

CHAPTER V
OTHER TAX RECEIPTS

5.1. Results of Audit

Test check of the records of the offices of the State Excise and Registration departments, Agricultural Income Tax offices and Office of the Chief Electrical Inspector conducted in audit during the year 2004-05 revealed non/short levy of duty/tax, incorrect exemption, etc., amounting to Rs 21.17 crore in 232 cases which may be categorised as under.

(In crore of rupees)

Sl. No.	Category	No. of cases	Amount
A. Stamps and Registration fees			
1.	Undervaluation of documents	40	0.51
2.	Incorrect exemption	6	0.03
3.	Other lapses	39	1.91
4.	Review on “Disposal of undervaluation cases in Registration Department”	1	9.03
B. State Excise			
5.	Less production of spirit from molasses	2	1.05
6.	Short levy of cost of establishment	5	0.15
7.	Non/short levy of interest on arrears	8	0.18
8.	Short/non-levy of duty due to other lapses	21	1.01
C. Taxes on Agricultural Income			
9.	Short levy due to grant of inadmissible expenses	3	1.70
10.	Income escaping assessment	2	0.40
11.	Incorrect computation of income		0.07
12.	Incorrect computation of tax		0.06
13.	Other items	3	3.67
D. Taxes and Duties on Electricity			
14.	Short collection of surcharge	1	0.90
15.	Non demand of interest on duty/surcharge	3	0.50
	Total	232	21.17

During the year 2004-05 the departments accepted underassessments, etc., of Rs 2.57 crore involved in 115 cases of which 10 cases involving Rs 38.31 lakh were pointed out during 2004-05 and rest in earlier years. At the instance of audit, the departments collected an amount of Rs 81.34 lakh in 81 cases of which five cases involving Rs 1.57 lakh were pointed out during 2004-05 and the rest in earlier years.

In one case entire amount on a draft para on 'short collection of cost of establishment' amounting Rs 2.66 lakh was collected by the Excise Department after the facts were brought to notice of the Government.

A few illustrative cases including review on 'Disposal of undervaluation cases in Registration Department' involving Rs 10.34 crore are given in the following paragraphs.

A. Stamps and Registration fees

5.2. Review on “Disposal of undervaluation cases in Registration Department”

Highlights

- Though 5,80,080 cases with anticipated additional revenue of Rs 94.39 crore were brought under the compounding scheme 2002, revenue realised was only Rs 13.70 crore in 94,991 cases. (Paragraph 5.2.10.)
- 4,85,089 cases involving Rs 268.96 crore were pending settlement on expiry of compounding scheme 2002 in March 2004 (Paragraph 5.2.11.)
- Stamp duty and registration fee amounting to Rs 9.03 crore was not demanded in 18,403 cases (Paragraph 5.2.12.)

5.2.1. Introductory

Under the Registration Act, 1908, instruments affecting immovable property are to be presented for registration in the office of Sub Registrar (SR) within whose sub district the whole or some portion of the property is situated. Section 45 B of the Kerala Stamp Act, 1959 (KSA) provides that if the registering officer while registering instruments involving transfer of property has reason to believe that the value of the property or the consideration has not been fully and truly set forth in the document, he may, after registering such document refer the same to the Collector for determination of the value or consideration and the duty payable thereon. The Collector may *suo motu*, within two years from the date of registration of any instrument not already referred to him, call for and examine the instrument and determine its consideration and the duty payable thereon. Government in October 1986 appointed District Registrars (DR) as Collectors for this purpose. Procedure for determining consideration and duty is prescribed in Kerala Stamp (Prevention of Undervaluation of Instruments) Rules 1968 (KSPUVIR). A right of appeal against the order of the DR lies with the District Court within whose jurisdiction the property transferred is situated.

Government introduced compounding schemes in 1997 and 2002 with the objective of settling pending undervaluation cases. Under the first scheme liability of the parties stood completely discharged on payment of 30 *per cent* of the stamp duty already levied and under the second scheme on payment of 30 *per cent* of the deficit stamp duty and registration fee in addition to the amount already paid by them.

5.2.2. Organisational set up

Registration Department is headed by the Inspector General of Registration (IGR). Under him, there are four[♦] zonal offices headed by Deputy IGRs. There are 14 offices of DR (General) one in each district, 10 offices of DR (Audit) and 308 sub registry offices (SROs). DR (General) exercises general supervision and DR (Audit) is entrusted with the internal audit of the SROs. Disposal of undervaluation cases is being done by DR (General)

5.2.3. Audit objectives

The review was conducted with a view to ascertain :

- reasons for huge pendency of undervaluation cases;
- whether prompt action was taken to report and dispose of undervaluation cases and demand and realise deficit amount due;
- whether the objectives of the compounding scheme introduced in 2002 were achieved;
- whether there was any lacuna in the relevant Act and Rules and
- whether proper internal control system existed in the Department.

5.2.4 Scope of audit

A review on “Disposal of undervaluation cases in Registration Department” with special emphasis on the compounding scheme introduced in 2002 was conducted between October 2004 and February 2005 with reference to the records in the office of the IGR and nine^{*} offices each of DR (General) and DR (Audit) and 31 SROs. The results of review are given in succeeding paragraphs.

5.2.5. Fixation of fair value of land

Section 28A of the KSA requires that every revenue divisional officer (RDO) shall, subject to such rules as may be made by the Government, fix the fair value of land situated within the area of his jurisdiction, for the purpose of determining the duty chargeable at the time of registration of instruments involving land. Government constituted a committee for studying the fixation

[♦] South Zone, South Central Zone, North Central Zone and North Zone

^{*} District Registrars’ offices at Alappuzha, Ernakulam, Kannur, Kottayam, Kozhikode, Malappuram, Palakkad, Thiruvananthapuram and Thrissur

of fair value of land for registration purpose and allied subjects which observed that under the existing law there was no effective machinery to check undervaluation in property transaction and that there would be substantial reduction in undervaluation once the fair value was fixed. The committee recommended in January 1999 fixation of fair value of each and every survey number of land using scientific methods. Accordingly, fair value of land in the State was fixed by the RDOs concerned as per notifications issued on 5 January 2004. This was, however, withdrawn on 19 February 2004 in response to public complaints to provide opportunity to interested parties to file objections/suggestions on the value notified. Government directed the RDOs in February 2004 to notify the earlier fair value as a draft notification and issue final notification after considering objections and suggestions received from the public within 120 days from the draft notification. But final notification of fair value has not been issued even after 17 months.

In the absence of fair value/minimum value, the registering officers were forced to report cases indiscriminately to the DR leading to huge accumulation of undervaluation cases.

The Department admitted in May and July 2005 that fixing of value of land would reduce the number of undervaluation cases apart from bringing more revenue to Government. Valuation of land had almost been finalised and Government had to decide the date from which it is to be made applicable.

5.2.6 Trend of disposal of undervaluation cases

As per general memorandum dated 21 October 1986, the DRs were required to maintain a register for the purpose of watching progress of disposal of undervaluation cases. Out of nine DR offices test checked, the prescribed register was not maintained in seven[♦] offices during the period falling prior to January 1995 and January 2001. In the absence of these registers, year wise/age wise analysis of disposal of undervaluation cases could not be made.

The table below indicates the overall achievement in disposal of undervaluation cases reported from 1 January 1996 to 31 March 2002 as on 13 August 2002, the date of introduction of compounding scheme of 2002.

(In crore of rupees)			
Sl. No	Description	No.	Stamp duty (including registration fee involved)
1.	Cases reported from 1.1.96 to 31.3.02	5,18,798	
2.	i) Cases where final orders were issued by the DR	3,19,693	154.27
	ii) Cases where recovery was made	1,42,591 (45 per cent)	35.36
	iii) Cases where recovery was not made despite issue of final order	1,77,102 (55 per cent)	118.91
3.	Cases where final orders were not issued 1-2(i)	1,99,105	
4.	Cases pending settlement as on 13.8.02 and subsequently brought under compounding scheme 2002 2(iii) + 3	3,76,207	

[♦] Ernakulam, Kannur, Kottayam, Kozhikode, Malappuram, Thiruvananthapuram and Thrissur

The Department attributed non serving of Form II notices for want of prescribed forms in 16,755 cases and non initiation of further action since issue of Form II notices in 1,82,350 cases as reason for non issue of final orders.

Out of 1,77,102 cases where remittance of deficit amount as per final order was due as on 13 August 2002, only 27,524 cases were reported for recovery under RR Act. Remaining 1,49,578 cases involving deficit amount of Rs 98.27 crore were not referred under RR Act, due to non receipt of recommendations from SRs.

5.2.7. Delay in processing undervaluation cases

Under KSPUVIR, the registering officer should furnish a statement in Form IA along with a reference for determination of value or consideration and proper duty payable thereon to DR. The DR by a notice in Form II/IIA should intimate the parties involved of the receipt of such reference and allow them 21 days for making representation, if any. He may collect records from any public office, inspect the property, consider the representation, if any, from the parties and pass a provisional order determining the value and duty payable and communicate a copy of the order to all those liable to pay duty. He should pass the final order on the value or consideration and duty payable after giving the parties a reasonable opportunity of being heard and considering relevant facts and evidence before him. DR should communicate the order to the parties and registering officer concerned and take steps to collect the deficit amount. If the amount as per the final order is not remitted within the time allowed, the SR is required to report such cases to the DR for revenue recovery (RR). No time limit has been prescribed in the Rules for issue of Form II/IIA notices and provisional/final orders

Test check in audit of 650 cases in 9 DR offices and 580 cases in 31 SROs referred between April 1999 and March 2002 revealed that:

in 27 SROs there were delays ranging from three to 49 months in recommending 580 cases involving Rs 48.86 lakh between April 1999 and March 2002 under RR Act to the DR;

column in Form IA explaining how consideration/ duty was arrived at had not been filled by the SRs in 75 cases (Rs 84.93 lakh), presumptive value was given in 66 cases (Rs 98.87 lakh) and explanation given was not specific in 57 cases (Rs 72.13 lakh);

- there was delay ranging from three months to five years in issuing Form II/IIA notices in 175 cases;
- in 133 cases (Rs 12 lakh), provisional orders were passed after four to 60 months from issue of Form II/IIA notices.

- in Kannur in 25 cases involving Rs 1.98 lakh, Form II notices and provisional orders were issued on the same day, and
- in 120 cases (Rs 10.02 lakh) final orders were passed after a delay of four to 60 months after issue of provisional orders.

After this was pointed out, the Department accepted in July 2005 audit observations and attributed the delay to shortage of staff. It was further stated that the shortage of staff had not been worked out and no work study in this regard was conducted during past 20 years and that it could not quantify the shortage as no work norms existed in the Department.

5.2.8. Loss due to non preservation of case files

Under Order No. 568 of Kerala Registration Manual Part I Vol. II, special care shall be taken regarding preservation and against tampering of the records maintained in registration offices.

On expiry of compounding scheme 1997 in 1999 March, 7,47,479 cases of pre 1996 period were pending settlement. The Department failed to take further action for realising the deficit amount or to preserve the files properly. Consequently, 5,04,922 case files in 13[♦] DR offices were reported to be destroyed by white ants/not traceable making it impossible to realize the dues. Loss of revenue on this account based on average rate of demand under the compounding scheme 2002 worked out to Rs 275.20 crore.

The Department stated that the files could not be arranged/preserved properly due to lack of space and adequate infrastructural facilities.

5.2.9. Appeals allowed/remanded due to non compliance of the provisions of the Act/Rules

According to sub section (4) of Section 45B of the KSA, any person aggrieved by an order of the Collector under sub sections (2) or (3) may appeal to the District Court within whose jurisdiction the property transferred is situated. The appeal shall be filed within thirty days of the date of the order sought to be appealed against.

Under Article 21 of the schedule to the KSA, stamp duty on “conveyance” is to be paid on the amount or value of the consideration for such conveyance. The procedure/principles for determination of value or consideration, issue of provisional/ final orders, manner of service of notice and orders to the parties are laid down in Rules 4 to 7 and Rule 15 of the KSPUVIR. The above provisions were not often complied with by the DRs with the result that the appeals filed against the orders of the DRs were either allowed or remanded for fresh disposal.

[♦] Ernakulam, Idukki, Kannur, Kasargod, Kollam, Kottayam, Kozhikode, Malappuram, Palakkad, Pathanamthitta, Thiruvananthapuram, Thrissur and Wayanad.

Test check of 140 cases disposed of by District Courts between October 2000 and July 2004 revealed that appeals were allowed in 43 cases in four* DR offices and were remanded for fresh disposal in accordance with law in 88 cases in six †DR offices.

The above situation could have been avoided had the provisions of the Act/Rules been complied with by the DRs.

Department stated in July 2005 that officers were not competent or adequately trained for handling quasi judicial function.

5.2.10. Disposal of undervaluation cases under Compounding Scheme 2002

Government vide notification dated 13 August 2002 introduced a scheme for disposal of about nine lakh undervaluation cases referred to the Collectors by the registering officers under sub section (1) of Section 45B of KSA or on the cases on which *suo motu* action had been taken by the Collector under sub section (3) and pending as on 31 March 2002. The salient features of the scheme were:

- liability of the parties for stamp duty and registration fee shall stand completely discharged on payment of 30 *per cent* of the deficit stamp duty and registration fee in addition to the amount already paid by them;
- the cases of undervaluation referred for RR proceedings for recovery of deficit stamp duty and registration fee shall also be brought under the purview of the notification except those cases in which the parties have already paid the due amount in part or full.

Government estimated recovery of Rs 105 crore under the scheme. The scheme was initially for a period of one year from 13 August 2002 and it was later extended to 31 March 2004 vide notification dated 20 January 2004.

Under this scheme, additional demand of Rs 94.39 crore (stamp duty Rs 79.92 crore and registration fee Rs 14.47 crore) was raised in 5,80,080 cases. But only Rs 13.70 crore could be realised in 94,991 cases. The Department failed to collect Rs 80.69 crore in remaining 4,85,089 cases.

The overall achievement during the two terms of the scheme was only 16 *per cent* of the pending cases. As against mobilisation of additional revenue of Rs 105 crore estimated under the scheme, the revenue actually realised was only Rs 13.70 crore. Thus the scheme failed to achieve the intended results.

* Ernakulam, Palakkad, Thiruvananthapuram and Thrissur.

† Alappuzha, Kannur, Kottayam, Kozhikode, Malappuram and Thiruvananthapuram

After this was pointed out, the Department stated in May 2005 that only ordinary people who were afraid of law and Government policies and who did not have the ability to move the court remitted the deficit amount and the parties well versed in legal aspects did not respond leading to failure of the scheme.

5.2.11. Lack of follow up action on unsettled cases

Currency of compounding scheme 2002 expired on 31 March 2004. In cases where the parties did not respond to the scheme, the Department was required to demand 100 per cent of the deficit stamp duty and registration fee payable as required under section 45 B of KSA

On expiry of the scheme, 4,85,089 cases involving stamp duty and registration fee of Rs 228.23 crore and Rs 40.73 crore respectively were pending settlement. No action was taken for realisation of the same.

Department stated in May 2005 that separate instructions had not been issued into the DRs to realise the dues in the above cases.

5.2.12. Non demand of deficit duty

According to information furnished by Department, in DR offices Ernakulam, Kasargod and Pathanamthitta in 18,403 cases, demands were not raised under the compounding scheme, 2002. These cases also did not figure in the list of cases pending settlement after expiry of the scheme. This resulted in non demand of deficit duty and fee amounting to Rs 9.03 crore at the average rate of demand under the compounding scheme.

5.2.13. Compounding scheme ultra vires the provisions of the Act

Section 9 of the KSA under which the compounding scheme was introduced empowers Government to reduce or remit stamp duty on any or all of a particular class of instrument and on instruments executed by or in favour of a class of persons. But the Act does not provide for composition or consolidation of duties on any instrument other than duty on bonds and marketable securities (excluding debentures) issued by incorporated company or other body corporate. Hence, the compounding scheme 2002 introduced by Government was beyond the powers conferred by the Act.

5.2.14. Deficiencies in Act and Rules

Prior to 1988 undervaluation cases were dealt with under Section 45A of the KSA. By an amendment in 1988 it was renumbered as Section 45B and a provision to deal with instruments not bearing stamp of sufficient amount as per minimum value of land was introduced as Section 45A. However, corresponding amendment was not incorporated in the KSPUVIR and hence

existing Section 45B of the KSA continues to be mentioned as 45A in the Rule.

After this was pointed out, the Department stated in May 2005 that necessary amendments to the KSPUVIR are to be made and steps will be taken in this matter at the earliest. Further reply has not been received (December 2005).

5.2.15. Internal control

Internal control is an integral process by which an organisation governs its activities to effectively achieve its objectives. A built in internal control mechanism and strict adherence to statutes, codes and manuals provide reasonable assurance to the Department about compliance of applicable Rules, thus achieving reliability of financial reporting, effectiveness and efficiency in departmental operations. Internal control is effected through internal inspection, internal audit and maintenance of registers. The Registration Department has separate wings for inspection and internal audit.

- **Inspection**

According to Kerala Registration Manual Part II Vol. I, the IGR should inspect the SR office at least once in five years and DR's office every year. The DR shall inspect the SR office twice in every calendar year.

The position of inspection by IGR and DRs is given as under :

Year	Number of Inspections							
	Target		Achievement		Shortfall		Percentage of shortfall	
	IGR	DR*	IGR	DR	IGR	DR	IGR	DR
1999	24	588	2	164	22	424	92	72
2000	24	588	7	164	17	424	71	72
2001	24	588	3	181	21	407	88	69
2002	24	588	20	176	4	412	17	70
2003	24	588	6	208	18	380	75	65

It would be seen that there was a short fall of 17 to 92 *per cent* in Inspection of DR's office by the IGR and short fall in inspection of SROs by DR (General) ranged between 65 and 72 *per cent*.

* does not include 14 Principal SROs which need not be inspected by DR (GI)

- **Internal audit**

Internal Audit is expected to provide an assurance regarding the adequacy and effectiveness of internal controls. According to Kerala Registration Manual, DR (Audit) who is entrusted with the internal audit of the SROs should audit the SROs twice a year. The position of internal audit during last five years is given as under:

Year	Number of Inspections			Percentage of shortfall
	Target	Achievement	Shortfall	
1999	616	229	387	63
2000	616	214	402	65
2001	616	233	383	62
2002	616	198	418	68
2003	616	231	385	63

There was a short fall of 62 to 68 *per cent*

Department stated diversion of staff for disposal of undervaluation cases, shortage of staff and priority given for issue of liability certificate to retired officials as reason for shortfall in inspection/audit.

5.2.16. Conclusion

The review revealed that the Government failed to fix fair value of land for registration purposes resulting in accumulation of undervaluation cases. Absence of time limit for disposal of undervaluation cases resulted in inordinate delay in disposal as well as in raising demand and realisation of amount ordered to be collected. Only 13 *per cent* of the targeted amount could be collected under Compounding Scheme 2002. The Department failed to take action against those who did not respond to the compounding schemes of Government. Lack of adequate system for preservation of undervaluation cases resulted in destruction/loss of lakhs of files. In addition, there was deficiency in relevant Act and Rules.

5.2.17. Recommendations

Government may consider

- issue of notification to prescribe fair value of lands as required under Section 28A of the KSA at the earliest;
- fixation of a specific time limit for disposal of undervaluation cases;
- fixing responsibility for pursuance of arrear cases under RR Act on a time bound basis and
- providing adequate infrastructure for preservation of undervaluation case files etc.

5.2.18. Acknowledgement

Audit findings as a result of review were reported to Department/Government in July 2005 with a specific request to attend the meeting of Audit Review Committee so that the view point of Department/Government was taken into account before finalising the review. The meeting was held on 29 July 2005 and attended by the Additional Secretary, Taxes Department, Government of Kerala and IGR. The views expressed by the members have been taken into account during finalisation of the review.

B. State Excise

5.3. Low production of spirit from molasses

As per the Kerala Excise Manual, Volume II, a yield of about 475 proof litres of spirit per tonne of molasses may be taken as a fair average out turn whereas the norm fixed by the Central Board of Molasses was 373.5 proof litres. The Kerala Distillery and Warehouse Rules, 1968, envisage that whenever the out turn of spirit is consistently low, the officer should arrange for examination of samples of the spent wash as it leaves the still. Mention was made in the Reports of the Comptroller and Auditor General of India (Revenue Receipts) for the years ended 31 March 1997 and 31 March 1999 on low yield of spirit in the years 1994-95, 1996-97 and 1997-98. Government in the statement of action taken on the recommendation of Committee on Public Accounts (1998-2000) in their 59 Report stated in April 2003 that action had been taken to amend the Manual and Rules to ensure correct yield of spirit and to make sample testing of fermented wash before distillation and spent wash after distillation mandatory.

Test check of records of three distilleries at Thiruvalla, Cherthala and Palakkad for the years 2002-03 and 2003-04 revealed that 80.48 lakh proof litres of spirit was produced from 23617.185 metric tonnes of molasses as against Rs 88.21 proof litres due under the norms fixed by Central Board of Molasses. Excise duty involved in the short yield of 7.73 lakh proof litres amounted to Rs 1.20 crore. No action has been taken to amend the Manual so far.

The matter was reported to the Department and Government between January 2004 and August 2005; their reply has not been received (December 2005).

5.4. Short levy of interest

Under the Kerala Abkari Shops (Disposal in Auction) Rules, 1974, interest payable on all money due to Government was 12 *per cent per annum* up to 31 March 1986 and 18 *per cent* thereafter. Honorable High Court of Kerala held* that State can demand interest at 18 *per cent* from 1 April 1986 on arrears accrued prior to that date. Government amended the Rule in June 2000 to allow reduction in interest to defaulters who pay the entire arrears of rental, taxes, duties, etc., before 31 August 2000. Interest payable was 25 *per cent* of the interest accrued limited to the amount of principal.

In three♦ excise circle offices, in four cases, while settling in August 2000 the abkari arrears of Rs 39.30 lakh for the period from 1980-81 to 1983-84 under the scheme in force from June to August 2000, circle officers computed the interest from 1 April 1986 at the rate of 12 *per cent* instead of 18 *per cent*. This resulted in short levy of interest of Rs 11.31 lakh.

After this was pointed out between March 2003 and January 2005, the Department stated in March 2005 that a sum of Rs 1.53 lakh due from Sulthan Bathery had been adjusted from excess licence fee remitted on a bar hotel owned by the defaulter. Further report has not been received (December 2005).

This was reported to Government in August 2004. Government informed in November 2005 that demand notice had been issued for realisation of Rs.6.73 lakh in two cases of North Parur. Further report has not been received (December 2005).

* G. Mohandas Vs State of Kerala 1999

♦ North Parur, Sulthan Bathery and Wadakkancherry