

CHAPTER-VI : OTHER TAX AND NON-TAX RECEIPTS

6.1 Results of audit

Test check of the assessment records in various departmental offices relating to the following receipts conducted in audit during 2007-08 disclosed underassessment amounting to Rs. 130.55 crore in 132 cases as mentioned below:

(Rupees in crore)

Sl. No.	Category	No. of cases	Amount
1.	Entertainments tax	18	8.67
2.	Luxury tax	14	2.03
3.	Electricity duty	12	0.13
4.	Geology and Mining	88	119.72
Total		132	130.55

During the year 2007-08, the department accepted underassessment of Rs. 1.49 crore in 464 cases and recovered Rs. 42.51 lakh in 160 cases.

A few illustrative cases involving Rs. 2.29 crore are mentioned in the following paragraphs:

LUXURY TAX

6.2 Non-recovery of luxury tax on massage/sauna bath and other facilities provided in hotel

The Gujarat Tax on Luxuries (Hotels and Lodging Houses) Act, 1977 (Act) and the Rules made thereunder provide to levy luxury tax at the prescribed rate on accommodation along with telephone, music and like charges recovered from customers of a hotel. Further, service charges recovered from customers and appropriated by the proprietor and not paid to the staff shall be deemed to be a part of the charges for luxury provided in the hotel. Non-payment of tax attracts simple interest at the rate of two *per cent* of the amount of tax due for each month or part thereof for the period for which the tax remained unpaid.

During test check of the records in the office of the Collector, Surat in November 2005, it was noticed that a proprietor of the hotel collected Rs. 4.06 crore for providing facilities like coconut oil massage/sauna bath/jacuzzi etc. during the year 2004-05. The entire amount collected by the proprietor was liable to luxury tax. The departmental officials did not levy tax on amount collected for providing such facilities. This resulted in non-levy of luxury tax of Rs. 67.65 lakh including interest of Rs. 6.68 lakh.

After the case was pointed out in January 2006, the department stated in March 2006 that such facilities/services do not fall within the meaning of luxury and owner of the hotel is paying service tax on such facilities. The reply is not tenable as the entire amount received was appropriated to the proprietor and was liable to luxury tax under the Act.

The matter was reported to the Government in May 2008; their reply has not been received (November 2008).

6.3 Non/short levy of interest on belated payment of luxury tax

The Act and the Rules made thereunder provide to levy luxury tax at the prescribed rates on declared tariff of hotel rooms within 15 days after the expiry of the month to which the tax is due. If the proprietor did not pay tax in time, interest at the rate of two *per cent* per month or part thereof for the period of delay is recoverable.

During test check of the records of three Collector¹ offices, it was noticed between November 2005 and June 2007 that 25 proprietors of hotels did not pay luxury tax for the period of October 2004 to March 2007 within the prescribed time limit. Though interest of Rs. 8.48 lakh was recoverable, the departmental officials recovered Rs. 1.87 lakh. This resulted in non/short levy of interest of Rs. 6.61 lakh.

After the cases were pointed out between January 2006 and February 2008, the department accepted audit observation involving Rs. 1.67 lakh in two cases. A report on recovery and reply in the remaining cases has not been received (November 2008).

The matter was reported to the Government in May 2008; their reply has not been received (November 2008).

¹ Ahmedabad, Surat and Vadodara

ENTERTAINMENTS TAX

6.4 Non-recovery of entertainments tax on breach of condition of exemption

The Government of Gujarat vide notification issued in February 2004 allowed the proprietors of, air conditioned/air cooled cinemas to reduce rupees three and other cinemas to reduce rupees two, from the rate of admission recovered from the movie goers while calculating their liability of payment of entertainments tax. The concession is available if cinema owners pay the tax so calculated within due date as prescribed under the Gujarat Entertainments Tax Act, 1977(the Act). In case of failure of payment of tax in time, entire amount so reduced from the calculation is to be recovered from the proprietors of cinema.

During test check of the records of the offices of two Collectors² and Mamlatdar Choryasi, it was noticed between February 2006 and March 2007 that the proprietors of three cinemas paid tax belatedly for the period from April 2004 to September 2005. The departmental officials did not recover the amount of Rs. 3/2 on each ticket from these defaulting proprietors. This resulted in non-recovery of entertainments tax of Rs. 7.15 lakh.

After the cases were pointed out between June 2006 and November 2007, the department accepted the audit observation involving Rs. 5.46 lakh in one case. A report on recovery and reply in the remaining cases has not been received (November 2008).

The matter was reported to the Government in May 2008; their reply has not been received (November 2008).

6.5 Non-raising demand of entertainments tax

The Act and Rules made thereunder provide to levy tax at the prescribed rate for exhibition of television programmes with the aid of antenna or cable television. For this purpose, each operator has to register with the Collector/Mamlatdar offices and file quarterly return in advance accompanied by copies of challan towards payment of tax. Non-payment of tax within the prescribed time attracts simple interest at the rate of 24 *per cent* per annum.

During test check of the records of three Collectors³ and two Mamlatdar⁴ offices, it was noticed between May 2006 and August 2007 that 50 cable operators did not pay tax during the period April 2002 and March 2006. The departmental officials did not raise demand for collecting the tax. This resulted in non-realisation of entertainments tax of Rs. 5.68 lakh including interest.

After the cases were pointed out between March and November 2007, the department accepted audit observation in all cases and recovered Rs. 36,025 in one case. A report on recovery in the remaining cases has not been received (November 2008).

The matter was reported to the Government in May 2008; their reply has not been received (November 2008).

² Gandhinagar and Valsad

³ Bhuj, Gandhinagar and Surat

⁴ Anjar and Mehsana

MINING RECEIPTS

6.6 Non/short levy of royalty/dead rent/surface rent

The Mines and Minerals (Regulation and Development) Act, 1957 (MMDR Act), the Mineral Concession Rules, 1960 and the Gujarat Minor Mineral Rules, 1966 provides that a lessee is liable to pay dead rent or royalty, whichever is higher, at the prescribed rates in respect of each lease for major/minor mineral. The lessee is also liable to pay surface rent on the area of land leased to him for mining activities. The procedure prescribed by the department in December 2000 requires the lessee to pay royalty in advance. Default in payment attracts simple interest at the rate of 24 *per cent* per annum.

During test check of the records of offices of 11 Geologists/Assistant Geologists,⁵ it was noticed between June and December 2007 that 139 lease holders of major minerals and 285 lease holders of minor minerals removed minerals without payment of royalty/dead rent/surface rent of Rs. 32.73 lakh and Rs. 1.07 crore respectively for the period between 2002-03 and 2006-07. The department neither raised demand of royalty/dead rent/surface rent nor levied any interest. This resulted in non/short levy of Rs. 1.41 crore including interest.

After the case was pointed out between June and December 2007, the department accepted audit observations in 400 cases involving Rs. 1.29 crore and recovered Rs. 35.23 lakh in 149 cases. A report on recovery and reply in the remaining cases has not been received (November 2008).

The matter was reported to the Government in May 2008; their reply has not been received (November 2008).

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⁵ Ahmedabad, Amreli, Bharuch, Gandhinagar, Godhra, Himatnagar, Mehsana, Nadiad, Navsari, Porbandar and Surendranagar