

CHAPTER VI

OTHER TAX AND NON-TAX RECEIPTS

6.1 Tax administration

This chapter consists of receipts from State Excise, Entertainments Duty, State Education Cess (EC), Employment Guarantee Cess (EGC), etc. The administration is governed by Acts and Rules framed separately for each Department.

6.2 Results of audit

In 2016-17, test check of the records of 139 units relating to the State Excise, Entertainments Duty, Taxes and Duties on Electricity, Education Cess/Employment Guarantee Cess, Profession Tax, Repair Cess, etc., showed short levy of licence fees, entertainments duty and other irregularities amounting to ₹ 55.26 crore in 412 observations, which fall under the following categories as indicated in **Table 6.2**.

Table 6.2

(₹ in crore)			
Sr. No.	Category	No. of observations	Amount
1	State Excise	122	2.84
2	Entertainments Duty	141	3.84
3	Taxes and Duties on Electricity	29	8.67
4	Repair Cess	10	0.02
5	Education Cess and Employment Guarantee Cess	46	29.08
6	Maharashtra Tax on Buildings (with Larger Residential Premises)	3	0.01
7	Profession Tax	57	0.35
8	Non-Tax Receipts	4	10.45
Total		412	55.26

In response to our audit observations pointed out during the year 2016-17 as well as earlier years, the concerned Department accepted underassessment, short levy, etc. and recovered ₹ 50.21 crore in 398 observations of which 40 observations involving ₹ 82.58 lakh related to 2016-17 and the rest to earlier years.

A few illustrative cases involving ₹ 6.21 crore are discussed in the succeeding paragraphs.

State Excise

6.3 Non-recovery of additional licence fees

Additional licence fees for service of liquor in rooms aggregating ₹ 51.34 lakh was not recovered from three star-category hotels

As per notifications issued from time to time by the Commissioner of State Excise, Maharashtra State under Rule 4(a) of the Maharashtra Potable Liquor (Periodicity and Fees for Grant, Renewal or Continuance of Licence) Rules, 1996, star hotels providing room-service of liquor are liable to pay in advance, in addition to licence fee, additional fees for one licence for service of liquor in rooms. In case these fees are not paid by the due date or within the prescribed period, the same can be recovered, under Section 114 of the Maharashtra Prohibition Act, 1949, along with simple interest at the rate of two *per cent* per month, from the date it has become due, as arrears of land revenue.

Scrutiny of licence renewal registers in two¹ offices between November 2015 and November 2016, we noticed that additional licence fee aggregating ₹ 51.34 lakh was not recovered from two hotels (one four star and one five star category) in Raigad District for the periods from 2013-14 to 2016-17, and from one four star category hotel in Thane District for 2014-15 and 2015-16. The non/short recovery aggregating ₹ 51.34 lakh was due to the fact that the Department had not made any enquiries before the issue of the regular licences for liquor, about the “star” category of the hotel, for application of the Rules regarding licence fees for service of liquor in rooms.

On this being brought to notice (November 2016) the Department accepted the observation and intimated (March 2017 and August 2017) recovery of ₹ 9.50 lakh in respect of two hotels in Raigad District and ₹ 20.85 lakh (including interest of ₹ 6.89 lakh) in respect of the hotel in Thane. Report on the recovery of the balance amount is awaited.

The Government may direct the Department to obtain undertakings regarding star category held by the hotels at the time of their grant/renewal of licences to ensure the timely recovery of additional licence fees.

We brought the matter to the notice of the Department in June 2017; their reply has not been received (February 2018).

6.4 Short recovery of privilege fees

Privilege fees for transfer of liquor shop licence from one name to another, which is based on the population of the area where the shop is situated, was recovered short by ₹ 22.92 lakh in one case, as the Department had considered population figures of Census 2001 instead of 2011

As per the provisions of Rule 5(b) of the Bombay Prohibition (Privileges Fees) Rules, 1954, the fees payable by any licensee for the privilege of having the transfer of licence in Form CL-III under the Maharashtra Country Liquor

¹ Superintendent of State Excise- Raigad and Thane.

Rules, 1973 or in Form FL-II or FL-III under the Bombay Foreign Liquor Rules, 1953, from one name to another, in the areas of Municipal Corporation of Greater Mumbai, Navi Mumbai, Thane, Bhiwandi, Mira-Bhayandar, Vasai-Virar, Kalyan-Dombivli and Pune shall be eight times of the fee chargeable for grant or renewal or continuance of such licence, whichever is higher. In case of other licences, the privilege fee is recoverable at the same rates as the fee chargeable for grant or renewal or continuance of licence, whichever is higher, in accordance with Rule 5(c) of the Bombay Prohibition (Privileges Fees) Rules, 1954. Further, the fees for grant or renewal or continuance of such licences is based on the population of the area in which these licences are operating.

During the test check (June 2016) of records relating to licences granted under Maharashtra Prohibition Act and Rules made thereunder in the office of the Superintendent of State Excise, Thane, we noticed that two licences, viz. FL-II and CLFLTOD-III of a shop located in the area of Navi Mumbai Municipal Corporation (population 11,20,547 – Census 2011), were transferred from one name to another in March 2015. However, while calculating the privilege fee, the licence fees were not recovered at the correct rates in accordance with the population of the area in which the licences were operating. Though the Report of Census 2011 was released in 31 May 2013, the Department had adopted the census figures of 2001 for calculation of privilege fee. This resulted in short recovery of privilege fee of ₹ 22.92 lakh as shown in **Table 6.4:**

Table 6.4

(Amount in ₹)						
Sr. No.	Licence Location Population	Date of transfer	Fees for renewal or grant of licence	Privilege fee to be recovered	Privilege fees recovered	Short recovery
1	FL II/ 238 and CLFLTOD-III/219 Navi Mumbai 11,20,547	30/03/2015	6,93,000 (FL) + 1,69,200 (Toddy)	55,44,000 + 1,69,200	33,00,000 + 1,20,900	22,44,000 + 48,300
Total						22,92,300

On this being brought to notice in June 2016, the Department accepted the observation and intimated recovery of the entire amount in September 2017.

We brought the matter to the notice of the Government in May 2017; their reply has not been received (February 2018).

6.5 Short recovery of licence renewal fees

Licence fees for renewal of liquor shop licences, which is based on the population of the area where the shop is situated, were recovered short by ₹ 14.67 lakh in five cases as the Department had considered population figures of Census 2001 instead of Census 2011

In exercise of the powers conferred by Clause (a) of Rule 4 of the Maharashtra Potable Liquor (Periodicity and fees for grant, renewal or continuance of licence) Rules, 1996 and the provisions under Maharashtra Prohibition Act, 1949 read with Maharashtra Country Liquor Rules, 1973 for grant, renewal or continuance of licences in respect of manufacture of spirits/potable liquor/beer/wine/country liquor and retail sale thereof, etc. the Commissioner notifies the rates for each financial year for licences mentioned in Column No. 2 of the Schedule of the notification. The licence fees for retail sale of country liquor is based on the population of the area in which the retail shop is located.

During the scrutiny of records in two² offices during July 2016 and November 2016, we noticed that renewal fees in respect of five licences, which were renewed for various periods beginning from 2014-15 onwards, were not recovered at the correct rates in accordance with the population of the area where the shops were situated. Though the Report of Census 2011 was released in May 2013, the Department continued to adopt the census figures of 2001 for calculation of licence fees. The short recovery in this regard worked out to ₹ 14.67 lakh.

After this was brought to the notice of the Department between September 2016 and November 2016, the Department accepted the observation and reported recovery of the entire amount between November 2016 and January 2018.

We brought the matter to the notice of the Government in June 2017; their reply has not been received (February 2018).

Entertainments Duty

6.6 Non recovery of Entertainments Duty from cable operators

Entertainments Duty payable by cable operators aggregating ₹ 1.21 crore was not recovered in case of 247 cable operators

Under Section 3(4) of the Maharashtra Entertainments Duty Act, 1923 (MED Act), Entertainments Duty is payable by the cable operators at the following rates:

² Superintendent of State Excise: Ahmednagar and Nagpur.

Sr. No.	Area	Amount of entertainment duty to be paid per TV set per month (with effect from 01/06/2006)
1	Within the limits of all Municipal Corporations and all cantonments	₹ 45
2	Within the limits of all 'A' and 'B' class ³ Municipal Councils	₹ 30
3	Within the limits of any other areas not covered by entries 1 and 2	₹ 15

Under Rule 14 of the Collection of Entertainments Duty on Cable Television (including Entertainments Duty leviable on DTH Broadcasting Services) by way of Public Auction Rules 2003, the Collector is required to assess the cable operators and recover the Entertainments Duty. These cable operators are required to file monthly returns in Form 'E' along with the payment of Entertainments Duty with the Collector. As per Section 4B(4) of the MED Act, if the return is not filed within the prescribed time, the State Government may, after giving the cable operator a reasonable time, assess to the best of its judgment, the Entertainments Duty due from the cable operators and also direct them to pay the Entertainments Duty and penalty. Besides fine, penal interest was also payable at the prescribed rates. Failure of compliance to the provisions of Section 4B is punishable under Section 5A by imprisonment for a term extending up to six months or fine not more than ₹ 5,000 or both. As per Section 9B of the MED Act, interest at the rate of 18 *per cent* per annum for the first 30 days and 24 *per cent* per annum thereafter is also to be levied in case of default in payment.

Test check of records of 11⁴ offices between December 2015 and September 2016 revealed that 245 cable operators who were operational neither filed the returns nor paid the Entertainments Duty amounting to ₹ 1.21 crore for various periods between April 2012 and March 2016. The demands were also not raised by the concerned Collectors resulting in non-realisation of Entertainments Duty to that extent. Penalty and interest at the prescribed rates was also leviable.

After we pointed out these cases, the Department accepted the observations and communicated (between June 2017 and December 2017) recovery of ₹ 67.79 lakh from 161 cable operators between January 2016 and December 2017. Report on action taken on recovery of remaining amount has not been received.

We brought the matter to the notice of the Government in May 2017; their reply has not been received (February 2018).

³ Category A – Municipal Councils with population between one lakh and three lakh. Category B – Municipal Councils with population between 40,000 and one lakh.

⁴ Resident Deputy Collectors- Latur, Mumbai (Zone XI), Nanded and Thane; Dy. Collectors- Mumbai (Zone III, Fort) and Nashik; Taluka Magistrates- Andheri (Zone I, Zone III, Zone IV), Borivali (Zone V) and Kalyan.

6.7 Non recovery of Entertainments Duty from permit rooms/beer bars with live orchestra

Entertainments Duty payable by proprietors of permit rooms/beer bars with live orchestra aggregating ₹ 11 lakh was not recovered in 10 cases

As per Section 3 (11A) of the Maharashtra Entertainments Duty Act, 1923, there shall be levied and paid in advance by the tenth of every calendar month by the proprietor of every permit room or beer bar with live orchestra, the Entertainments Duty in respect of entertainment in such permit room or beer bar with live orchestra, to the State Government, at the rates of ₹ 50,000 per month in case of areas within the limit of Municipal Corporations.

Scrutiny of Recovery Register and relevant records in three⁵ offices falling within the limits of Municipal Corporation of Greater Mumbai, between July 2016 and September 2016 revealed that Entertainments Duty amounting to ₹ 11 lakh was not paid by the proprietors of 10 permit room/beer bars with live orchestra during various periods between May 2015 and March 2016. The demands were also not raised by the respective prescribed officers against these permit rooms/beer bars resulting in non-recovery of Entertainments Duty of ₹ 11 lakh.

On this being brought to notice between July 2016 and September 2016, one office communicated (April 2017) recovery of ₹ 7 lakh in respect of eight permit rooms/beer bars. Recovery in respect of the balance cases was awaited.

We brought the matter to the notice of the Government in May 2017; their reply has not been received (February 2018).

6.8 Non levy of Entertainments Duty on convenience charges collected in respect of online booking of movie tickets

Entertainments Duty aggregating ₹ 13.21 lakh was not levied on convenience/service charges charged for online booking of tickets for admission to seven cinema theatres in Mumbai Suburban District

Section 2(b)(ii) of the Maharashtra Entertainments Duty Act, 1923 (MED Act) defines “payment for admission” as “any payment for seats or other accommodation in a place of entertainment”.

As per Seventh Proviso under the aforesaid Section (added on 29 December 2014), any payment not exceeding ten rupees per ticket charged by the proprietor of any place of entertainment, for providing facility for online ticket booking shall not be included in the payment for admission i.e. any amount of such convenience charges in excess of ₹ 10 shall be included in the payment for admission and consequently Entertainments Duty shall be leviable. The proviso also required the proprietor to submit the data of online tickets sold per month and internet handling fee or convenience charges thereof to the Collector before seventh day of every succeeding month.

⁵ Resident Dy. Collector Mumbai (Zone II and Zone XI) Fort and Taluka Magistrate Zone IV, Andheri.

Under the provisions of Section 4(2)(b) of the MED Act, the owners of place of entertainments are required to file returns in Form B disclosing the payments for admission and the duty payable thereon. However, the Form B has not been modified to include amounts of convenience charges collected in excess at ₹ 10 per ticket.

Under the provisions of Section 3(1)(c) of the MED Act, rates of Entertainments Duty on movie theatres is 45 per cent within the limits of Brihan Mumbai Municipal Corporation.

Our test check (April 2017) of returns in Form B and the returns pertaining to online ticket bookings in four⁶ offices in Mumbai Suburban District (within the limits of Brihan Mumbai Municipal Corporation) revealed that “convenience charges” collected by seven cinema theatres in excess of ₹ 10 amounting to ₹ 42.55 lakh during the various periods between December 2014 and March 2017, were not assessed and subjected to levy of Entertainments Duty by the Department. This resulted in non-recovery of Entertainments Duty amounting to ₹ 13.21 lakh.

On this being brought to notice (April 2017) of the Department, the Department accepted the observations and stated that demand notices would be issued and recovery would be effected. Report on the recovery is awaited.

It is recommended that the Department may verify the records of other theatres with online booking facility in the Mumbai Suburban District as well as other districts to ascertain the recovery of Entertainments Duty on convenience charges.

We brought the matter to the notice of the Government in May 2017; their reply has not been received (February 2018).

6.9 Non-recovery of Entertainments Duty in case of dishonored cheques

Entertainments Duty aggregating ₹ 13.25 lakh in 21 cases was not recovered in cash as the cheques by which they were initially paid were not honoured by the banks

As per the provisions of Maharashtra Entertainments Duty Act, 1923, Entertainments Duty can either be paid in cash or through cheque. Further, if the cheque through which Entertainment Duty is paid is dishonoured for any reason whatsoever, the Department has to immediately recover the amount in cash along with interest from the defaulters and also initiate action under the provisions of Section 138 of Negotiable Instruments Act (Amended), 1988 (NI Act).

During test check of the records of four⁷ offices of the Department between April 2016 and July 2016, we noticed from the cheque/ dishonoured cheque register that in 21 cases, cheques issued by cable operators for payment of Entertainments Duty aggregating ₹ 13.25 lakh between January 2015 and March 2016 had been dishonoured by the concerned banks. Of these in one

⁶ Taluka Magistrate: Borivali, Kurla at Mulund (Zones VIII, X and XII).

⁷ Entertainments Duty Officer- Zone D, Pune (Collector, Pune): Taluka Magistrates – Andheri (Zones I, III and IV) (Collector Mumbai Suburban Division).

case, it was stated that the cheque was dishonoured due to paucity of funds in the account of the cable operator. In the other cases, reasons were not furnished. The concerned officers neither took any action to recover the dues from the defaulters nor initiated proceedings as contemplated under the Negotiable Instrument Act. This resulted in non-realisation of Entertainments Duty aggregating ₹ 13.25 lakh and interest thereon.

After we pointed out the cases between May 2016 and August 2016, the Department accepted the observation and communicated (November 2016 and November 2017) recovery of ₹ 8.87 lakh in 12 cases. Report on recovery in the balance cases has not been received.

We brought the matter to the notice of the Government in May 2017; their reply has not been received (February 2018).

6.10 Non/short levy of penal interest on delayed payment of Entertainments Duty

Penal interest aggregating ₹ 10.91 lakh was not levied in delayed payment of Entertainments Duty in 59 cases

Under Section 3 of the Maharashtra Entertainments Duty Act, 1923 (MED Act), Entertainments Duty is payable on a monthly basis by cable operators, DTH service providers and proprietors of permit rooms and beer bars with live orchestra.

Under the provisions of Section 9(B) of the Maharashtra Entertainments Duty Act, 1923, if any proprietor fails to pay the amount of duty due under Section 3 within the prescribed period, he shall be liable to pay to the State Government, in addition to the amount of duty so payable, penal interest at the rate of 18 *per cent* per annum for the first 30 days and at the rate of 24 *per cent* per annum thereafter on such amount from the date such amount became or becomes payable till the amount and interest is fully paid.

Scrutiny of recovery register pertaining to Entertainments Duty in six⁸ offices revealed that 59 assesseees of Entertainments Duty including cable operators, proprietors of permit rooms and beer bars, etc. had delayed payments of Entertainments Duty dues for various periods between January 2013 and March 2016. The delays ranged from 30 days to 1,072 days but the Department did not levy/short levied penal interest for the delayed remittances of the dues for which the penal interest recoverable in these cases worked out to ₹ 10.91 lakh.

On this being brought to notice, the Department stated that action would be taken to recover the interest. Further progress in the matter is awaited.

We brought the matter to the notice of the Government in July 2017; their reply has not been received (February 2018).

⁸ Deputy Collector, Fort (Zone II and Zone XI): Taluka Magistrates - Borivali (Zone VI), Kalyan and Kurla at Mulund (Zone IX and XI).

Police Receipts

6.11 Short realisation of fines due to delay in implementation of revised rates for traffic violations

Fines at revised rates for traffic violations aggregating ₹ 3.63 crore in 1,34,010 cases was not realized as the notification revising the rates was implemented with delays ranging from four to 25 weeks in five offices

Under the Motor Vehicles Act, 1988 (MV Act), the Traffic Police are required to recover fines from traffic offenders for offences under the Act. The quantum of fines to be recovered are regulated by notifications issued by the Home Department of the State Government from time to time.

The Home Department had vide a Gazette notification issued on 4 August 2016 revised the rates of fines for offences committed under various Sections of the MV Act, and circulated the same to all offices.

Scrutiny of records of the offices of the Dy. Commissioner of Police (HQ), Aurangabad City and the Superintendents of Police, Dhule, Nashik, Raigad and Ratnagiri during December 2016 to September 2017 revealed that the notification was implemented with delays ranging from four to 25 weeks⁹, resulting in short realization of revenue amounting to ₹ 3.63 crore on account of various traffic offences penalised by the Department during various periods between August 2016¹⁰ to January 2017 as shown in **Table 6.11**:

Table 6.11

Sr. No.	Name of the office	Delay in weeks	No. of Cases	Penalty leviable (₹)	Penalty levied (₹)	Short recovery (₹)
1	Commissioner of Police, Aurangabad City	25	1,14,718	4,40,62,100	1,19,99,800	3,20,62,300
2	Superintendent of Police, Dhule	25	12,869	54,24,900	25,32,600	28,92,300
3	Superintendent of Police, Nashik	16	4,984	16,63,300	5,53,800	11,09,500
4	Superintendent of Police, Raigad	8	641	2,00,900	64,100	1,36,800
5	Superintendent of Police, Ratnagiri	4	798	1,84,800	88,600	96,200
Total			1,34,010	5,15,36,000	1,52,38,900	3,62,97,100

⁹ Calculated from 4 August 2016.

¹⁰ Information for the period from 04 August 2016 to 31 August 2016 is not readily available in respect of Superintendents of Police – Dhule, Nashik and Raigad, hence non-recovery calculated from 01 September 2016. In case of SP Ratnagiri, information available from 19 August 2016 only.

After this was pointed out, the offices stated that the delay in receipt of the aforesaid notification caused consequent delays in its implementation.

Failure of the Department to implement the notification from the date of issue indicates weak internal checks and control systems within the Department.

We brought the matter to the notice of the Government in August and September 2017; their reply has not been received (February 2018).



(SANGITA CHOURE)

Principal Accountant General (Audit)-I,
Maharashtra

Mumbai
The 07 May 2018

Countersigned



(RAJIV MEHRISHI)

Comptroller and Auditor General of India

New Delhi
The 09 May 2018

