

*CHAPTER IV*

*OTHER TAX AND NON-TAX RECEIPTS*





## CHAPTER IV

### OTHER TAX AND NON-TAX RECEIPTS

#### 4.1 Results of audit

In 2014-15, test check of departmental offices revealed under-assessment of electricity tax, duty, dead rent, seigniorage fee and other observations amounting to ₹ 105.74 crore in 90 cases, which fall under the categories given in Table 4.1.

Table 4.1

(₹ in crore)			
Sl.No.	Categories	Number of cases	Amount
<b>Electricity Tax</b>			
1	Audit of Assessment and collection of Electricity Tax	1	90.48
2	Non-levy/collection of electricity tax, duty and additional tax	9	4.58
3	Others	26	1.84
<b>Total</b>		36	96.90
<b>Mines and Minerals</b>			
1	Non/short levy of dead rent, seigniorage fee, royalty	24	7.66
2	Others	30	1.18
<b>Total</b>		54	8.84
<b>Grand Total</b>		<b>90</b>	<b>105.74</b>

During the course of the year, the Departments accepted under-assessment and other deficiencies in 33 cases and recovered ₹ 1.70 crore, out of which ₹ 1.19 crore involved in eight cases were pointed out during the year and the rest in earlier years.

Cases of under-assessment and other deficiencies in levy and collection of Electricity Tax and short collection of royalty in respect of Mines and Minerals involving ₹ 97.54 crore are discussed in the following paragraphs.

## **ELECTRICITY TAX**

### **4.2 Audit of Assessment and collection of Electricity Tax**

#### **4.2.1 Introduction**

The assessment, levy and collection of tax on consumption or sale of electricity in the State of Tamil Nadu is governed by the Tamil Nadu Tax on Consumption or Sale of Electricity Act, 2003 (Act) and the Tamil Nadu Tax on Consumption or Sale of Electricity Rules, 2003 (Rules) made thereunder. The Act came into force on 16 June 2003 after repealing the Tamil Nadu Electricity Duty Act, 1939 and the Tamil Nadu Electricity (Taxation on Consumption) Act, 1962.

The Chief Electrical Inspector to Government (CEIG), Chennai is the Head of the Electrical Inspectorate Service and is appointed as the Director of Electricity Tax for the purpose of the Act. There are 23 Electrical Inspectorates under the control of CEIG.

Section 3 of the Act provides that every licensee and every person other than a licensee shall pay every month to the Government in the prescribed manner, a tax on the electricity sold or consumed during the previous month at the rates prescribed therein. The tax shall be credited into the Government Treasury and a duplicate copy of the treasury challan shall be sent to the Director with a copy to the jurisdictional Inspecting Officer.

The Tamil Nadu Generation and Distribution Corporation (TANGEDCO) is the licensee approved for collection of electricity tax payable by its consumers. The electricity tax is recovered from the consumer by TANGEDCO through the Current Consumption (CC) bills. Government, by issue of orders in December 2010 empowered TANGEDCO to collect electricity tax on energy generated through diesel generator (DG) sets from April 2011.

Audit was undertaken from November 2014 to March 2015 to ascertain the extent of adherence to the prescribed procedures for the purpose of assessment, levy and collection of electricity tax. The records in the office of CEIG and in 10 out of 23 Electrical Inspectorates were scrutinised covering the period from 2011-12 to 2013-14.

#### **4.2.2 Trend of receipts from Taxes and Duties on electricity**

The budget estimates and actual receipts of the Department during the period from 2011-12 to 2013-14 are given in Table 4.2.2



Table 4.2.2

Year	Budget Estimates	Actual Receipts	Variation	(₹ in crore)
				Percentage of variation
2011-12	532.03	1,040.20	(+) 508.17	(+) 95.52
2012-13	609.89	768.88	(+) 158.99	(+) 26.07
2013-14	670.94	743.56	(+) 72.62	(+) 10.82

(Source: Finance Accounts of the Government of Tamil Nadu)

As seen from the above table, the actual receipts were higher than the budget estimates during the three years, the percentage of variation ranging between 10.82 and 95.52 *per cent*. After Audit pointed this out, the Department stated (August 2015) that the adjustment of electricity tax due from TANGEDCO for the periods 2010-11 and 2011-12 during the year 2011-12 led to increased receipts and also for the large variation between the budget estimates and actual receipts during the year.

### 4.2.3 System for monitoring filing of returns

Section 8 of the Act and Rule 15 prescribe submission of monthly returns in duplicate, one copy to the Director and another to the Inspecting Officer, before fifteenth day of the month following the month to which the returns relate. Section 9 of the Act also provides for assessing to the best of judgment in case of failure by the licensee to submit returns or if the returns submitted appears to be incorrect or incomplete.

Section 5 of the Act and Rule 5 stipulate that every person, other than a licensee who has installed or proposes to install a generating plant for generation of electricity for his own consumption, shall register his name with the jurisdictional Electrical Inspector.

Audit noticed that, although a register was maintained in each of the Electrical Inspectorates to enter the details of registrations, there existed no system to monitor the filing of returns by the registered entities. The office of the CEIG had not prescribed any register to be maintained by the field offices for watching due submission of returns by the entities. As a result, database of entities who had not filed returns was not available with the Department. The monthly returns (PDL 14) furnished by the Electrical Inspectorates are not designed to report cases of non-filing of returns. Thus, initiation of action for invoking the provisions of best judgement assessment in a systematic manner in respect of non-filers of monthly returns was not possible.

The matter was reported to the Government (July 2015) and it attributed (September 2015) shortage of manpower as a reason for failure to ensure periodical filing of returns by the entities. The Government further stated that once the online system of registration and payment of tax is implemented, the non-filers of tax could be watched by the Department.

### 4.2.4 Assessment and collection of electricity tax

The Tamil Nadu Tax on Consumption or Sale of Electricity Act, 2003 came into force on 16 June 2003 after repealing the Tamil Nadu Electricity Duty Act, 1939 and the Tamil Nadu Electricity (Taxation on Consumption) Act,

1962. On a batch of petitions filed against the validity of the Act, the Supreme Court held that in view of the phraseology used in the Act, the right of the appellant acquired by way of exemption granted under the repealed Act cannot be said to have been destroyed. The Government, therefore decided to amend the Tamil Nadu Tax on Consumption or Sale of Electricity Act, 2003 suitably so as to invalidate the exemptions granted from levy of electricity tax under the repealed Act. Hence, an amendment was made in 2007 with retrospective effect.

After passing of amendments to the Act, the Department failed to insist on furnishing of monthly returns by the licensees. Instead, the Department gathered details of electricity captively consumed/sold by the licensees and proceeded to initiate action for levy of electricity tax between May 2011 and December 2014. Audit scrutiny of the details furnished by the Department in this regard revealed the following:

- In three<sup>77</sup> Electrical Inspectorates, only letters were issued to six licensees demanding payment of electricity tax of ₹ 33.67 crore relating to the period from October 2004 to December 2014, instead of following the procedure prescribed under the Act for invoking the provisions of best judgement assessment.
- In four<sup>78</sup> Electrical Inspectorates, in respect of eight licensees, though details were obtained by the Department, further action to assess and demand electricity tax of ₹ 8.02 crore was not taken.
- In five<sup>79</sup> Electrical Inspectorates in respect of 16 cases, though assessment was made between May 2011 and December 2014, electricity tax of ₹ 136.84 crore remained unpaid. However, further action was not taken by the Department to recover the amount by invoking the provisions prescribed under Section 7(1)(b) the Act.
- Audit noticed that 23 sugar mills were in arrears for payment of electricity tax of ₹ 71.67 crore for various periods starting from June 2003.

When the issue of non-collection of arrears was pointed out (March 2015), the Department replied (April 2015) that 10 mills with arrears of ₹ 36.77 crore had filed special leave petition (SLP) before the Supreme Court. Audit scrutiny revealed that the Supreme Court in its orders dated April 2013 had not stayed collection of taxes by the Department. However, the Department had not effected collection of tax from the sugar mills.

#### **4.2.5 Exclusion of excess charges for the purpose of levy of electricity tax**

According to Section 3(1)(a) of the Act, every licensee, other than a captive power plant, shall pay tax at 5 *per cent* on the electricity sold or consumed. The Government accorded sanction to TANGEDCO to recover electricity tax from the consumers.

---

<sup>77</sup> Cuddalore, Namakkal and Ponneri

<sup>78</sup> Chengalpet, Krishnagiri, Trichy and Virudhunagar

<sup>79</sup> Dindigul, Madurai, Namakkal, Salem and Tirunelveli

The Government issued directions in October 2008 for implementing power supply through Restriction and Control (R&C) measures to manage the shortage of energy and distribute the available energy equitably effective from 1 November 2008. Accordingly, 40 *per cent* cut on the base demand and energy for High Tension (HT) industrial and commercial consumers and 20 *per cent* cut on Low Tension Current Transformer (LTCT) industrial and commercial consumers were imposed from the above date. The Tamil Nadu Electricity Regulatory Commission (TNERC) in its order dated 28 November 2008 directed that the excess demand and excess energy consumption be charged at thrice the normal rate.

Scrutiny of the records of TANGEDCO revealed that though TANGEDCO had collected current consumption charges at thrice the normal rate, the amount collected in excess of the normal rate was shown separately in the CC bill of TANGEDCO. Verification of bills indicated that the same was not taken into account for calculation of electricity tax. It was confirmed from TANGEDCO that tax was not collected on excess demand and excess energy consumption charges.

A sum of ₹ 1,786 crore was collected as excess demand and energy charges during the period from 2011-12 to 2013-14. However, electricity tax, due at 5 *per cent* on ₹ 1,786 crore, amounting to ₹ 89.30 crore, was not levied.

On being pointed out (July 2015), Government accepted the audit observation (September 2015) and stated that TANGEDCO has been requested to collect electricity tax on the excess demand and energy charges collected from the consumers. Further report regarding recovery of electricity tax on the excess demand and energy charges was awaited from the Government (December 2015).

#### **4.2.6 Collection of electricity tax on Diesel Generating (DG) sets**

The Government of Tamil Nadu issued orders in December 2010 entrusting the work of collection of electricity tax (Gen-Tax on consumption) from DG sets to Tamil Nadu Electricity Board (TNEB, now TANGEDCO) as TNEB had the infrastructure to reach the DG sets located in HT and LT premises and remote location. The order mentioned that CEIG would monitor such revenue realisation on behalf of the Government. Scrutiny of records of the Department and TANGEDCO relating to levy and collection of electricity tax revealed the following deficiencies.

- According to Section 5 of the Act, every person, who has installed or proposes to install a generating plant for generating electricity for his own consumption shall register his name with such officer as the Government may appoint in this behalf. However, registration of DG sets continues to be only on self compliance. Audit noticed that an entity falling under the jurisdiction of the Electrical Inspectorate, Ponneri (November 2014) who commissioned a plant in November 2012 belatedly reported the same to the Department in October 2014. The Department had not devised a system to ensure that all DG sets commissioned in the State are compulsorily brought to registration. Therefore, it did not have information on potential tax base.

- Audit observed that the particulars of registered entities were not being forwarded to TANGEDCO to facilitate collection of tax on DG sets. TANGEDCO also did not forward details of consumer-wise collection of tax by it to the CEIG. Hence, there was no coordination between the Department and TANGEDCO in implementing the Government Order to collect tax on DG sets.
- TANGEDCO stated that all its circles were collecting electricity tax on DG sets from April 2011. However, Audit noticed from the relevant files that 12 TANGEDCO circles did not collect tax on DG sets for the period from April 2011 as on 31 March 2014.
- TANGEDCO was already collecting tax on generation of electricity through windmills from its consumers and the same was included in CC bill under the column “Self Generation Tax”. The Chief Financial Controller, TANGEDCO issued instructions in April 2011 that collection of tax from DG sets shall be booked separately under the category “E-tax (generation)”. Audit noticed that there were no separate clause in the CC bills under the nomenclature “E-tax (generation)” to indicate receipts from tax on DG sets. Though TANGEDCO stated that the account head “Self Generation tax” included tax on windmills and DG sets, since the same were not booked separately, the collection of self-generation tax by TANGEDCO in respect of DG sets could not be ensured.

Government, to whom the matter was reported (July 2015), stated in September 2015 that TANGEDCO has been requested to furnish details of self-generation tax separately and pay the self-generation tax in its relevant head. The Government further stated that the Superintendents of the office of the CEIG, who are designated as Electricity Tax Inspection Officers were instructed to conduct tax inspection in the revenue divisions of TANGEDCO in their respective jurisdiction to verify the number of consumers from whom self-generation tax has been collected.

#### **4.2.7 Other audit observations**

##### **4.2.7.1 Omission to raise demand of electricity tax**

In exercise of the powers conferred by Section 14 of the Act, the Government, by an order issued in September 2010, extended the exemption in respect of electricity tax on the consumption of electricity for own use by HT consumers using their captive generating plants for the period from 1 April 2010 to 31 March 2011.

A licensee falling within the jurisdiction of the office of Electrical Inspectorate, Ponneri (erstwhile Electrical Inspectorate, Kancheepuram North), paid electricity tax of ₹ 1.44 crore for the period from 1 April 2010 to 31 March 2011. The licensee subsequently claimed exemption as per the above Government Orders and *suo motu* adjusted ₹ 1.44 crore from the tax payable from April 2011 to April 2014. The Electrical Inspector concluded that the licensee, being registered as a captive generating plant, was not eligible for the exemption granted to HT consumers and accordingly, raised demand of ₹ 92.23 lakh in June 2013 towards electricity tax due for the period from April 2011 to March 2012. Audit noticed (February 2015) that demand



of ₹ 92.96 lakh for the subsequent period from April 2012 to April 2014 was not raised by the Electrical Inspector.

After Audit pointed this out (February 2015), the Electrical Inspector issued demand notice (March 2015) and collected (March 2015) electricity tax of ₹ 1.14 crore including interest, due for the period from April 2012 to April 2014.

#### **4.2.7.2 Excess allowance of exemption towards auxiliary consumption**

According to Explanation II under Section 2(5) of the Act, where a licensee or other person consumes energy for purposes connected with the construction, maintenance and operation of the generating, transmitting and distributing system, such licensee or person shall not be deemed to be a consumer in respect of the energy so consumed. The energy consumed for such purposes is termed by the Department as auxiliary consumption. Rule 11 provides that where there is a combined installation, where a part of a supply of electricity is taxable and part exempt, the consumer shall install and maintain separate, suitable and correct meters or sub-meters to register the quantities of two kinds of consumption separately. TNERC had fixed<sup>80</sup> the deduction towards auxiliary consumption at a maximum of 10 *per cent* of the total gross generation.

In Namakkal and Vellore Electrical Inspectorates, Audit noticed that in four cases, the gross generation of electricity during the period from May 2013 to March 2014 was 24.44 crore units<sup>81</sup>. The claim of auxiliary consumption of 2.86 crore units was allowed as against 2.44 crore units. Thus, failure to adopt the TNERC order of deduction towards auxiliary consumption resulted in excess allowance of exemption of 41.55 lakh units and consequential non-levy of electricity tax of ₹ 4.15 lakh at the rate of 10 paise per unit.

On being pointed out (July 2015), the Government accepted (September 2015) the audit observation and stated that, in future, auxiliary consumption will be allowed according to the reading of meter and will be restricted to 10 *per cent* of generated electricity in case of non-provision of meters.

#### **4.2.7.3 Misclassification of Receipts**

According to Rule 7, interest on belated payment of electricity tax shall be paid into the major Head “0043 Taxes and Duties on Electricity”.

Government released ₹ 696 crore in March 2014 and ₹ 74.50 crore in March 2015 to TANGEDCO and debited the amounts under share capital assistance. The book adjustment of the same amount was ordered to be adjusted against the penal interest on Electricity Tax payable by the TANGEDCO under the Major Head “0049-Interest Receipts, which was against the provisions of the Rule. This had resulted in a misclassification of receipts, which otherwise would have been reflected in the revenue of the Department.

After Audit pointed this out (July 2015), the Government replied (September 2015) that the audit observation was under consideration in consultation with the Finance Department. Further report was awaited (December 2015).

---

<sup>80</sup> Order No.3 dated 6.5.2009

<sup>81</sup> Section 2(15) of Act- 1 unit is equal to 1 kilowatt hours of energy

#### **4.2.8 Internal control**

The monthly returns (Form PDL 14) furnished by the Electrical Inspectorates to CEIG contain only the details of monthly collection of tax. The returns do not contain the details of arrears of tax and list of non-filers. In a reply to the Audit query, CEIG stated (June 2015) that internal audit was being conducted only on the revenue bills received from the division and not on collection of tax. It was confirmed from Department's reply that no internal circular or guidelines were issued to the Electrical Inspector to verify tax compliance of licensees/entities during inspection. This indicates absence of an effective control system in the Department.

The Government accepted the audit observation and stated (September 2015) that internal audit did not check the details of arrears of tax, the list of non-filers and correctness of the amount of tax paid and attributed this to the vacancy of staff.

#### **4.2.9 Conclusion**

The Department needs to evolve a system to monitor filing of returns by prescribing maintenance of register in this regard and link it with the register of registered entities, so that timely and effective action can be taken against non-filers. There is a need for instituting a proper coordination system between the Department and TANGEDCO, involving periodical sharing of details of registration, assessment and collection of tax to effectively administer the Act.

## **MINES AND MINERALS**

#### **4.3 Short collection of royalty**

According to Section 6-A of the Oilfields (Regulation and Development) Act, 1948 read with Rule 14 of the Petroleum and Natural Gas Rules, 1959, a lessee shall file monthly returns showing the quantity of all crude oil and natural gas obtained during the preceding month from mining operations and pay royalty at the rate for the time being specified in the Schedule to the Act.

As per Article 2 of the Tamil Nadu Financial Code Volume I, every Government servant entrusted with the duty of collecting any revenues due to the Government should assess demands carefully, maintain proper accounts of the collections, watch the progress of the collections against the total demand and take prompt steps to collect all arrears.

Articles 32 to 34 of the Tamil Nadu Financial Code Volume I, regarding refunds of revenue provide that a refund order should be signed by the Government servant authorised to sanction refunds of revenue. The refund amount should be paid to the person entitled to receive it or a proper voucher made payable to that person should be delivered to him for presentation at the treasury for payment. Further, the particulars of refund should be recorded

against the original entry of the receipt in the departmental records so that any further claim of refund of the same amount cannot be entertained.

During scrutiny of records in the offices of Assistant Director of Geology and Mining, Nagapattinam & Thiruvarur and Thanjavur, Audit noticed (May and August 2014) that a holder of mining lease originally paid royalty of ₹ 438.15 crore for the period 2010-11 to 2012-13 but subsequently declared that, on account of revision of price of crude oil, royalty of ₹ 431.09 crore alone was required to be paid. The licensee *suo motu* deducted from the royalty of ₹ 11.76 crore payable for the month of April 2013, ₹ 7.06 crore, being the royalty paid in excess for the period from April 2010 to March 2013 and paid ₹ 4.70 crore as royalty.

As the royalty paid was already credited into Government account, the excess payment was to be claimed as refund by submitting a proper application. The *suo motu* deduction of excess amount paid from the amount due to Government was not in order.

Audit reported the matter to the Government in August 2015. Government accepted the audit observation (October 2015) and requested the licensee to remit royalty of ₹ 7.06 crore. Further report was awaited (December 2015).

**Chennai**  
**Dated**

**(ALKA REHANI BHARDWAJ)**  
**Accountant General**  
**(Economic and Revenue Sector Audit)**  
**Tamil Nadu**

**Countersigned**

**New Delhi**  
**Dated**

**(SHASHI KANT SHARMA)**  
**Comptroller and Auditor General of India**



