

## CHAPTER – VI

### OTHER TAX RECEIPTS

#### 6.1 Results of Audit

Test check of records of various departmental offices relating to the following receipts conducted in audit during the year 2002-03 revealed under assessment etc. of Rs.66.32 crore in 156 cases as detailed below:

(Rupees in crore)			
Sr. No.	Category	No. of cases	Amount
1	Electricity duty	22	56.52
2	Entertainments tax	89	7.26
3	Luxury tax	28	2.54
4	Profession tax	17	0.002
	<b>Total</b>	<b>156</b>	<b>66.32</b>

During the year 2002-03, the department accepted and recovered under assessment amounting to Rs.55.88 lakh in 84 cases pertaining to earlier years. A few illustrative cases highlighting important audit observations involving Rs.5.66 crore are discussed in the following paragraphs.

### ENTERTAINMENTS TAX

#### 6.2 Incorrect grant of exemption

Under the new Tourism policy of 1995-2000, the Government exempted wholly the tax on entertainments which fulfil the criteria laid down under the scheme during the eligibility period or upto the period of expiry of the limits of incentives, whichever is earlier. The eligibility certificate issued by the Commissioner of Tourism is subject to the condition that the unit should obtain tax exemption certificate from the Commissioner of Entertainments Tax.

During test check of records of Collector (ET), Ahmedabad, it was noticed in October 2001 that the owner of a cinema had availed exemption between November 2000 and March 2001 from entertainment tax to the extent of Rs.1.01 crore without obtaining the tax exemption certificates from the Commissioner of Entertainments Tax, resulting in irregular grant of exemption from entertainments tax.

The above facts were brought to the notice of the Department in December 2001 and of the Government April 2003; reply had not been received (August 2003).

### **6.3 Non realisation of Entertainments Tax and Interest**

Under the Gujarat Entertainments Tax (GET) Act, 1977 and the Rules made thereunder, entertainments tax shall be paid by the proprietor of a cinema house weekly within 14 days of the end of the week and by the proprietor of video parlour in advance every month by the 15<sup>th</sup> day of the month preceding the month to which the tax relates. If the payment of tax is delayed, simple interest at the rate of twenty-four *per cent* per annum is chargeable on the unpaid amount of tax for the period of delay.

During test check of records of 4<sup>@</sup> Collectors (ET) and 3<sup>#</sup>Mamlatdar offices, it was noticed that 18 cinema houses and 3 video parlours neither filed the returns nor paid the tax of Rs.71.45 lakh during the years 1999-00 and 2001-02. Failure to enforce the provisions of the Act and lack of proper monitoring resulted in non-realisation of tax of Rs.78.00 lakh including interest.

The above facts were brought to the notice of the Department between March and November 2002 and of the Government in March 2003. The Department accepted audit observations in 3 cases involving an amount of Rs.2.84 lakh and recovered an amount of Rs.0.37 lakh in one case. Government also, while accepting the audit observation replied in August 2003 that the Commissioner of Entertainments Tax had been instructed to recover the amount of tax from the defaulters. Further reply was awaited (August 2003).

### **6.4 Non recovery of entertainments tax from cable operators**

Under the Act, tax is leviable for exhibition of programmes with the aid of antenna or cable television. Every proprietor has to pay tax in advance in quarterly instalments at the rate prescribed. For non-payment of tax within the prescribed time, interest at the rate of 24 *per cent* per annum is leviable.

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<sup>@</sup> Ahmedabad , Bhuj, Navsari, and Vadodara.

<sup>#</sup> Mandvi, Modasa and Morbi.

During test check of records of 2<sup>&</sup>Collectors (ET) and 6<sup>§</sup> Mamlatdar offices, it was noticed that 146 cable operators did not pay entertainments tax between the periods 1999-00 and 2001-02. Failure to enforce the provisions of the Act and lack of proper monitoring resulted in non recovery of entertainment tax of Rs.17.44 lakh, including interest.

The above facts were brought to the notice of the Department between April and November 2002 and of the Government in March 2003. The Department accepted audit observations in 36 cases involving an amount of Rs.9.87 lakh. Government also, while accepting the audit observation replied in August 2003 that the Commissioner of Entertainments Tax had been instructed to keep note of actual number of connections and recover the dues.

### **6.5 Short levy of tax from “Touring Cinemas” paying compound tax**

According to explanation below Section 6 of the GET Act, 1977, touring cinema means “an outfit comprising of cinematograph apparatus, plant and enclosures taken from place to place for giving cinematograph exhibition in local theatres and halls”. These touring cinemas are allowed to pay the tax at concessional rate prescribed in the Act. To ensure the compliance with the provisions, the Act provides for production and inspection of accounts and documents by the proprietor and search of premises etc., by the departmental authorities. For contravention of the provisions, the prescribed officer shall recommend to the licensing authority to suspend the license granted to the proprietor.

During test check of records of Collector (ET), Mehsana and 11<sup>@</sup>Mamlatdar offices, it was noticed that 21 touring cinema halls with permanent built-up facilities and being run in the same place for the periods ranging between more than 2 years and 20 years, were incorrectly issued licenses as touring cinemas and collected tax at concessional rates. Failure to enforce the provisions of the Act and lack of proper monitoring resulted in short levy of tax of Rs.12.92 lakh during 1999-00 and 2001-02.

The above facts were brought to the notice of the Department between November 2000 and December 2002 and of the Government in March 2003. The Department accepted the audit observations in 6 cases involving an amount of Rs.3.39 lakh. Particulars of recovery, if any, and reply in the remaining cases have not been received (August 2003).

<sup>&</sup> Bhuj and Vadodara.

<sup>§</sup> Anand(Rural), Gandevi, Himatnagar, Khambhat, Mandvi and Patan.

<sup>@</sup> Amreli, Bardoli, Chikhli, Jasdan, Lathi, Lalpur, Liliya, Mahuva, Porbandar, Sami and Umralla.

### **6.6 Non recovery of entertainments tax due to delay in finalisation of offence cases**

As per section 9(1) of the GET Act, 1977, where for any reason any amount for admission to any entertainment or any complimentary ticket has escaped assessment to tax or the proprietor has failed to pay tax due, the prescribed officer shall assess to the best of his judgment the tax due on such payments. Commissioner (ET) issued instructions in July 1997 that demand notices should be issued to the defaulters within seven days from the date of registering the offences and offence cases decided promptly.

During test check of records of Collector (ET), Vadodara for the year 1999-00 to 2001-02, it was noticed that show cause notices were issued between August 2001 and February 2002 for payment of tax of Rs.1.42 crore after registering offences in 7 cases. However, final orders for effecting recovery were either not passed or issued even after lapse of periods ranging from 8 to 14 months. In 11 cases, though final orders were passed during December 1989 and December 1999, recovery of tax of Rs.4.91 lakh was not effected. Failure to enforce the provisions of the Act and follow the instructions of the Commissioner (ET) resulted in non-recovery of tax of Rs.1.47 crore.

The above facts were brought to the notice of the department between July 2000 and November 2002 and of the Government in April 2003. The Department accepted audit observations in 11 cases involving an amount of Rs.4.91 lakh and recovered an amount of Rs.0.63 lakh in 5 cases. Government also, while accepting the audit observation replied in August 2003 that instructions had been issued to the Commissioner of Entertainments Tax to take necessary action in the above cases.

### **6.7 Availing of unintended benefit by owners of the cinema**

Under the GET Act, 1977, the Government may by notification in the Official Gazette, exempt either wholly or partly, any entertainment or class of entertainments from payment of tax subject to such conditions as may be specified therein. Government by issue of a Notification in June 1981 exempted from payment of tax the films in Gujarati language produced with the equipment of recognised studios located in Gujarat subject to fulfillment of certain conditions. As per condition of the eligibility certificate issued by the Commissioner of Entertainments Tax, the Cinema owner shall fix the rate of admission independently on the very day on which the Gujarati film is to be exhibited. The rate of admission shall be worked out after deducting entertainment tax from the rate of admission thus fixed and no addition/reduction shall be made in the rate of admission during exhibition of tax-free Gujarati films subsequently.

The intention of the Government to grant exemption to Gujarati films from payment of tax was to encourage the producers to produce films at a lower cost, which in turn, would benefit viewers. Hence, the benefit of tax-free films would reach viewers only when the rate of admission is kept lower than that of taxable films. Thus, by giving an option to the cinema owners to fix the rate of admission independently, the intention of the Government to make available low cost films to the viewers was defeated.

During test check of records of 4<sup>s</sup> Mamlatdar offices, it was noticed that 7 cinema owners fixed the rates of admission of tax-free Gujarati films at rates higher than the regular non-exempted films. This resulted in availing of unintended benefit of Rs.15.71 lakh by the cinema owners.

The above facts were brought to the notice of the Department between May and November 2001 and of the Government in April 2003. Government replied in August 2003 that instructions had been issued to the Commissioner of Entertainments Tax to take necessary action.

## LUXURY TAX

### 6.8 Non-payment of luxury tax under tariff rates declared in form II return/printed tariff

Under the Gujarat Taxes on Luxuries (Hotels and Lodging Houses) Act, 1977 and the Rules made thereunder, tax is leviable on the full tariff of a room as declared by the proprietors of hotels irrespective of whether the room was let out free or at concessional rates. Where any proprietor fails to furnish a true and correct return or to pay amount of tax due according to such return, he shall be liable to pay simple interest at the rate of 2 *per cent* per month. In addition, penalty not exceeding one and one half times the amount of tax is also leviable.

During the course of audit of 6<sup>s</sup> Collectors/Dy. Collector (Luxury Tax), it was noticed that luxury tax including interest of Rs. 1.41 crore was either not paid or paid short by the hotel owners during the period 2000-01 and 2001-02 as per details given below. In addition, penalty at the maximum of Rs.1.71 crore was also leviable.

(Rupees in lakh)

Sr. No.	Name of the place	No. of hotels	Tax short levied	Nature of irregularity
1	Ahmedabad.	9	81.44	The hotels had fixed two tariffs for the same luxury provided in double room, one when occupied by two persons and another when occupied by single person. Since the luxury provided in both the cases was the same, fixation of two tariffs for same luxury was irregular.

<sup>s</sup> Borsad, Khambhat, Patan and Vijapur.

<sup>s</sup> Ahmedabad, Bharuch, Mehsana, Palanpur Vadodara and Veraval.

2	Ahmedabad, Bharuch, Palanpur, Vadodara and Veraval	11	30.24	Proprietors of 11 hotels had paid luxury tax on the discounted amount in contravention of the provisions of the Act.
3	Ahmedabad	4	12.55	4 hotels at Ahmedabad fixed separate rate of tariff (day tariff) for part of the day less by 50 to 60 <i>per cent</i> of regular tariff contrary to the provisions of the Act.
4	Ahmedabad.	4	9.67	Hotel owners had collected and paid tax at half the rate for the last day's stay of the customer, which was contrary to the provisions of the Act.
5	Ahmedabad, Mehsana and Palanpur.	9	4.30	Proprietors of hotels had collected charges for extra bed but did not pay luxury tax on the charges so collected. Since extra bed is part of the luxury provided, charges collected should have been included for the purpose of levy of luxury tax.
6	Ahmedabad	1	3.03	A hotel owner at Ahmedabad did not pay any tax for the stay of persons on the plea that they were house guests. Invoices, however, revealed that charges for all other services like food, telephone, laundry etc. provided to them were recovered from these guests.
	<b>Total</b>	<b>38</b>	<b>141.23</b>	<b>Say 1.41 crore</b>

The above facts were brought to the notice of the Department between November 2001 and October 2002 and of the Government in March 2003. The Government replied in August 2003 that the Commissioner of Luxury Tax had been instructed to review the cases and recover the tax as per rules in five cases. In one case at Sr.No.2 the audit observation was not accepted on the ground that tax was recovered on the actual payment made by the customers. The reply is not tenable in view of the provisions of the Act.

#### **6.9 Short levy due to non-inclusion of telephone charges in the taxable amount**

Section 3(1) of the Act provides for levy and collection of tax from every person on the charges collected in respect of any luxury provided to him in a hotel. The charges for luxury provided in a hotel include telephone charges also. If the proprietor does not pay the tax within the prescribed period, he shall be liable to pay simple interest at the rate of 2 *per cent* for each month or part thereof alongwith penalty.

During test check of records of Collectors (LT), Ahmedabad, Jamnagar and Palanpur, it was noticed that 10 hotel owners had collected telephone charges but not included the same in the taxable amount. This resulted in short levy of tax amounting to Rs.42.28 lakh including interest.

The above facts were brought to the notice of the Department between September 2001 and October 2002 and of the Government in March 2003. The Government replied in August 2003 that the matter had been referred to the Law Department for their opinion and on receipt of the same necessary action would be taken. Further reply was awaited (August 2003).

### **6.10 Short levy of interest due to incorrect calculation**

Under the Gujarat Taxes on Luxuries (Hotels and Lodging Houses) Act, 1977 and the Rules made thereunder, if a proprietor does not pay the amount of tax within the prescribed period, he shall be liable to pay simple interest at the rate of 2 *per cent* of the tax due for each month or part thereof with penalty for the period for which tax remains unpaid.

During test check of records of 3<sup>@</sup> Collectors (LT), it was noticed in respect of 18 hotels that interest was calculated at the rate of 24 *per cent* per annum, in number of days, for the period of default instead of calculating at the rate of 2 *per cent* for each month and part of the month as laid down in the Act. This resulted in short levy of interest of Rs.10.21 lakh.

The above facts were brought to the notice of the Department between November 2001 and October 2002 and of the Government in March 2003. The department accepted and recovered the amount of Rs.0.42 lakh in one case. The Government replied in August 2003 that the Commissioner of Luxury Tax had been instructed to take necessary action.

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<sup>@</sup> Ahmedabad, Surat and Vadodara.