

CHAPTER V
OTHER TAX AND NON-TAX RECEIPTS

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5.1 Results of audit

In 2016-17, test check of departmental offices revealed non / short levy of licence fee / privilege fee, electricity tax, inspection fees, dead rent, seigniorage fee and other observations amounting to ₹ 1,121.80 crore in 137 cases, which fall under the following categories.

Table 5.1

(₹ in crore)			
Sl. No.	Category	No. of cases	Amount
State Excise			
1	Non/short collection of licence fee / privilege fee	8	1.45
2	Others	44	227.97
Total		52	229.42
Electricity Tax			
1	Non-levy / collection of electricity tax, duty and additional tax	8	3.25
2	Non-levy / collection of inspection fees, testing fees, fine and penalty	2	3.37
3	Non-renewal / collection of licence fees under Lift Act, 1997	4	3.82
4	Others	10	698.37
Total		24	708.81
Mines and Minerals			
1	Non / short levy of dead rent, seigniorage fees, royalty	10	65.59
2	Non-collection of brick mineral annual fee	3	0.37
3	Non-collection of interest / penalty	5	39.02
4	Others	43	78.59
Total		61	183.57
Grand Total		137	1,121.80

During the course of the year 2016-17, the departments accepted under assessments and other deficiencies in 59 cases and recovered ₹1.02 crore, out of which, ₹ 0.29 lakh involved in one case was pointed out during the year and the rest in earlier years.

Audit on Collection of Arrears in the Department of Geology and Mining and few illustrative cases involving ₹ 2.40 crore are discussed in the following paragraphs.

STATE EXCISE

5.2 Short collection of annual privilege fee

As per clause II in sub-rule (b) of Rule 17 of the Tamil Nadu Liquor (Licence and Permit) Rules, 1981, FL2 licence for possession of liquor by a non-proprietary club for supply to members, shall be issued by the Commissioner of Prohibition and Excise Department, on payment of annual privilege fee, licence fee and application fee. The licence is valid from the date of grant or the beginning of the financial year for which the license is granted, whichever is later, till the end of the financial year. With effect from 1 April 2012, the annual privilege fee for FL2 licence is ₹ 10 lakh for licensees situated in Chennai City and ₹ 6 lakh for licensees in other areas.

During test check (March 2017) of records in the office of the Commissioner of Prohibition and Excise, Chennai, we noticed that during issue / renewal of thirteen FL2 licences for the years 2014-15 to 2016-17, annual privilege fee of ₹ 6 lakh was collected, though the licensees were situated in areas which were already brought within Chennai City limits as per the orders of Government issued in July 2011⁶¹. This resulted in short realisation of revenue of ₹ 52 lakh.

After we pointed this out (April 2017), the Department replied (May 2017) that the issue of collection of privilege fee either on the basis of Revenue Districts or taking into account the Corporation limits was taken up with the Government and the clarification in this regard was awaited.

The matter was referred to the Government (May 2017). Reply was awaited (January 2018).

5.3 Non-payment of brand renewal fee and label approval fee

As per Rules 13 and 16 of the Tamil Nadu Wine (Manufacture) Rules, 2006, renewal fee of ₹ 2 lakh and ₹ 5,000 are payable for brand renewal and label approval respectively. By an Order⁶² issued in November 1998, the Government decided to levy registration fee of ₹ 2 lakh and renewal fee of ₹ 2 lakh for each brand of other forms of liquor, *i.e.* beer and Indian made foreign spirits, also. The Commissioner of Prohibition and Excise had decided in a meeting held on 2 March 2017 that brand renewal and label approval fee had to be paid by the licensees till the date of obtaining Government orders for deletion of brands.

⁶¹ G.O (Ms) No 97 Municipal Administration and Water Supply (Election) Department dated 19-7-2011

⁶² G.O.Ms.No.248, Prohibition and Excise (III) Department dated 25.11.1998

During the verification of licence records (between October 2014 and October 2016) in three⁶³ Excise Supervisory Officers (ESO), we noticed that three licensees neither renewed the licenses for 11 brands nor did they submit proposals for deletion of the brands previous held by them. The brand renewal fee of ₹ 22 lakh and label fee of ₹ 1.45 lakh for 29 pack sizes for the years 2013-14, 2014-15 and 2016-17 was, however, not collected from the licensees. After we pointed this out (between October 2014 and October 2016), the ESO, SNJ Distilleries Private Limited reported (June 2017) collection of brand renewal fee and label approval fee of ₹ 10.75 lakh for the year 2016-17. The ESO, Mohan Breweries and Distilleries Limited (IMFL Unit) stated in March 2016 that the licensee had been instructed to remit the amount of brand renewal and label fee. Further report regarding collection and reply in respect of the remaining case was awaited (January 2018).

The matter was referred to the Government in May 2017. Reply was awaited (January 2018).

ELECTRICITY TAX

5.4 Incorrect grant of refund

As per Rule 12 of the Tamil Nadu Tax on Consumption or Sale of Electricity Rules 2003, no consumer shall be entitled to the refund of tax paid to the Government in excess of tax leviable under the Act, unless an application for the refund of tax has been made to the Director within twelve months from the date of payment of such excess tax. The Director, on receipt of the application for the refund of tax, may, if satisfied, pass an order for the refund of tax paid during the period of one year prior to the date of receipt of the application.

During scrutiny of records in the Office of the Chief Electrical Inspector to Government (CEIG), we noticed that a Company, which was sanctioned a Structured Package of Assistance by the Industries Department (October 2008) *inter alia* involving exemption from payment of electricity tax for a period of five years from the date of commercial production of the expansion unit, had applied to the CEIG (who is also the “Director” for the purpose of this Act) for refund of electricity tax of ₹ 2.63 crore paid by it during January 2012 to May 2014. Accordingly, instructions were issued by the CEIG for adjustment of electricity tax of ₹ 2.63 crore from the tax payable by the Company for future periods.

⁶³ ESO, M/s.Mohan Breweries and Distilleries Ltd. (IMFL Unit), Chennai, ESO, M/s.Mohan Breweries and Distilleries Ltd. (Breweries Unit), Chennai & M/s.SNJ Distilleries (P) Ltd., Maduranthakam

The commercial production was commenced in April 2009, and the Company, instead of availing exemption, had paid electricity tax in respect of electricity captively consumed by it at the expansion unit from January 2012 to May 2014, before seeking refund (June 2014) of electricity tax. In as much as the Rules provide for refund of tax only if the application is filed within one year of payment of tax and also the Director is empowered to grant refund only for the period of one year prior to the date of receipt of application, the Company was eligible for refund of ₹ 98.31 lakh alone which was paid during the period from June 2013 to May 2014. Thus, the refund of the entire amount of ₹ 2.63 crore, including the electricity tax of ₹ 1.64 crore paid by the Company during the period from January 2012 to May 2013, was not in order. This resulted in excess refund of electricity tax of ₹ 1.64 crore.

After we pointed this out (April 2016), the CEIG replied (June 2016) that necessary action would be taken on receipt of information regarding the tax paid by the Company during the period of exemption. Further report was awaited (January 2018).

The matter was referred to the Government in August 2017. Reply was awaited (January 2018).

MINES AND MINERALS

5.5 Audit on Collection of Arrears in the Department of Geology and Mining

5.5.1 Introduction

The extraction of major and minor minerals are governed by Mines and Minerals (Development and Regulation) Act, 1957 (MMDR Act), Mineral Concession Act, 1960 (MC Act) and the Tamil Nadu Minor Mineral Concession Rules, 1959 (TNMMC Rules). The Department of Geology and Mining is the administrative authority for implementing the provisions of the Act and Rules and checking of violations. The Commissioner of Geology and Mining (CGM) is the head of the Department. The CGM is assisted by the District Collectors (DCs), Deputy Directors (DD) and Assistant Directors (AD) at district level.

Audit was conducted in July 2017 and arrears as at the end of March 2017 was examined to ascertain (i) the reasons for pendency; (ii) whether the provisions of the Acts and Rules were followed scrupulously in pursuing the cases of arrears; and (iii) the efficiency and effectiveness of the monitoring system.

Out of 31 District level offices, four⁶⁴ offices were selected for test check based on random sampling covering 28 *per cent* of the total arrears.

The arrears of revenue as on 31 March 2017 along with the figures for the preceding three years are given in Table 5.2 below:

Table 5.2 – Position of arrears

(₹ in crore)						
Year	Opening balance	Addition	Total	Amount deleted	Amount collected during the year	Closing Balance
2013-14	2,461.66	128.08	2,589.75	0	3.23	2,586.52
2014-15	2,586.52	101.97	2,688.49	0	2.40	2,686.09
2015-16	2,686.09	64.12	2,750.21	65.13*	1.97	2,683.11
2016-17	2,683.11	218.68	2,901.79	107.03	28.49	2,766.27

*deleted based on Supreme Court’s decision in respect of local cess and local cess surcharge

Source: Figures furnished by the Department

The category wise pendency of arrears of revenue of the Department as on 31 March 2017 is as follows:

Table 5.3– Category wise pendency of arrears

(₹ in crore)		
Category	Amount	Percentage
Pending in appeal	1,783.76	64.48
Covered under RR Act	139.00	5.03
Rectification/review	5.66	0.20
Other factors/stages	837.85	30.29
Total	2,766.27	100

(Source: Figures furnished by the Department)

As on 31 March 2017, ₹ 2,323.04 crore was outstanding for more than five years.

Audit Findings

The report includes observations in the sampled districts with illustrations and an analysis of system of monitoring collection of arrears.

5.5.2 Non pursuance of cases to finality and non-reference under Revenue Recovery Act

According to Rule 36B (1) of the TNMMC Rules, interest at the rate of 24 *per cent* per annum on any rent, royalty, fee or other sum due to the State Government under the Act, after the amount is unpaid for more than sixty days from the date from which it became payable. Rule 36B(2) *ibid* lays down that

⁶⁴ Dindigul, Krishnagiri, Tirunelveli and Tiruvallur

the arrears of any amount payable under the Act or these Rules may be recovered under the provisions of the Tamil Nadu Revenue Recovery Act, 1864 (RR Act). While scrutinising the DCB register along with relevant files, we came across cases, wherein no action was taken to refer long pending cases for recovery under the RR Act. A few illustrative cases are mentioned below:

- The District Revenue Officer (DRO), Kodaikanal issued orders (2003) for recovery of ₹ 6.02 lakh on account of illegal mining activity carried on by a person. The matter was referred to Tahsildar, Kodaikanal in May 2005, but no action was taken for effecting recovery under the RR Act. The amount remained uncollected (January 2018).
- The District Collector, Krishnagiri, in one case, imposed (February 2002) penalty of ₹ 33.86 lakh for illicit removal of granite blocks. Despite issue of reminders by the Department to Tahsildar, no action was taken (July 2017) for effecting recovery under the RR Act.
- The Revenue Divisional Officer (RDO), Hosur imposed (January and March 2015) penalty of ₹ 28.71 crore for illicit quarrying of rough stone by eight persons. No action was taken by the Department to recover the amount under the RR Act.

After we pointed this out (July 2017), the Department stated that one case involving arrears of ₹ 25.87 crore was covered by appeal. However, details of appeal were not furnished to audit. In respect of the remaining cases, the Department stated that action would be taken for collection of arrears.

5.5.3 Non-initiation of action in cases referred under the RR Act

According to Section 5 of the RR Act, whenever revenue may be in arrear, it shall be lawful for the Collector, or other officer empowered by the Collector in that behalf, to proceed to recover the arrear, together with interest and costs of process, by the sale of the defaulter's movable and 'immovable property, or by execution against the person or the defaulter. Cases are referred by department for recovery under the RR Act after exhausting all ways for recovery or if the defaulter is absconding or not traceable.

While verifying the registers and records relating to cases referred under the RR Act, we found that no action was initiated by the Officer responsible to proceed against the defaulters. A few illustrative cases involving substantial money value are detailed below:

The District Collector, Krishnagiri imposed (2002) penalty of ₹ 5.39 crore in two cases for illegal quarrying of granite. The cases were referred for collection under the RR Act during the years 2007 and 2010. However, no action was taken by the Tahsildar to recover the amounts under the RR Act. The amounts, therefore, remained unrecovered even after the lapse of 15 years.

5.5.4 Non-initiation of action following disposal of appeals

While perusing the files relating to arrear of revenue, we found that the department did not take follow-up action after disposal of appeals. This resulted in accumulation of arrears. A few cases are illustrated below:

➤ The Sub-Collector, Hosur, in one case, imposed (October 2014) penalty of ₹ 4.35 crore. The appeal filed (December 2014) against the levy of penalty was dismissed by the District Collector in July 2016. However, no action was taken for recovery of the amount of penalty.

After we pointed this out, the Department replied that appeal was filed by the defaulter. However, no evidence was available regarding filing of second appeal by the defaulter.

➤ The District Collector, Dharmapuri imposed (January 2004) penalty of ₹ 19.44 crore for illicit quarrying by a lessee. When the lessee appealed against the above penalty, the CGM remitted the case back to the District Collector. A further appeal filed by the lessee against the decision of the CGM to remit the case back to the District Collector was dismissed by the Government in November 2005. However, the District Collector issued notice only in August 2012, *i.e.* seven years after the dismissal of appeal by the Government. As of March 2017, the demand was still in arrear and no action was taken to refer the case under the RR Act. Thus, even after the lapse of 12 years since dismissal of the case, the demand remained uncollected.

After we pointed this out (July 2017), the Department replied that action would be taken to collect the arrears. However, reasons for delay in initiation of action for recovery of arrears was not furnished.

➤ The Tahsildar, Kodaikanal, under the directions of District Revenue Officer, issued orders levying penalty of ₹ 18.01 lakh to four contractors of Highways department for illegal removal of hard rock in 2011. While one contractor paid an amount of ₹ 50,000 as against ₹ 1.36 lakh due, others did not remit their dues. The Collector initiated action under the RR Act in 2012, which was challenged in Madurai Bench of Madras High Court. The Court granted interim stay of recovery proceedings (2013) subject to payment of deposit of ₹ 1 lakh. Though the amount was not deposited by the appellants, action was not taken for recovery of arrears. The amount of ₹ 43.59 lakh including interest calculated upto 31 March 2017 remained uncollected.

After we pointed this out (July 2017), the Department replied (October 2017) that reminders were issued to the Tahsildar for collection of arrears under the RR Act. However, reason for delay in initiation of action consequent to the vacation of stay in 2013 was not furnished.

5.5.5 Absence of further information in the records

The Department shall maintain the files of individual defaulters of amounts due to the Government and update them so as to watch the progress of the case and to furnish the Government the latest position on the pursuance. During verification, we found that in the following cases, files were not updated and the latest position was not available even when the amounts were shown as pending in DCB register as arrears:

- The Sub-Collector, Hosur imposed (October 2014) penalty of ₹15.90 crore on four persons for illicit quarrying of rough stone. Though the Department stated that the persons had gone on appeal to the District Collector, evidence of preference of appeal was not available in the records. The outcome of appeal and further action taken was also not known.
- The fixation of a lease amount of ₹ 4.13 crore in the year 2000 for the period from 1995-2000 by Tahsildar, Ponneri, was challenged in High Court in 2004. The case was remanded back to the Collector in 2008, who sought opinion on fixation from the Secretary, Industries Department in January 2009. No trail was available in the records in respect of further action taken. The arrear was pending for 17 years now without further action.

We pointed this out in July 2017. Reply was awaited (January 2018).

5.5.6 Internal Control Mechanism

Proper maintenance of records and internal control mechanism are essential to watch progress of collection of arrears. In the statement of details of arrears of revenue as on 31 March 2017, a sum of ₹ 1,540.88 crore was shown as arrears towards local cess (LC) and local cess surcharge (LCS) and interest thereon for the period from 1982-83 to 1990-91. On the basis of Supreme Court's decision, the department ceased to levy, LC and LCS from 1991-92, although the existing demand was carried forward with interest as arrears. In 2001, the Supreme Court struck down the demand and further appeal was not contemplated. However, only ₹ 65.13 crore was deleted and the balance demand of ₹ 1,534.77 crore (including interest) continued to be shown as arrears. Failure to maintain records in a proper way and watch the progress of cases systematically resulted in non-deletion of arrear amount from the records for a long time, resulting in over statement of arrears due to Government.

After we pointed this out (October 2017), the Department replied that the case was pending with PAC and no directions were issued by the Government for further appeal. The reply is not tenable as though PAC recommended to take legal action in this regard, further action was not taken and the amount also was not deleted.

5.5.7 Conclusion

From the above, we conclude that there was a lack of systematic follow-up action to collect arrears due to Government as just above one *per cent* of arrears only had been collected in the last four years. Pursuance of cases had also been tardy as almost 85 *per cent* of arrears was pending for more than

five years. There was no proper maintenance of related files and records to watch the trail of action taken in the pending cases.

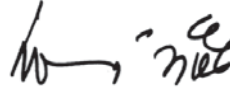
The matter was referred to Government in August 2017. Reply was awaited (January 2018).



Chennai
Dated 07 May 2018

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Dated 09 May 2018

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