in that locality. However, no such reports are being submitted by the DCs to ascertain the effect of concessions granted to the MTCs on the nearby theatres. In the absence of such report, the department is not in a position to ascertain the commercial viability of the single screen theatres in the locality as these theatres are the sources of entertainment for masses. Moreover, these theatres are the regular sources of revenue for the department in the light of large scale exemptions granted to the MTCs.

After this was pointed out in audit, the Government called for clarification from the concerned DCs in this regard.

**The Government may prescribe a mechanism for monitoring the performance of MTCs, so that the effect of the MTCs on the single screen theatres of that area could be ascertained.**

##### **6.2.12.2 Non-maintenance of separate register to watch the transactions relating to security deposit**

Scrutiny of records in the office of the Collector, Mumbai Suburban District (MSD) indicated that, security deposits received from organisers of special events were deposited into a separate savings bank account which was

operated by the Additional Collector, MSD. The balance amount as per the pass book of that account was Rs. 4.76 crore as of March 2009.

The department had not maintained a separate register for recording the transactions in respect of the amount of security deposits received. In the absence of such a register, correctness of the transactions relating to credits of security deposits, transfer of EDs to the concerned major head and refund of security deposits to organisers could not be verified in audit.

### **6.2.12.3 Inadequate coverage by internal audit**

The internal audit wing (IAW) of an organisation is a vital component of its internal control mechanism. As per the GR dated 2 April 1983, the work of internal audit was entrusted to the divisional commissionerate. However, this work was transferred to the respective Collectorates as per Government letter dated 19 July 2006 addressed to the Divisional Commissioners.

- Test check of records indicated that, till date internal audit has not been conducted in the offices of Collectors of Solapur, Pune and Nagpur districts since 1992-93, 1994-95, 2004-05, respectively. Further, in these offices 34 audit notes issued prior to 1992-93 involving amount aggregating Rs. 20.61 lakh were pending for action.

On this being pointed out, the DC, Solapur stated that, the internal audit was not conducted as the post of the Accounts Officer had been lying vacant. No reply was received from DC, Nagpur and Pune.

- In the office of the Collector, Mumbai City though the internal audit was conducted upto 2006-07, 125 audit notes issued between 1992-93 and 2006-07 involving revenue of Rs. 1.13 crore were pending for action in the department.

Lack of regular internal audit made the department vulnerable to the risk of control failure. Since timely action on audit notes issued by the internal audit was not taken, it resulted in delayed realisation of revenue.

**The Government may consider evolving a mechanism for monitoring the functions of internal audit wing.**

### **6.2.13 Non-submission of completion certificate within 24 months from the date of issue of Conditional letter of Intent in case of Multiplex Theatre Complex**

As per the condition No. 4 of the GR dated 4 January 2003, the proprietor of MTC has to furnish a certificate of completion of construction of MTC (issued by the Municipality/Gram Panchayat alongwith licence issued by the Commissioner of Police/Collector for running the cinema, video games etc.) to the Government within 24 months from the date of issue of CLI. In case of failure to fulfill the above condition the CLI is liable to be cancelled.

Test check of records in the office of the R&FD indicated that though the CLIs were issued to 23 applicants in six districts<sup>21</sup> between February 2004 and September 2006 for construction of MTCs, none of the applicants had

<sup>21</sup> Amravati(1), Mumbai Suburban (8), Mumbai City (3), Nagpur (2), Pune (4) and Thane (5).

furnished the certificates of completion of construction along with the required licences for running the cinema, video games etc., even after a period ranging from 28 to 59 months. Audit observed that no system was laid down in the department to watch compliances to the conditions of issue of the CLI.

**The Government may prescribe a mechanism for monitoring the compliance with the conditions of issue of the CLI.**

### **Compliance deficiencies**

#### **6.2.14 Non-reconciliation of receipts with treasury records**

As per the provisions of Rule 98 (2) of the Maharashtra Treasury Rules, 1968, all moneys received by the Government Officer on behalf of the Government and remitted into the treasury are required to be reconciled with figures booked by the concerned treasury officer.

Test check of records of the Mumbai Suburban (Taluka Magistrate, Kurla and Borivali) and Solapur (Resident Dy. Collector) districts indicated that the Pay and Accounts Office, Mumbai and Solapur treasury had intimated non-accounting of credits aggregating Rs. 48.39 lakh to the respective Taluka offices between June 2003 and March 2006.

The department has not taken any action to ascertain the reason for non-accounting of credits in these offices. Failure of the department to reconcile the remittances with the treasury receipts exposed the department to the risk of misappropriation.

Further, in the office of the DC, Pune, no reconciliation of revenue receipts with treasury records was carried out between April 2001 and March 2005.

After this was pointed out, the department stated that reconciliation of revenue receipts with treasury records would be carried out and a report would be submitted to audit.

#### **6.2.15 Non-reconciliation of balances between Personal Ledger Account (PLA) and bank scrolls**

As per para 589 of Maharashtra Treasury Manual, the Treasury Officer is required to obtain certificate of balances at the end of each year from the administrator of PLAs. Further, as per Rule 515 of the Maharashtra Treasury Rules, the balances shown in the PLA cash book should be reconciled with the Treasury Cash Book at the end of each month.

Scrutiny of records of the Collector, Mumbai City indicated that, the balance in the cash book as of March 2008 was Rs. 1,75,06,953, whereas, the balance reflected by the bank scroll for March 2008 was Rs. 1,63,99,312. The difference of Rs. 11,07,641 was not reconciled.

On this being pointed out, the department stated that the difference would be reconciled.

### **6.2.16 Pendency in receipt of service charge accounts and scrutiny thereof of cinema theatres**

As per provisions of Section 2(b) of the Act, 1923 read with circular dated 2 May 1998 issued by the R&FD, the proprietor of a cinema theatre is required to submit service charges account duly certified by a Chartered Accountant to the prescribed officer before 30<sup>th</sup> September every year. After receipt of the accounts, the prescribed officer is required to scrutinise the accounts to verify that, amount collected has been spent towards the maintenance of cinema theatre and providing facilities and safety measures as specified by the Government. This scrutiny is to be completed on or before 31<sup>st</sup> December every year. Further, as per the third proviso below Section 2 (b), in case the service charges or part thereof has not been spent towards the maintenance and providing facilities and safety measures, then the said amount of service charges or part thereof, not so spent, shall be included in the payment of admission and subjected to ED.

Test check of records of office of the Collector in Mumbai Suburban, Pune and Solapur districts indicated that out of 823 accounts in respect of utilisation of service charges receivable for the period 2003-04 to 2007-08, 370 accounts were received. Out of this only 33 accounts were scrutinised and approved by the department leaving a balance of 337 accounts<sup>22</sup> pending for scrutiny. The department has also not taken any action in respect of 453 service charge<sup>23</sup> accounts not received from the theatres.

On this being pointed out, the department stated that necessary action in this regard will be taken. Further reply is awaited (November 2009).

### **6.2.17 Non/short levy of surcharge in respect of water parks**

Under the provisions of the BED Act, water parks were exempted from payment of duty for the first three years from the date of their commencement. For the subsequent two years ED at the rate of five *per cent* and from the sixth year onwards ED at the rate of 10 *per cent* on the admission fees was to be levied. Further, surcharge at the rate of five *per cent* where payment for admission does not exceed one rupee and in all other cases at the rate of 10 *per cent* in respect of entertainments other than an amusement park is leviable.

Test check of records in the offices of collectors of four districts<sup>24</sup> indicated that during various periods between April 2003 and March 2008, there was short payment of surcharge aggregating Rs. 2.00 crore, in respect of three water parks<sup>25</sup> as the assesses had paid the surcharge on the ED payable rather than on the admission rate of the ticket. Further, in respect of five water parks<sup>26</sup>, the assesseees had not paid surcharge aggregating Rs. 6.13 crore. The department did not take any action to recover the amount of surcharge of Rs. 8.13 crore non/short paid.

<sup>22</sup> Mumbai Suburban District 105, Pune 92 and Solapur 140.

<sup>23</sup> Mumbai Suburban District 370, Pune 63 and Solapur 20.

<sup>24</sup> Mumbai Suburban, Nagpur, Pune and Thane.

<sup>25</sup> Great Escape (Vasai); Suraj Water Park and Tikuji-ni-wadi in Thane districts.

<sup>26</sup> Water Kingdom in Mumbai Suburban; Fun and Food in Nagpur district; Dolphin at Nigdi and MTDC at Karla in Pune district; and Sangrila Resort, Bhiwandi in Thane District.

On this being pointed out, in case of Mumbai Suburban and Nagpur districts, the department accepted the observation and agreed to recover the amount (April and May 2009). In case of Pune and Thane districts the department stated (June 2009) that the audit observation would be verified.

#### **6.2.18 Incorrect exemption of entertainment duty on films**

Under the provision of Section 6(3) of the Act, Government may by general or special order, exempt any entertainment or class of entertainments from liability to pay ED. The producer of a film, which is granted exemption from payment of ED, is required to give an undertaking that he would pay an amount equivalent to the amount of ED leviable on the exhibition of such film to the person or persons most responsible for the educational, cultural or social contribution of such films as nominated by the advisory committee. The producer is also required to submit a weekly return to the DC specifying particulars of payments made to the nominated person(s) with a copy thereof to the Government. Exemption from liability to pay ED for exhibition of any such film should be withdrawn, if the producer fails to comply with the undertaking. However, the Government did not prescribe any mechanism to ensure that the conditions laid down in the Act were enforced.

Test check of records of the R&FD indicated that seven<sup>27</sup> films were declared tax-free and were granted exemptions from payment of ED aggregating Rs. 2.26 crore for various periods between 2005-06 and 2006-07. But in none of the cases:

- the advisory committee had nominated any person or persons responsible for the educational, cultural or social contribution of the film; and
- the proprietor had submitted the weekly returns as prescribed to the DC with a copy thereof to the Government.

While granting exemptions from payment of ED by declaring the films as tax-free, the department had failed to ensure that essential conditions subject to which exemptions were granted were fulfilled. This resulted in incorrect grant of exemption aggregating Rs. 2.26 crore.

After the cases were pointed out, the Government stated that the rules framed under the Act were outdated and the same were undergoing modification.

The facts remains that the conditions prescribed in the Act were not fulfilled due to absence of a mechanism to enforce these conditions.

#### **6.2.19 Non-forfeiture of security deposit of Rs. 1.87 crore from the organisers of special events**

Under the Bombay Entertainments Duty Rules, 1958, every organiser of an entertainment shall pay security deposit to the prescribed officer as that officer may decide. If an organiser fails either to submit returns and accounts or to pay the ED due within 10 days from the date of entertainment or such

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<sup>27</sup> Antariksha, Chaka Chak, Dr. Babasaheb Ambedkar, Hanuman, Lage Raho Munnabhai, Netaji Subash Chandra Bose and Salam Bache.



extended period not exceeding one month as the prescribed officer may allow, the prescribed officer may, after giving the organiser a weeks notice, forfeit the security deposit.

Test check of the records in Mumbai City and Mumbai Suburban District indicated that security deposits of Rs. 1.87 crore were collected from the organisers of special events such as new year eve programme, fun fair, music concerts etc., between April 2003 and March 2008 in respect of 138 performances. However, the organisers had neither submitted the prescribed returns and accounts for assessment nor had paid ED for periods ranging from one to six years after the events were held. Seven of these organisers who had not submitted the prescribed returns in respect of special events organised during the previous year were also granted permission to organise special events in subsequent years. Despite the failure on the part of the organisers to fulfill the prescribed conditions, the department had not issued notices to forfeit the security deposit amounting to Rs. 1.87 crore and the amount is lying in a bank account outside the Consolidated Fund of the State. Further, since the organisers of entertainment have not approached the department for refund of security deposit in excess of the ED payable, there is a room for doubt that the ED actually payable would have been in excess of the security deposit collected by the department. Also, the department does not have a mechanism in place to ensure that the accounts are submitted by the organisers regularly and the same are assessed in time. In the absence of such a mechanism, Audit could not calculate the actual amount of ED forgone.

After the cases were pointed out, the department has agreed to issue notices to the organisers for submission of returns and accounts and to initiate action for forfeiture of security deposit.

**The Government may consider evolving a mechanism to ensure that the accounts are submitted by the organisers of special events on time so as to assess the correct amount of ED payable, enhancing the amount of security deposit and having a provision for penalty in case of non-submission of the accounts.**

#### **6.2.20 Incorrect refund of security deposit**

As per sub Section 13 (a) of the Act and conditions prescribed in the revised GR issued on 4 January 2003, the conditional letter of intent (CLI) issued to the applicant for construction of multiplex theatre complex is non-transferable. The applicant is also required to pay security deposit, which is refundable at the time of issuing of EC.

Test check of records of the Collector, Pune indicated that M/s. Paranjape Schemes Construction (Pvt) Ltd., was issued CLI in February 2004 on payment of security deposit of Rs. 28 lakh. M/s Paranjape Schemes Construction (Pvt) Ltd., had tendered application to the Government to transfer the CLI to M/s. Sairaj Scheme (Buildcon) (Pvt) Ltd. The Government under letter dated 17 July 2004 addressed to the Additional Collector, Pune accepted the proposal of transfer. Accordingly, the security deposit of Rs. 28 lakh paid by M/s. Paranjape Schemes Construction (Pvt) Ltd., was refunded in August 2005. The transfer of CLI and refund of Rs. 28 lakh was irregular as it was against the conditions prescribed in the GR issued in January 2003.

After this was pointed out, the department stated (March 2009) that regarding transfer of CLI and refund of security deposit, guidance of the Government would be obtained.

#### **6.2.21 Conclusion**

The review indicated that the department failed to enforce the prescribed conditions for grant of exemptions to Multiplex Theatre Complexes and hence has allowed undue benefits to the proprietors. It has also failed to bring more number of duty payers into the tax-net by conducting surveys as in the case of cable operators. Internal control mechanism of the department was not effective and internal control tools such as internal audit were not used timely and effectively.

#### **6.2.22 Summary of recommendations**

**The Government may consider:**

- **evolving appropriate control mechanisms for enforcing the prescribed conditions for grant of exemptions/concessions to Multiplex Theatre Complexes;**
- **including a provision in the Act for forfeiting the excess amount of ED collected by the entertainment centres to avoid litigation in future;**
- **conducting an extensive survey, in co-ordination with other departments to bring evaders of duty within the fold of the Act to augment the state revenue;**
- **levying entertainment duty on commercialised sports activities such as IPL matches having considerable revenue potential. Further, legislative sanction may be obtained for granting exemption from payment of entertainment duty rather than giving exemption on the basis of GR alone;**
- **evolving a system for sharing of information of buses with video facility between the Motor Vehicles Department and the R&FD;**
- **prescribing a mechanism for monitoring the performance of MTCs, so that the effect of the MTCs on the single screen theatres of that area could be ascertained;**
- **evolving a mechanism for monitoring the functions of internal audit wing;**
- **prescribing a mechanism for monitoring the compliance with the conditions of issue of the CLI; and**
- **evolving a mechanism to ensure that the accounts are submitted by the organisers of special events on time so as to assess the correct amount of ED payable, enhancing the amount of security deposit and having a provision for penalty in case of non-submission of the accounts.**

### 6.3 Other audit observations

*Scrutiny of records in the offices of the Resident Deputy Collectors/Taluka Magistrates, Municipal Corporations, Offices of the Chief Engineer (Electrical) and the Electrical Inspectors, and Profession Tax Officers revealed several cases of non-observance of provisions of the Acts and rules as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on a test check carried out in audit. There is a need for the Government to evolve suitable mechanism so that mistakes can be avoided, detected and corrected.*

### 6.4 Non-recovery of entertainment duty from cable operators

*The Bombay Entertainments Duty (BED) Act, 1923 provides for levy and collection of entertainment duty (ED) on cable connections at the prescribed rate. The Entertainment Duty Officers did not observe some of the provisions which resulted in non-recovery of entertainment duty of Rs. 81.59 lakh.*

Under Section 3(4) of the BED Act, 1923, ED was payable by the cable operators at flat rates of Rs. 30, Rs. 20 or Rs. 10 per television set per month with effect from 1 April 2000 depending on whether the area is a municipal corporation (MC), A and B class municipality or other area. The rates were revised to Rs. 45, Rs. 30 or Rs. 15 per television set per month with effect from June 2006. Further, ED is payable on or before the 10<sup>th</sup> of the subsequent month to which it relates. Interest at the rate of 18 *per cent* per annum for the first 30 days and 24 *per cent* thereafter is to be levied in case of default.

During test check of the records of 20 units<sup>28</sup> in seven districts<sup>29</sup>, between November 2006 and July 2008, it was noticed that ED amounting to Rs. 81.59 lakh was not paid by 317 cable operators during various periods between 2004-05 and 2007-08. The demands were also not raised by the Resident Deputy Collectors/Taluka Magistrates/Entertainment Duty Officers against these cable operators. This resulted in non-recovery of ED of Rs. 81.59 lakh. Besides, interest at the prescribed rates was also leviable.

After the cases were pointed out between December 2006 and August 2008, the department accepted the observations and recovered ED amounting to Rs. 38.48 lakh alongwith interest of Rs. 33,967, between April 2007 and May 2009, from 214 cable operators. A report on recovery of the balance amount has not been received (November 2009).

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

<sup>28</sup> Resident Deputy Collectors : Kolhapur, Mumbai-Zone II, V, VI, VIII, IX, Nashik; Entertainment Duty Officer : Pune-Zone G, J, K, M; Taluka Magistrate : Andheri-Zone II and IV; Shegaon and Mehkar at Buldhana; Kurla-Zone XI, XII; Kalyan, Murbad, Wada at Thane

<sup>29</sup> Buldhana, Kolhapur, Mumbai City, Mumbai Suburban, Nashik, Pune and Thane.

**SECTION B**  
**STATE EDUCATION CESS AND EMPLOYMENT**  
**GUARANTEE CESS**

**6.5 Non-remittance of education and employment guarantee cess**

*Non-observance of the Maharashtra Education and Employment Guarantee Cess (Cess), Tax on Lands and Buildings (Collection and Refund) Rules, 1962 resulted in non-remittance of State Education Cess and Employment Guarantee Cess to the extent of Rs. 180.41 crore.*

Under Section 4 and 6B of the Maharashtra Education and Employment Guarantee (Cess) Act, 1962 read with Rule 4 of the Collection and Refund Rules, cess and penalty collected by the MCs during a calendar week are required to be credited to the Government account before the expiry of the following week in which it was recovered. If any MC defaults in payment of any sum under the Act, the Government may, after holding such enquiry as it thinks fit, fix a period for the payment of such sum. The Act also empowers the Government to direct the bank/treasury in which the earnings of the MC are deposited, to pay such sum from the bank account to the Government.

During test check of the records of Bhiwandi-Nizampur Municipal Corporation and Brihan Mumbai Municipal Corporation in May 2006 and April 2009, it was seen that the MCs did not remit revenue amounting to Rs. 180.41 crore relating to State education cess and employment guarantee cess collected during the year 2005-06 and 2007-08. The Government also did not initiate any action either to fix a period for payment of the dues or to direct the banks to pay the amounts due from the bank accounts of the MC.

After the cases were pointed out in June 2006 and April 2009, the MC Mumbai remitted Rs. 80.45 crore into the Government treasury in July 2009 leaving a balance of Rs. 98.93 crore and MC Bhiwandi-Nizampur stated that in respect of Rs. 1.03 crore, the amount would be remitted into the Government account. Further report has not been received (November 2009).

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

**SECTION C**  
**REPAIR CESS**

**6.6 Foregoing of revenue due to non-prescribing of rate of repair cess**

*The Maharashtra Housing and Area Development Act, 1976 prescribed the rates at which the repair cess is to be levied and collected. The Government has not yet enhanced the rate of repair cess with respect to the increased permissible limit of expenditure towards cost of repairs which resulted in foregoing of revenue due to non-prescribing of rate of repair cess to the extent of Rs. 14.50 crore.*

Under Section 82 of the Maharashtra Housing and Area Development Act, 1976, when a building is structurally repaired, a cess<sup>30</sup> is to be levied depending upon the category<sup>31</sup> of the building, at the rate prescribed in the second schedule to the Act. The rate of cess is based on the permissible limit towards cost of repairs to be borne by the Board<sup>32</sup>. The permissible limit was increased by the Government to Rs. 750 per sq.m. in 1992 and further increased to Rs. 1,000 and 1,200 per sq.m. on 15 May 1998 and 4 July 2004, respectively. However, Government had enhanced the rate of cess only with respect to permissible limit towards cost of repairs of Rs. 750 per sq.m. The assessment, levy and collection of cess vests with the Brihan Mumbai Municipal Corporation (BMC).

During test check of the records of nine<sup>33</sup> wards of the BMC in July 2008, it was noticed that during the period from 1 February 2004 to 31 March 2008, 1,434 buildings were structurally repaired by incurring expenditure at the enhanced cost of repairs of Rs. 1,000 and Rs. 1,200 per sq.m. However, as the rate of cess was not fixed by the Government, these buildings continued to be assessed for cess at the rate applicable to the cost of repairs of Rs. 750 per sq.m. In this regard the Chief Officer of the Board had proposed to the Government in June 2001 and July 2004, the rate of cess that should be levied on the enhanced cost of repairs depending on the categories of the buildings. Non-fixing of revised rates of repair cess resulted in foregoing of revenue of Rs. 14.50 crore as worked out at the rates proposed by the Board.

After the cases were pointed out in September 2008, the Government stated that there was no loss of revenue as the cabinet had not decided the issue relating to recovery of cess at enhanced rates. The fact, however, remains that the delay in enhancement of rates of repair cess resulted in foregoing of revenue of Rs. 14.50 crore.

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

## SECTION D TAX ON BUILDINGS (With Larger Residential Premises)

### 6.7 Non-remittance of tax

*Non-observance of the provisions of the Maharashtra Tax on Buildings (with Larger Residential Premises) (Re-enacted) (MTOB) Act, 1979 resulted in non-remittance of tax of Rs. 214.41 lakh.*

Under section 14 of the MTOB Act, 1979, tax recovered by a municipal corporation (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 any sum due under the

<sup>30</sup> Mumbai Building Repairs and Reconstruction Cess.

<sup>31</sup> A, B and C.

<sup>32</sup> Mumbai Building Repairs and Reconstruction Board.

<sup>33</sup> A, B, C, D, E, F-North, F-South, G-North and G-South.

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 such bank account to the state Government. Any such payment made in pursuance of the orders of the Government shall be a sufficient discharge to such bank/treasury from all liabilities to the MC.

During test check of the records of the two MCs at Mumbai and Pune in January and February 2009, it was noticed that the MCs did not remit revenue amounting to Rs. 2.14 crore collected during the year 2007-08 on account of tax on buildings (with larger residential premises). In both the cases the State Government had not directed the bank/treasury to pay the sum into the Government account as required. This resulted in non-remittance of tax of Rs. 2.14 crore.

After the cases were pointed out in February 2009, MC Pune remitted the entire amount of Rs. 68.12 lakh into the Government treasury in February 2009 and MC Mumbai remitted Rs. 144.05 lakh into the Government treasury in July 2009 leaving a balance of Rs. 2.24 lakh. Further report in the matter is awaited (November 2009).

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

## **SECTION E ELECTRICITY DUTY**

### **6.8 Incorrect retention of tax on sale of electricity and non-levy of interest**

*Non-observance of the provisions of the Maharashtra Tax on Sale of Electricity (TOS) Act, 1963 resulted in non-remittance of Rs. 85.35 crore alongwith the interest of Rs. 38.09 crore.*

Under Section 3 and 4 of the TOS Act, 1963, every bulk licensee shall pay tax into the Government treasury on or before the last date of the succeeding calendar month on every unit in respect of all his sales of energy in bulk. Further, as per Section 8 of the Act, in case of failure to pay the tax on sale collected, by the due date, the 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 amount of tax remaining unpaid till the date of payment.

During test check of the records of the Chief Engineer (Electrical), Mumbai (CE) in February 2009, it was noticed that the Maharashtra State Electricity Distribution Company Ltd. (MSEDCL) collected tax on sale of electricity aggregating Rs. 153.01 crore during the period from April 2007 to March 2008 from the consumers but did not remit the amount into the Government account. The Government by issuing a resolution in March 2008 adjusted Rs. 67.66 crore against the subsidy payable by Government to MSEDCL leaving a balance of Rs. 85.35 crore.

After this was pointed out in February 2009, the Chief Engineer (Electrical) stated that he had proposed to the Government in September 2008 either to

adjust Rs. 47.51 crore against the dues payable by the Government or to recover the dues from MSEDCL and the balance amount would be recovered by this way of adjustment at Government level. However, the fact remains that the amount collected on behalf of the Government was incorrectly retained by MSEDCL instead of crediting the amount in the Government treasury. This resulted in non-remittance of Rs. 85.35 (153.01 - 67.66) crore by MSEDCL on account of tax on sale of electricity and also non-recovery of interest of Rs. 38.09 crore.

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

### **6.9 Incorrect retention and non-levy of interest on electricity duty**

*Non-observance of the provisions of the Bombay Electricity Duty Act, 1958 resulted in non-remittance of Rs. 70.83 crore alongwith interest of Rs. 15.94 crore.*

Under Section 4 of the Bombay Electricity Duty Act read with Rule 2 of the Bombay Electricity Rules, 1962, every licensee who supplies electricity to consumers is required to collect duty from the consumers together with his own charges, if any, and pay it to the State Government on or before the last date of the succeeding calendar month in which the bills are raised. Further, as per Section 8 of the Act, in case 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 amount of duty remaining unpaid till the date of payment.

During test check of the records of the Chief Engineer (Electrical), Mumbai (CE) in February 2009, it was noticed that the Maharashtra State Electricity Distribution Company Ltd (MSEDCL) collected electricity duty aggregating Rs. 1,089.33 crore during the period from April 2007 to March 2008 from the consumers but did not remit the amount into the Government account. The Government by issuing the resolution between September 2007 and November 2008, adjusted Rs. 1,018.50 crore of electricity duty due from MSEDCL against the subsidy payable to it. The CE proposed to the Government in September 2008 to adjust the balance amount of Rs. 70.83 crore against the dues payable by the Government to MSEDCL or to recover the dues from it. Report on remittance of the balance amount of Rs. 70.83 crore has not been received. (November 2009).

After this was pointed out in February 2009, the Chief Engineer (Electrical) stated that the balance amount would be recovered by way of adjustment at Government level. However, the fact remains that the amount collected on behalf of the Government was incorrectly retained by MSEDCL instead of crediting it into the Government treasury. This resulted in non-remittance of electricity duty of Rs 70.83 crore and also non-recovery of interest of Rs 15.94 crore.

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

### **6.10 Non recovery of inspection fees**

*Non-observance of the Indian Electricity Rules, 1956 resulted in non-realisation of inspection fees of Rs. 41.90 lakh.*

Under Rule 4 of the Indian Electricity Rules, 1956, inspection fees are required to be paid by the consumers within 10 days from the date of the inspection, examination or test of electrical installations. The rates of fees payable are regulated by notifications issued by the Government from time to time.

During test check of the records of the offices of the Electrical Inspectors in seven districts<sup>34</sup> between December 2007 and January 2009, it was noticed that inspection fees aggregating Rs. 41.90 lakh for the inspection of electrical installations carried out during 2006-07 and 2007-08 were not paid by 328 consumers. No action was taken by the department to recover the amount.

After the cases were pointed out, the department accepted the observations between December 2007 and January 2009 and recovered Rs. 21.53 lakh between December 2007 and August 2009, from 157 consumers. A report on recovery of the balance amount has not been received (November 2009).

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

## **SECTION F PROFESSION TAX**

### **6.11 Non-realisation of Profession Tax**

*Under the provisions of the Profession Tax Act, 1975, every person liable to pay tax under the Act is required to obtain an enrolment certificate. Non-enrolment of the medical practitioners with the profession tax department resulted into non-realisation of the profession tax to the tune of Rs. 14.35 crore.*

Under Section 3 of the Profession Tax Act, 1975, every person liable to pay tax under the Act 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 fails to apply for such certificate, a penalty of Rs. 2 per day is leviable.

In order to ascertain whether all the medical practitioners in allopathic, homeopathy, ayurvedic and dental medicine in respect of Pune district are brought under the purview of the Act, details of medical practitioners who were registered with the four medical councils<sup>35</sup> were collected between January and March 2009. As per the information received from the medical councils 16,668 medical practitioners were registered with the medical councils upto March 2008. Cross check of these details with the information

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<sup>34</sup> Ahmednagar, Aurangabad, Kolhapur, Nashik, Pune, Sangli and Thane.

<sup>35</sup> Maharashtra Medical Council (Allopathic), Mumbai, Homeopathic Medical Council, Maharashtra, Mumbai, Medical Council for Indian Medicines (Ayurvedic), Mumbai and Maharashtra Dental Council, Mumbai.



furnished by the five<sup>36</sup> profession tax officers of Pune district indicated that only 287 medical practitioners were enrolled with the profession tax department. This resulted in non-realisation of profession tax of Rs. 14.35 crore in respect of 16,381 non-enrolled persons for the period from 2005-06 to 2008-09.

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

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<sup>36</sup> Profession Tax Officers, Pune division: 1,2,3,4 and 5.