

CHAPTER V
OTHER TAX AND NON-TAX RECEIPTS

5.1 Results of audit

Test check of the records of the offices of the Commercial Taxes, Registration, Excise, Motor Vehicles and Forest departments conducted during 2007-08 revealed undervaluation of documents, non-collection of import fee, non/short levy of tax, other lapses etc. amounting to Rs. 175.75 crore in 473 cases, which may be categorised as under :

(Rupees in crore)

Sl. No.	Category	No. of cases	Amount
1	Receipts from luxury tax (A review)	1	1.28
A. Stamp duty and registration fee			
2.	Undervaluation of documents	60	0.63
3.	Other lapses	185	0.96
B. State excise			
4.	Non-collection of import fee	9	18.51
5.	Non/short demand of differential cost of establishment	25	0.81
6.	Short levy of gallonage fee	7	0.07
7.	Other lapses	14	8.17
C. Taxes on vehicles			
8.	Non/short levy of tax.	86	0.77
9.	Incorrect classification.	17	0.18
10.	Irregular exemption.	11	0.01
11.	Other lapses.	34	1.10
D. Taxes and duties on electricity			
12.	Improper classification of consumers by licensee	1	0.05
13.	Short levy of electricity duty due to excess allowance of line loss.	1	0.02
Forest receipts			
14.	Short levy of lease rent	2	27.10
15.	Short levy/loss in auction/reaction	7	114.90
16.	Collection of value/seignorage value	4	0.78
17.	Other lapses	9	0.41
Total		473	175.75

During the year 2007-08, the department accepted underassessment of Rs. 22.37 crore involved in 330 cases out of which 27 cases involving Rs. 84 lakh was pointed out during 2007-08. The department recovered Rs. 78 lakh in 55 cases during the year of which 29 cases involving Rs. 15 lakh pertains to 2007-08.

After the issue of draft paragraphs, the department recovered Rs. 2.42 lakh in full in one case.

A few illustrative cases involving Rs. 18.32 crore and result of a review of “**Receipts from luxury tax**” involving Rs. 1.28 crore are mentioned in the succeeding paragraphs.

5.2 Receipts from luxury tax

5.2.1 Highlights

- Luxury tax and registration fee was evaded by proprietors of unregistered hotels, houseboats, *kalyanamandapams* etc. and maximum penalty leviable thereon for this evasion amounted to Rs. 175.07 crore.

(Paragraph 5.2.8)

- Three amendments were made to The Kerala Tax on Luxuries Act, 1976 incorporating the provisions for levy of luxury tax on hospitals charging Rs 1,000 or more per room, home stays and recovery of tax under revenue recovery.

(Paragraph 5.2.8.1 and 5.2.9.1)

- Effective steps for realisation of arrears of revenue of Rs. 11.41 crore could not be taken in the absence of provision for realisation under the revenue recovery.

(Paragraph 5.2.9.1)

- Short levy of luxury tax of Rs. 5.63 crore due to exclusion of taxable amenities from assessment/assessment at a reduced rate in 46 cases.

(Paragraph 5.2.14)

5.2.2 Introduction

The Kerala Tax on Luxuries Act, 1976 (KTL Act) provides for registration, assessment, levy and collection of tax on luxuries provided in hotels, houseboats, *kalyanamandapams*, clubs etc. Section 2 (ee) of the Act defines luxury as a commodity or service that ministers comfort or pleasure. Luxury provided in a hotel means accommodation for residence and other amenities and services rendered for monetary consideration. Tax on the luxuries provided is assessed and collected at the rates prescribed in the KTL Act. The Act also provide for levy of penalty, not exceeding twice the amount of luxury tax or other amount sought to be evaded, if acted in contravention of the provisions of the Act.

It was decided by audit to review the mechanism for assessment, levy and collection of luxury tax by the Commercial Taxes Department (CTD). The review revealed a number of system and compliance deficiencies which have been discussed in the succeeding paragraphs.

5.2.3 Organisational set-up

The CTD functions under the administrative control of the Secretary in Taxes Department at the Government level. The Commissioner of Commercial Taxes (CCT) is the head of the CTD. He is assisted by a Joint Commissioner and at the district level by Deputy Commissioners of Commercial Taxes

(DCCT)¹. The work relating to the assessment, levy and collection of luxury tax is carried out in Commercial Tax Offices (CTOs) attached to DCCTs.

5.2.4 Scope and methodology of audit

A review of the assessment, levy and collection of luxury tax by CTOs for the period from 2002-03 to 2006-07 was conducted during the period from January 2008 to May 2008. Six² out of 14 districts were selected for review.

5.2.5 Audit objectives

The review was conducted to ascertain whether:

- system/procedure existed for registration, assessment and collection of luxury tax; and
- there exist an internal control mechanism within the department which is effective and working efficiently to check non/short levy and evasion of luxury tax.

5.2.6 Acknowledgement

Indian Audit and Accounts Department acknowledges the co-operation of the departments of Commercial Taxes, Tourism, Excise, Irrigation and Local Bodies in providing necessary information and records for audit. An entry conference was held with Secretary (Taxes) and CCT who were apprised of the scope, methodology and objectives of the review. The draft review report was forwarded to the department and the Government in June 2008 and was discussed in the Audit Review Committee meeting held in September 2008. Secretaries to the Government (Taxes) and (Finance Resources) represented the Government while Dy. Commissioner (General) represented the Department. Views of the Government/department have been incorporated in the relevant paragraphs.

5.2.7 Trend of revenue

Under the Kerala Budget Manual, the heads of departments shall forward proposals for budget estimates (BEs) of receipts directly to the Finance Department with a copy to the concerned administrative department in the Government which in turn shall forward the same to the Finance Department with their remarks and the Finance Department shall finally frame the BEs. The BEs of revenue shall be based on existing rates and no increase or decrease in the rates shall be proposed unless approved by the Government. Officers who submit the BEs have to ensure that the BEs are neither inflated nor under pitched but are as accurate as practicable.

The BEs, actual receipts, variations in receipts of luxury tax over BEs and percentage of variation for the years 2002-03 to 2006-07 were as under:

¹ DCCT: Alappuzha, Ernakulam, Idukki, Kannur, Kollam, Kottayam, Kozhikode, Malappuram, Mattancherry, Palakkad, Thiruvananthapuram and Thrissur.

² Alappuzha, Ernakulam, Idukki, Kottayam, Palakkad and Thiruvananthapuram.

(Rupees in crore)

Year	Budget estimates	Actuals	Short fall (-) excess (+)	Percentage of excess (+)/ short fall (-)
2002-03	15.00	20.72	(+) 5.72	(+) 38.13
2003-04	35.66	25.73	(-) 9.93	(-) 27.85
2004-05	35.30	27.11	(-) 8.19	(-) 23.20
2005-06	29.10	40.49	(+) 11.39	(+) 39.14
2006-07	32.01	51.52	(+) 19.51	(+) 60.95

The BEs during these years were either inflated or under pitched as is evident from the fact that variations between BEs and actuals ranged from (-) 27.85 per cent to 60.95 per cent during the years 2002-03 to 2006-07. The Government did not inform the reason for variation despite being requested (September 2008).

Audit findings

System deficiencies

5.2.8 Leakage of revenue due to lack of a system to ensure obtaining of registration by hotels, house boats, halls etc.

The proprietors of hotels, house boats, halls, auditoriums, *kalyanamandapams* or places of like nature are required to be registered under the KTL Act. The officers of the intelligence wing of the CTD are empowered to conduct intensive survey and field work so as to collect details from other departments/sources to enlist the proprietors liable for registration under the KTL Act. Essential information such as commencement of business, number of rooms, whether air conditioned (A/C) or not (non-A/C), whether having star status, other amenities available in the hotels and in the case of house boats, cut number³, Chief Inspector of Boats (CIB) number, number of rooms available, tonnage, date of launch etc., necessary for determination of luxury tax were either not available or were incomplete. In the absence of these details, luxury tax to be levied could not be exactly quantified. Further, the details available in these offices regarding proprietors liable to pay luxury tax are at variance with the figures collected from the departments like Tourism, Excise, Local Bodies and other sources (print and electronic media).

The departments of Tourism, Irrigation, State Excise and Local Bodies are the competent authorities to issue licence to hotels (local body/State Excise), house boats (Irrigation Department), halls/*kalyanamandapams* etc. (local bodies) and sharing of information with these departments could have helped to plug evasion of luxury tax. However, the department did not prescribe any mechanism for sharing of information to detect the evasion of luxury tax. Cross verification of information collected from these departments with the records of Commercial Taxes Department revealed non-registration of entities and thereby evasion of luxury tax which have been discussed in the subsequent paragraphs.

³ canal licence number issued by the canal officer to identify boats.

5.2.8.1 Hotels

- Section 4 B (1) of the KTL Act stipulates that every proprietor of a hotel⁴ having not less than five rooms to be rented out for accommodation of residence shall get his hotel registered and the registration renewed annually and pay the luxury tax at the prescribed⁵ rates. The registration and renewal fee for hotels in municipal corporation, municipal council and *grama panchayat* were Rs. 1,000, Rs. 750 and Rs. 500 respectively upto 31 March 2005 and thereafter Rs. 1,250, Rs. 1,000 and Rs. 750. Any action in contravention of the provisions of the KTL Act attracts penalty not exceeding twice the amount of luxury tax or other amount sought to be evaded and the burden of proving that any person is not liable to pay penalty shall be on such persons

Cross verification of the information collected in audit from the Assistant Commissioners of Excise, Secretaries of local bodies and from the publications of the Tourism Department and advertisements of proprietors (both in print and electronic media) with the registers maintained in CTOs revealed that proprietors of 390 hotels in the selected districts liable to be registered under the Act, did not get their hotels registered. The loss on account of registration/renewal fee of these hotels and penalty for the period from 2002-03 to 2007-08 worked out to Rs. 98.03 lakh.

The above 390 hotels were also evading luxury tax. Considering the lowest of tariff range and occupancy at the rate of 65.1 *per cent* a year as per India tourism statistics, the luxury tax sought to be evaded during the period from 2002-03 to 2007-08 by these hotels, in the districts selected, amounted to Rs. 102.48 crore, including penalty, as mentioned below:

District	Total ⁶ no.of hotel	No. of hotels registered	No. of hotels not registered	Registration/ renewal fee and penalty due (Rupees in lakh)	Luxury tax evaded and penalty (Rupees in crore)
Alappuzha	134	82	52	31.58	27.08
Ernakulam	576	390	186	50.55	36.66
Idukki	170	112	58	5.63	28.74
Kottayam	325	241	84	9.33	8.91
Palakkad	183	176	7	0.45	0.78
Thiruvananthapuram	453	450	3	0.49	0.31
Total	1,841	1,451	390	98.03	102.48

⁴ Hotel means a building or part of a building, a guest house run by the Government or a company or a corporation, where residential accommodation is provided for a monetary consideration and includes a lodging house.

⁵ Luxury tax at the rate of 10 *per cent* is leviable in respect of hotels for charges of accommodation for residence and other amenities and services excluding food and liquor where the gross charges is less than Rs. 500 per day and 15 *per cent* where the gross charges is more than Rs. 500.

⁶ The total number of hotels required to be registered on the basis of information collected in audit and shown in the table does not depict the actual total number of hotels to be registered.

After the cases were reported to Government in June 2008, the Government stated in October 2008 that action was initiated in 250 cases. Report on the remaining cases has not been received. It was also stated that penalty cannot be imposed invariably in all cases and in certain cases the tariff was below Rs. 200. The details of cases where luxury tax is not leviable was not furnished.

- As per the provisions existed in the KTL Act, accommodation charges received by ayurveda centres were not exigible to tax. Certain ayurvedic centres were doing hotel business, in the garb of ayurveda treatment centres.

Test check, in the selected districts, revealed that 26 of them were conforming to the standards of hotel, as defined in the KTL Act. They evaded registration fee, renewal fee, luxury tax and penalty to the tune of Rs. 14.49 crore.

After the cases were pointed out, provision was introduced in the KTL Act to bring hospitals charging rent of Rs. 1,000 or more per room per day under the tax net.

- There was no provision in the KTL Act to levy luxury tax on charges of accommodation, amenities and services provided for by home stays.

In 20 cases identified, in the districts selected, it was found that these units conform to the definition of hotels as defined in the Act. Working in the guise of home stays, they evaded registration fee, luxury tax and penalty amounting to Rs. 7.29 crore for the period from 2002-03 to 2007-08.

After the cases were pointed out, home stays are also brought within the purview of the KTL Act.

5.2.8.2 House Boats

Section 4 C of the KTL Act stipulates that every proprietor of a house boat rented for accommodation for residence or leisurely cruising shall get his house boat registered and registration renewed annually with effect from 1 April 2004 and pay the luxury tax at the prescribed⁷ rates. The registration fee for house boats is Rs. 1,000 per annum and the renewal fee Rs. 500 per annum.

Cross verification of the list of house boats registered with the CIB, who issues fitness certificate for all house boats in the State with the luxury tax registration details maintained in the CTOs of selected districts, revealed that 350 house boats were not registered. The loss on account of registration, renewal fee and penalty in 350 cases in the districts selected, for the period from 2004-05 to 2007-08 amounted to Rs. 26.26 lakh.

Luxury tax evaded by the above proprietors of house boats were quantified taking the lowest estimation that the boats have only one room and that 50 *per cent* of the house boats are air conditioned and the remaining are non air conditioned with the tariff of Rs. 5,500 and Rs. 3,500 respectively and also

⁷ Luxury tax shall be levied at the rate of 4 *per cent* and 10 *per cent* during the year 2004-05 and 2005-06 respectively and at 10 *per cent* up to 30 June 2006 and at the rate of 15 *per cent* thereafter.

considering the statistics of District Tourism Promotion Council of 120 days of cruise a year, the tax evaded during the period from 2004-05 to 2007-08 by the above proprietors of house boats, in the districts selected, amounted to Rs. 24.20 crore including penalty, as mentioned below:

District	Total no. of house boats registered with CIB	No. of house boats registered with CTO	No. of unregistered house boats	Regn. / renewal fee and penalty due (Rupees in lakh)	Luxury tax and penalty leviable (Rupees in crore)
Alappuzha	372	137	235	17.63	16.26
Ernakulam	28	1	27	2.03	1.87
Kottayam	126	44	82	6.15	5.68
Thiruvananthapuram	12	6	6	0.45	0.39
Total	538	188	350	26.26	24.20

These are only indicative of the loss sustained by Government and not exhaustive.

After the cases were pointed out in June 2008, the Government stated in October 2008 that penalty of Rs. 5.70 lakh was imposed in 44 cases and in 61 cases penal action was being taken and registration fee of Rs 1.72 lakh was collected. Report in respect of other cases has not been received (December 2008).

Due to lack of prescribed system, the department was not aware of the number of house boats carrying on business and evading the luxury tax. Effective steps need to be taken to locate the house boats carrying on business without registration and also to ensure that the tax due to Government is duly collected.

5.2.8.3 *Kalyanamandapam/Auditorium/Hall or places of like nature*

Section 4 B(2) (c) of the KTL Act, introduced with effect from 1 April 2005, stipulates that proprietor of every hall, auditorium, *kalyanamandapam* or places of like nature shall get them registered paying registration fee at the rate specified for each category and locality and the registration renewed annually and pay the luxury tax for charges received for accommodation, amenities and services provided.

Cross verification of the registration details in the commercial tax offices with the list of licenses issued to halls, auditoriums, *kalyanamandapams* or places of like nature, by the local bodies, pamphlets/advertisements given by the providers of luxury in print/electronic media, web site of providers etc., revealed that 488 proprietors in the districts selected did not get them registered during 2005-06 or renewed their registration. Loss on account of registration/renewal fee and penalty in these cases amounted to Rs. 17.43 lakh. Apart from non-registration, the above proprietors evaded luxury tax on the rent collected. In order to quantify the evasion, taking average rent rate of the locality and minimum occupancy rate of 100 days per annum stipulated in the Kerala *Panchayat Raj* (Building Tax and Surcharge thereon) Rules 1996,

luxury tax evaded and penalty leviable worked out to Rs. 25.18 crore as mentioned below:

District	Total number of cases	Number of cases registered	Number of cases not registered	Regn./renewal fee and penalty due (Rupees in lakh)	Luxury tax and penalty leviable (Rupees in crore)
Alappuzha	71	32	39	1.40	1.68
Ernakulam	241	13	228	6.84	15.84
Idukki	12	5	07	0.31	0.30
Kottayam	129	14	115	4.88	3.03
Palakkad	83	13	70	2.31	2.00
Thiruvananthapuram	175	146	29	1.69	2.33
Total	711	223	488	17.43	25.18

These are only indicative of the loss sustained by Government and not exhaustive.

After the cases were reported to the Government, it was stated that in certain cases the halls were situated in the premises of places of worship and hence not liable to registration. The reply is not correct as halls/auditoriums situated within the premises of places of worship are also liable to take registration even though they are not liable to pay luxury tax. It was also stated that action had been initiated in 180 cases. Further report has not been received (December 2008).

5.2.8.4 Clubs

As per explanation under Section 4 (2A) of the Act, “club” means a club which provides more than two facilities like card room, billiard room, snooker room, tennis court, swimming pool, *sauna jacuzzi*, gymnasium, golf course etc. and having a membership strength of minimum 25. The members of the club have to pay luxury tax at the rate of Rs. 100 per year per member with effect from 1 July 2006. The person responsible for the management of the club shall collect the same and remit it to the Government.

Cross verification of the records maintained by local bodies and available in print media with the records of CTD revealed that the persons responsible for management of 34 clubs (providing more than two facilities) in four districts had not remitted luxury tax envisaged in the Act. The luxury tax payable by these clubs for the years 2006-07 and 2007-08 works out to Rs. 62.97 lakh by way of luxury tax and penalty based on the number of members gathered from various departments and in other cases the number of members was taken as 25 being the minimum number provided in the Act as mentioned below.

(Rupees in lakh)

District	No. of clubs	No. of members	Tax due	Penalty
Eranakulam	11	2,865	5.73	11.46
Idukki	02	350	0.70	1.40
Kottayam	01	1,110	2.22	4.44
Thiruvananthapuram	20	6,169	12.34	24.68
Total	34	10,494	20.99	41.98

After the cases were reported to Government, it was stated that Rs. 30.74 lakh was collected from the major clubs in Thiruvananthapuram and Ernakulam Districts. Report in respect of other cases has not been received (December 2008).

The foregoing paragraphs indicate the failure of the department to conduct inspections and interactions with other departments and local bodies in order to bring all the prospective proprietors into the tax net. In the absence of an effective monitoring system to ensure registration of hotels, house boats, *kalyanamandapam* etc., the Government is forgoing revenue.

The Government may, therefore, consider taking of appropriate steps:

- to ensure that the administrative departments maintain the prescribed register and to watch registration and renewal of the above entities;
- prescribing a mechanism for sharing of information amongst different departments like Irrigation, Excise, Tourism, Local Bodies etc., to ensure all entities are brought under tax net. Besides, it may also consider prescribing register in a prescribed format for recording details like commencement of business, number of rooms, tariff, cut number etc. to enable the department to determine the correctness of luxury tax levied; and
- prescribing penal provisions and accountability of the authorities in exercising controls over renewal and registration of the entities.

5.2.9 Inadequacy of provisions of the Act

5.2.9.1 The KTL Act provide for recovery of the arrears of luxury tax from defaulters as arrears of land revenue. This provision was deleted by the Government with effect from 1 April 2005.

The arrears due as on 31 March 2008 was Rs. 11.41 crore. As there is no provision in the KTL Act to realise the arrears of luxury tax and other amount payable under the KTL Act, the revenue recovery proceedings cannot be initiated against the defaulters. Recovery of the arrears without initiating revenue recovery proceedings is very bleak. The district/year wise position is mentioned below:

(Rupees in lakh)

District	Year					Total
	Upto 2003-04	2004-05	2005-06	2006-07	2007-08	
Trivandrum ⁸						39.25
Kollam	10.53	10.07	16.71	8.35	0.33	45.99
Alappuzha	4.53	4.30	8.48	14.12	50.13	81.56
Kottayam	Nil	Nil	145.33	444.32	18.67	608.32
Idukki	0.72	Nil	0.15	9.37	16.57	26.81
Ernakulam	4.33	3.79	3.69	0.61	0.15	12.57
Thrissur	1.53	0.29	0.13	0.11	0.06	2.12
Malappuram	16.22	41.39	68.62	76.95	0.88	204.06
Kozhikode	17.02	2.99	2.45	6.71	39.48	68.65
Wayanad	0.12	0.02	2.01	1.51	1.65	5.31
Kannur	9.54	15.54	Nil	Nil	Nil	25.08
Kasargod	0.42	Nil	13.38	7.56	Nil	21.36
Total						1,141.08

On the basis of the audit recommendations, the Government had amended the KTL Act incorporating provision for recovery of arrears of luxury tax under the Revenue Recovery Act.

5.2.9.2 Under the KTL Act, if the tax or any other amount assessed or due under the Act was not paid within the time specified in the notice of demand, simple interest at the rate of 12 *per cent* was leviable. It was judicially held⁹ that interest could be levied only for the defaulted payment, after the expiry of the date provided in the notice of demand. Thus, the present position is that if any proprietor fails to pay or defers payment of luxury tax due, interest for non payment of the same within the time could be levied only after the expiry of the date noted in the demand notice.

In the absence of provision for levy of interest on escape of charges, the Government could not realise the interest of Rs. 2.03 crore as detailed below:

(Rupees in crore)

District	No. of cases	Amount
Ernakulam	19	0.35
Idukki	01	0.11
Kottayam	22	1.57
Total	42	2.03

The Government may consider initiating necessary remedial action in the interest of revenue.

⁸ Yearwise breakup not furnished.

⁹ 15 KTR 485 (Kerala) Casino Hotel Vs. State of Kerala

5.2.10 Internal control mechanism

Internal controls are intended to provide reasonable assurance of orderly, efficient and effective operations, safeguarding resources against irregularities, adhering to laws, regulations and management directives and developing and maintaining reliable data. Effective internal control system both in the manual as well as computerised environments are a pre-requisite for the efficient functioning of any department.

Mention was made in Paragraph 7.2 of the Report of the Comptroller and Auditor General of India for the year ended 31 March 2001 (Revenue Receipts), Government of Kerala regarding:

- non-reconciliation of remittances into treasury as required in Kerala Financial Code, volume I ;
- improper maintenance of DCB register; and
- defective maintenance of registers like registration register, assessment register, etc.

In the notes on remedial measures on the paragraph, the Government stated (April 2006) that reconciliation of remittances into treasury was being done either by the Inspecting Assistant Commissioner or the Luxury Tax Officer and that the registers were being maintained properly. However, it was noticed during review that:

- no reconciliation was done in any of the offices reviewed; and
- the DCB register and statements were not maintained/prepared in any of the offices reviewed.

These indicate that the department had not complied with the assurance given by the Government to the Committee on Public Accounts.

5.2.11 Internal Audit

Internal audit is intended to assure an organisation that the internal control system instituted by it for its efficient and cost effective functioning, are adequate and effective. The internal audit is not being conducted in the department.

5.2.12 Departmental Manual

A departmental manual is essential for regulating and streamlining its functions and activities, but no departmental manual was prepared though the Act came into force in 1976. In the absence of manual, effective internal control cannot be enforced and evaluated.

5.2.13 Annual Administrative Report

As per the directions of the Government, all heads of departments are required to submit annually their Administrative Reports to the Government on or before 15 April of the succeeding financial year and the Secretaries to the Government should review these reports before 15 May and make them available for presentation when the budget demands are taken up for consideration by the Subject Committee. In the administrative report, the

performance of the year were required to be analysed which would deter probable deviations. The department did not publish the Administrative Report from the year 2003-04.

Compliance deficiencies

5.2.14 Short return of charges and amenities escaped assessment

As per KTL Act, every amenity and service provided in the hotel that ministers comfort are exigible to luxury tax. It was judicially held¹⁰ that the amenities provided in hotels are taxable.

In commercial tax offices of six districts mentioned in the table, while finalising 46 assessments (between 2003 and 2007) for the years from 2002-03 to 2006-07, the charges collected for amenities for other services provided were excluded or assessed at reduced rate. Short levy of luxury tax in the above cases amounted to Rs. 5.63 crore as mentioned below:

(Rupees in crore)		
District	Number of cases	Short levy
Alappuzha	14	0.19
Ernakulam	14	0.67
Idukki	06	3.41
Kottayam	06	1.14
Palakkad	03	0.01
Thiruvananthapuram	03	0.21
Total	46	5.63

In four of these cases in Idukki and Kottayam, maximum penalty of Rs. 8.30 crore was leviable due to non/short return of accommodation charges.

An illustrative case is given below:

In CTO (WC & LT), Kottayam a private limited hospitality business company, having 49 air conditioned rooms in their luxury hotel division (M/s Windsor Castle, Kodimatha) and 17 heritage villas in the resort division (M/s The Lake Village Heritage Resort, Kodimatha) in the same premises which was having a separate identity had registration for hotel business only and tax was paid for hotel division. The income received from the heritage division of Rs. 8.37 crore escaped assessment resulting in short levy of Rs. 90.13 lakh during the period 2002-03 to 2006-07. The proprietors were also liable for a maximum penalty of Rs. 1.80 crore.

The assessing officer stated in May 2008 that these 17 heritage villas were part and parcel of the luxury hotel division. The reply is not tenable since the income from 49 air conditioned rooms only had been included in the annual return of M/s. Windsor Castle from 2000-01. Further in the brochures issued by the Tourism Department, the Lake Village had separate identity and existence. Hence, a separate registration for the same should have been insisted.

¹⁰ 15 KTR 485 (Kerala) Casino Hotel Vs. State of Kerala

After these cases were pointed out in June 2008, the Government stated that action was initiated in 35 cases and additional demand of Rs 30.39 lakh was created.

5.2.15 Conclusion

The budget estimates for all the years under review were unrealistic. The actual collections were either 23 to 27 *per cent* below or 38 to 60 *per cent* above the budget estimates. The large number of entities which were liable to be brought under the tax net had evaded registration, renewal, payment of luxury tax due to lack of interaction with other departments/local bodies and failure to conduct surveys. The internal control system is very ineffective and even the assurances given by the Government to the Committee on Public Accounts are not implemented by the department.

5.2.16 Summary of recommendations

The Government may consider:

- streamlining the budgeting process to make the budget estimates realistic;
- ensuring that the administrative departments maintain the prescribed register and to watch registration and renewal of the above entities;
- prescribing a mechanism for sharing of information amongst different departments like Irrigation, Excise, Tourism, Local Bodies etc. to ensure all entities are brought under tax net. Besides, it may also consider prescribing register in a prescribed format for recording details like commencement of business, number of rooms, tariff, cut number etc. to enable the department to determine the correctness of luxury tax levied; and
- prescribing penal provisions and accountability of the authorities in exercising controls over renewal and registration of the entities.

A. STATE EXCISE

5.3 Non-levy of import fee

Under the Kerala Abkari Act (Abkari Act) and the Foreign Liquor Rules, 1953 (FL Rules), plain rectified spirit including absolute alcohol, intended to be used for the manufacture of liquor meant for human consumption, manufactured in India and or outside and imported into the State is 'foreign liquor'. As such extra neutral alcohol (ENA), grape spirit, malt spirit, etc., imported into the State from other states for the manufacture of potable liquor, come under the classification of Indian made foreign liquor (IMFL). As per notification issued in March 1996, import of IMFL other than beer attracts import fee of Rs. 5 per proof litre¹¹. It has been judicially¹² held that as far as the rectified spirit supplied or utilised for potable purpose was concerned, levy of excise duty and all other control shall be that of States.

Test check of the records in eight¹³ distilleries revealed (August 2006) that the distilleries had imported 347.13 lakh proof litres of spirit (ENA, grape spirit, malt spirit, etc.) from other States for manufacture of liquor meant for human consumption during the period from 2005-06 to 2006-07. However, the department failed to collect the import fee while issuing import permits though export fee prescribed in the same notification on export of spirit meant for manufacture of potable liquor was levied by it. Import/export permits of other States available at the institutions test checked revealed that the other States were levying import fee on spirit imported into their states from Kerala and export fee for export of spirit/ENA to Kerala. Loss due to non-levy of import fee on 347.13 lakh proof litres of spirit imported amounted to Rs. 17.36 crore as mentioned in the annexure.

The matter was reported to the department between July 2007 and March 2008 and the Government in February 2008; their reply has not been received (December 2008).

B. TAXES ON VEHICLES

5.4 Short demand of composite tax

Two axled goods carriage vehicles registered in other states or Union Territories in India can ply in Kerala under national permit after remitting composite tax of Rs 3,000 *per annum* upto 16 July 2006 and Rs. 5,000 *per annum* thereafter. Under the Kerala Motor Vehicles Taxation Act, composite tax on such vehicles with multi axle shall be 25 *per cent* less than the rate applicable to two axled vehicles. But this concession is restricted to vehicles

¹¹ Spirit having same alcohol content as one litre of 'proof spirit', i.e. a mixture of alcohol and water with alcohol content 57.06 *per cent* by volume at 60° F.

¹² Bihar distillery and another V/s Union of India and others.

¹³ Cassanova Distilleries Nattakam, SDF industries Trissur, Polsons distillery Chalakkudy, Murugan Pharma Punalur, Travancore Sugar and Chemicals Thiruvalla, United Spirits Kanjikode, Kerala Alcoholic Products Ltd. Palakkad, United distilleries Vengalipara.

of those states which allow similar concession on multi axled vehicles of other states or union territories.

Test check of the records of the Transport Commissioner's (TC) Office, Thiruvananthapuram revealed that 1,955 goods carriages and 3,125 multi axled vehicles registered in Karnataka, Tamil Nadu and Nagaland and authorised to ply in Kerala under the national permit during the year 2006-07 plied in the State on payment of pre-revised composite tax of Rs. 3,000 *per annum* and Rs. 2,250 *per annum* respectively instead of paying the tax at the rate of Rs. 5,000 *per annum* and Rs. 3,750 *per annum*. However, the department did not take any action to demand and collect the differential tax through the concerned regional/state transport authorities (STAs). This resulted in short levy of composite tax of Rs. 70.43 lakh.

After the cases were pointed out in January 2008, the department stated that TC's and Secretaries of other states were requested to collect the differential tax. A report on recovery has not been received (December 2008).

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

C. STAMP DUTY AND REGISTRATION FEES

5.5 Short levy due to under valuation

Under the Kerala Stamp Act 1959, if the registering officer is of the opinion that the consideration conceded in the instrument for registration has not been truly set forth, he may, after registering the document, refer the document to the District Collector for determining 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 value or consideration and the duty payable thereon. Government in October 1986, appointed District Registrars (DRs) as Collectors for this purpose.

During scrutiny of the records in three sub registry offices¹⁴ between June 2007 and January 2008, it was noticed that three documents registered in favour of different parties at various survey numbers were undervalued. The total difference in consideration in all the three cases works out to Rs. 1.40 crore resulting in short levy of stamp duty and registration fees of Rs. 19.73 lakh.

After the cases were pointed out between June 2007 and January 2008, the department stated between January 2008 and July 2008, that notice was issued in one case¹⁵ and in another case¹⁶ there is an agreement executed between the transferor and transferee and accordingly the buildings which were transferred through the subsequent documents by the transferee does not belong to the transferor. The reply is not tenable as the first document was executed on 6 February 2006 without any mention of the buildings in the land sold. The

¹⁴ Mattannur, Mavoor and West Hill

¹⁵ SRO, Mavoor

¹⁶ SRO, Mattannur

buildings in the above mentioned land were sold on various dates by the transferee, starting from 10 February 2006. A building cannot be constructed by the transferee within four days, indicating that the building was also transferred in the previous document. Further report has not been received (December 2008).

The matter was reported to the Government between December 2007 and April 2008. The Government stated in August 2008 that in one case¹⁷ *suo motu* action initiated against the Sub Registrar and notice issued to the party. Further report has not been received (December 2008).

D. TAXES AND DUTIES ON ELECTRICITY

5.6 Short levy of electricity duty

Under the Kerala Electricity Duty Act, 1963, electricity duty is chargeable at the rate of 10 *per cent* of the energy charges from consumers other than industrial consumers having high tension load of 11 KV or above. The licensees shall collect the duty from the consumers and remit it to the Government.

During scrutiny of the records in chief electrical inspectorate, Thiruvananthapuram, in February 2007, it was noticed that 165.02 lakh units of energy were supplied by a licensee to six non-industrial consumers having high tension load of 11 KV or above and paid electricity duty of Rs. 16.50 lakh at the rate of 10 paise per unit instead of Rs. 22.49 lakh at the rate of 10 *per cent* of the energy charges of Rs. 224.93 lakh. However, the department did not initiate action to recover the differential duty. This resulted in short realisation of electricity duty of Rs. 5.99 lakh.

After the case was pointed out in February 2007, the department stated in February 2008 and June 2008 that the matter had been referred to the Government for further direction. Further report has not been received (December 2008).

¹⁷ SRO, West Hill

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



**Thiruvananthapuram,
The**

**(S.NAGALSAMY)
Principal Accountant General (Audit), Kerala**

Countersigned



**New Delhi,
The**

**(VINOD RAI)
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