

## CHAPTER V : OTHER TAX RECEIPTS

### 5.1 Results of audit

Test check of records of departmental offices conducted during 2005-06 revealed short realisation or loss of revenue amounting to Rs 157.53 crore in 5,877 cases as detailed below:

(Rupees in crore)

Sl. No.	Nature of receipt	No. of cases	Amount
1.	Mumbai building repairs and reconstruction cess	26	67.31
2.	Entertainments duty	1,275	1.92
3.	State education cess and employment guarantee cess	787	19.52
4.	Tax on buildings (with larger residential premises)	519	2.40
5.	Tax on professions etc.	2,803	0.62
6.	Electricity duty	467	65.76
	<b>Total</b>	<b>5,877</b>	<b>157.53</b>

During 2005-06, the departments concerned accepted and recovered underassessment etc., in 2,683 cases involving Rs 11.70 crore, of which 334 cases involving Rs 0.80 crore related to 2005-06 and the rest to earlier years.

A few illustrative cases involving Rs 137.37 crore, highlighting important observations, are given in the following paragraphs:

**SECTION A  
REPAIR CESS**

**5.2 Mumbai building repairs and reconstruction cess**

**5.2.1 Introduction**

Under the provisions of the Bombay Building Repairs and Reconstruction Board Act, 1969, the Bombay building repairs and reconstruction cess (cess) was introduced with effect from 1 October 1969. Subsequently, this Act was replaced by the Maharashtra Housing and Area Development Act, (MHAD Act) 1976 (effective from 5 December 1977). Cess is being levied on buildings erected prior to October 1969 and on lands in Mumbai city only, to provide for funds for structural repairs and reconstruction of buildings in ruinous condition. Cess is being levied and collected by BMC along with general tax and is required to be credited to Government account within 15 days from the date of recovery.

The assessor and collector is the head of the assessment and collection department of the BMC. He is assisted by one assistant assessor and collector in each of the nine wards engaged in the assessment and collection of repair cess. The Mumbai Building Repairs and Reconstruction Board (board) a constituent of the Maharashtra Housing and Area Development Authority (MHADA) is headed by a chief officer who is assisted by two deputy chief engineers, a chief accounts officer and 10 executive engineers (EE) for structural repairs and reconstruction of buildings in ruinous and dangerous condition. The Secretary, Housing Department exercises administrative control at Government level.

Test check of records maintained for the years 2000-01 to 2004-05 in all the nine wards of BMC which are engaged in levy and collection of repair cess and the records of the board and the Housing Department at Mantralaya was conducted between November 2005 and January 2006. Results of test check are detailed in the following paragraphs:

**5.2.2 Non remittance of cess**

Under the provisions of the MHAD Act, cess recovered by BMC on behalf of the State Government is required to be credited to the Consolidated Fund of the State within 15 days from the date of recovery after deducting therefrom, rebate at five *per cent* of the amount recovered towards cost of collection. In cases of default in remittance of cess collected by the BMC, the Act empowers Government to direct the bank or treasury in which the earnings of BMC are deposited, to pay such sums to the State Government as it thinks fit. There are no checks prescribed in the Act to ascertain the correctness of cess recovered and remitted by the BMC.

It was noticed that out of Rs 215.25 crore collected during the period from 1 April 2000 to 31 March 2005, BMC remitted only Rs 99.95 crore into Government account. Out of the balance amount of Rs 115.30 crore,

BMC paid Rs 71.05 crore to MHADA and Rs 5.97 crore was adjusted against service charges payable by Government. The balance amount of Rs 38.28 crore collected during the said period was not remitted to Government account as of March 2006.

### **5.2.3 Irregular disbursement of funds to MHADA**

Under the provisions of the MHAD Act, proceeds of cess collected by BMC is first to be credited to the Consolidated Fund of the State and thereafter, the amount is to be transferred to Mumbai Building Repairs and Reconstruction Fund (repair fund) of MHADA for meeting the expenditure on repairs.

Scrutiny of records of BMC revealed that repairs cess of Rs 46.05 crore was disbursed by BMC in February and March 2003 to MHADA directly without the instructions of Government instead of crediting the same to Government account, which was irregular.

After this was pointed out, Government stated in December 2005 that the amounts were disbursed to MHADA directly as advance to enable MHADA to complete urgent repairs. The reply of Government is not tenable because as per MHAD Act, the cess should be credited first to the Government account and then appropriated towards repair fund.

### **5.2.4 Forgoing of revenue due to non prescription of rate of cess**

As per the MHAD Act, when a building is structurally repaired, cess is to be levied on different categories of buildings at the enhanced rates, depending on the slab of expenditure incurred by the board (limited to Rs 750 per sq. m. with effect from 1 April 1994). The permissible limit towards cost of repairs to be borne by the board was enhanced to Rs 1,000 per sq. m. with effect from 15 May 1998 and Rs 1,200 per sq. m. from 4 July 2004 but the rate of cess leviable was not revised after 1 April 1994.

The Chief Officer of the board proposed in June 2001 and July 2004 to Government the rate of cess that could be levied on the enhanced cost of repairs depending on the different categories of buildings. However, pending revision of the rates by Government, 2,468 buildings which were structurally repaired during the period from 1 April 2000 to 31 March 2005 by incurring expenditure at the enhanced cost of repairs, were continued to be assessed for repair cess at the rates applicable to the cost of expenditure on repairs of Rs 750 per sq. m. This resulted in foregoing revenue of Rs 27.18 crore worked out at the proposed rates.

### **5.2.5 Non levy of interest on delayed remittance of repair cess**

As per the provisions of the MHAD Act, cess recovered by BMC is required to be credited to the Consolidated Fund of the State within 15 days from the date of recovery. There is no provision for levy of interest on delay in remittance, in the Act.

It was noticed that BMC remitted Rs 30 crore collected between August 2000 and March 2001, in January 2003 after a delay of 22 months. In the absence of a provision for levy of interest for delay in remittance of cess collected, no interest could be levied.

There is thus, a need for a provision to levy interest on delayed remittance to curb the tendency of retention of Government money.

#### **5.2.6 Non levy of penalty for delayed payment**

As per the MHAD Act, read with the Bombay Municipal Corporation Act, if a person liable to pay any dues does not pay it within three months of the service of the notice, he is liable to pay a penalty not exceeding 20 *per cent* of the amount due.

It was noticed that in 146 cases pertaining to five<sup>1</sup> wards, the assessee delayed payment of cess of Rs 2.64 crore on which penalty of Rs 39.60 lakh, worked out at the rate of 15 *per cent* of the amount being levied, was not levied and demanded by BMC.

#### **5.2.7 Loss of revenue**

When a building is structurally repaired, the rate of cess is to be enhanced to the appropriate rate from the date of completion of repairs. For this purpose, the EEs of the Board are required to send intimations to BMC in respect of buildings which are structurally repaired, furnishing details of the property to enable BMC to issue bills at the enhanced rate of cess. As per a judgment<sup>2</sup> of the Mumbai High Court, levy of tax is for every official year<sup>3</sup> and the provision is also in respect of the current official year. It could not operate retrospectively to cover the previous years.

Test check of records of 'B' ward of BMC revealed that the EEs of the board intimated BMC during 2002-03, completion of repairs in 49 cases but the bills at enhanced rates were raised with effect from 1 April 2005 instead of during the year 2002-03 in which the intimations were sent by the EEs. This resulted in loss of revenue of Rs 76.16 lakh.

After this was pointed out, BMC stated that bills would be issued with retrospective effect. The reply is not acceptable as retrospective bills could not be issued in view of the above judgment.

The above points were reported to Government in May 2006; their reply had not been received (December 2006).

## **SECTION B ENTERTAINMENTS DUTY**

### **5.3 Non/short recovery of entertainments duty from cable operators/video game operators**

Under the provisions of the Bombay Entertainments Duty Act, 1923 (BED Act), entertainments duty (ED) is payable with effect from 1 May 2000 by cable operators at flat rates of Rs 30 or Rs 20 or Rs 10 per television set per month depending on whether the area is a municipal corporation (MC), A and

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<sup>1</sup> A, C, D, E and G/North Wards.

<sup>2</sup> Writ petition No. 214 of 1984.

<sup>3</sup> Official year means the year commencing on the first day of April.

B class municipality or other area. In respect of video games, ED payable from May 2003 onwards is Rs 1,000 or Rs 750 or Rs 500 per machine operated by one person, depending on whether the area is within the limits of BMC, all MCs other than BMC or other area.

Test check of records in 19 offices<sup>4</sup> in 12 districts<sup>5</sup> revealed that ED amounting to Rs 33.37 lakh was either not paid or paid short by 279 cable operators/video games operators during the period between 2001-02 to 2004-05. No demands were raised by the Resident Dy. Collectors/tahsildars against the operators. The underassessment was due to failure to review the registers containing the number of cable connections serviced by each cable operator/number of machines operated by each video operator, ED recoverable and payments made thereagainst.

After this was pointed out between September 2002 and September 2005, the Resident Dy. Collectors/tahsildars recovered between February 2003 and November 2006, ED amounting to Rs 16.65 lakh from 143 cable operators/video operators. Report on recovery of the balance amount had not been received (December 2006).

The matter was reported to Government in May 2006; their reply had not been received (December 2006).

#### **5.4 Incorrect exemption of entertainments duty to films**

Under the BED Act and the rules framed thereunder, Government may, by general or special order, exempt any entertainment or class of entertainments from the liability to pay ED. The rules framed under the Act require that exemption be granted to films which have been awarded the President's Gold Medal or films which, as recommended by an advisory committee appointed by the State Government, fulfills the criteria of educational, cultural or social purposes of a high order. The proprietor of a film which is granted exemption from payment of ED, is required to give an undertaking that he would pay an amount equivalent to the amount of ED leviable on the exhibition of such film to the person or persons responsible for the educational, cultural or social contribution of such film as nominated by the advisory committee. The proprietor of the film is also required to submit a weekly return to the District Collector specifying particulars of payments made to the nominated person(s) with a copy thereof to Government. Further, any exemption from the liability to pay ED granted for the exhibition of any such film should be withdrawn, if the proprietor fails to comply with the undertaking.

Scrutiny of the records of the Revenue and Forest Department granting exemption from ED during the year 2004-05 to six films revealed that:

<sup>4</sup> Resident Dy. Collector: Akola, Amravati, Beed, Kolhapur, Latur, Nanded, Solapur and Yavatmal.

Dy. Collector: BEDA Zone VII, Zone VIII, Mumbai.

Entertainments Duty Officer: Pune Zone A, B, D, J, K.

Taluka Magistrate: Ambernath; Andheri Zone IV, (Mumbai); Kurla Zone IV, (Mumbai); Chalisgaon at Jalgaon.

<sup>5</sup>Akola, Amravati, Beed, Jalgaon, Kolhapur, Latur, Mumbai, Nanded, Pune, Solapur, Thane and Yavatmal.

- In none of the cases had the committee nominated any person or persons responsible for the educational, cultural or social value of the films and weekly returns as prescribed were not submitted by the proprietors of the films to the District Collectors, with copies thereof to the Government.
- Though the advisory committee had recommended against granting of exemption of ED to three films as shown at Sl. Nos. 1 to 3 of the table, these were declared tax free by the Government.

As the essential conditions subject to which exemption from payment of ED was to be granted were not fulfilled, the exemption orders declaring the films as tax free should have been withdrawn under the rules. However, no such action was taken by the Government. Consequent revenue foregone on account of exemption from ED granted to these films as furnished by the Revenue and Forest Department amounted to Rs 98.04 lakh as detailed below:

Sl. No.	Name of the film	Period of exemption	Loss of revenue (Rs, in lakh)
1.	Dil Pardesi Ho Gaya	6 months from 6 December 2003	42.30
2.	Kids No. 1	6 months from 4 June 2004	0.03
3.	Lakshya	3 months from 8 July 2004	27.69
4.	Swadesh	6 months from 27 January 2005	7.19
5.	Black	6 months from 23 March 2005	14.55
6.	Chakachak	6 months from 2 February 2005	6.28
		<b>Total</b>	<b>98.04</b>

After this was pointed out, Government stated in February 2006 that even though the criteria of educational, cultural or social purpose of high order was not fulfilled, exemption was granted after considering the subject matter of these films.

The reply of the Government is not tenable as the conditions of exemptions were not fulfilled and in the case of three films, the advisory committee had also recommended against grant of exemption from payment of ED.

**SECTION C**  
**STATE EDUCATION CESS AND EMPLOYMENT**  
**GUARANTEE CESS**

**5.5 Short/non remittance of cess**

Under the provisions of the Maharashtra Education and Employment Guarantee (Cess) Act, 1962 and Rules made thereunder, cess and penalty recovered by the municipal corporations (MCs) are required to be credited to Government account before the expiry of the following week. If any MC defaults in payment to the State Government of any sum under the Act, the State Government may after holding such enquiry as it thinks fit, fix a period for the payment of such sum. The Act also empowers Government to direct the bank/treasury in which the earnings of the MC are deposited, to pay such sum from the bank account, to the State Government. Any such payment made in pursuance of the orders of Government shall be sufficient discharge of such bank/treasury from all liabilities to the MC.

It was noticed that three<sup>6</sup> MCs had not remitted revenue amounting to Rs 19.77 crore relating to State education cess (SEC) and employment guarantee cess (EGC) collected during the year 2004-05. The State Government had not directed the bank to pay the sum due from the MCs to them. No internal control existed at the apex level in the Revenue and Forest Department as there was no provision in the Act/Rules for furnishing of details of cess collected and remitted to Government account.

After this was pointed out between May and December 2005, the Pune Municipal Corporation and Nagpur Municipal Corporation stated that the amounts would be credited to Government account shortly. BMC stated in September 2005 that orders for adjustment of the amounts against the grant due to it were awaited. Further report had not been received (December 2006).

The matter was reported to Government in May 2006; their reply had not been received (December 2006).

**SECTION D**  
**TAX ON BUILDINGS**  
**(with larger residential premises)**

**5.6 Non remittance of tax**

Under the provisions of the Maharashtra Tax on Buildings (with Larger Residential Premises) (Re enacted) Act, 1979, tax recovered by a municipal corporation (MC) on behalf of the State Government shall be credited to the Consolidated Fund of the State within 30 days from the date of its recovery. If any MC defaults in payment to the State Government of any sum due under

<sup>6</sup> Brihan Mumbai (three units Mumbai City, Eastern Suburb (Chembur) and Western Suburb (Bandra)), Nagpur and Pune.

the Act, the State Government may, after holding enquiry as it thinks fit, fix a period for payment of such sum. The Act also empowers Government to direct the bank/treasury in which the earnings of the MC are deposited to pay such sum from such bank account to the State Government. Any such payment made in pursuance of the orders of the Government shall be sufficient discharge of such bank/treasury from all liabilities to the MC.

It was noticed that three MCs<sup>7</sup> had not remitted revenue amounting to Rs 3.52 crore collected on account of tax on buildings (with larger residential premises) during the year 2004-05. In none of the cases, the bank/treasury was directed to pay the sum to the State Government.

After this was pointed out between May and December 2005, the Pune Municipal Corporation and the Solapur Municipal Corporation stated in August 2005 that the amount would be credited to Government account. BMC stated in September 2005 that the matter would be taken up with the Government to adjust the amount due to Government against the grants payable to them.

The matter was reported to Government in May 2006; their reply had not been received (December 2006).

## **SECTION E PROFESSION TAX**

### **5.7 Non recovery of profession tax**

Under the provisions of the Maharashtra State Tax on Professions, Trades, Callings and Employment Act, 1975 and the rules made thereunder, every person liable to pay profession tax is required to obtain a certificate of enrolment from the profession tax officer and pay tax annually at the rates prescribed in the schedule to the Act.

Test check of records in 15 profession tax offices<sup>8</sup>, revealed that profession tax amounting to Rs 17.37 lakh in respect of 1,081 persons enrolled under the Act for various periods between 2003-04 and 2004-05 was neither paid by them nor demanded by the department.

After this was pointed out between June 2004 and August 2005, the department recovered Rs 4.97 lakh in 326 cases between June 2004 and December 2006. Report on recovery of balance amount had not been received (December 2006).

The matter was reported to Government in May 2006; their reply had not been received (December 2006).

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<sup>7</sup> Mumbai {three units Mumbai City, Eastern Suburb (Chembur) and Western Suburb (Bandra)}, Pune and Solapur.

<sup>8</sup> PTO: Amravati, Aurangabad-I, Barshi, Chandrapur, Gadchiroli, Jalgaon, Kalyan, Kolhapur-II, Latur, Nagpur-I & II, Osmanabad, Ratnagiri, Solapur and Thane-II.



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**SECTION F**  
**ELECTRICITY DUTY**

**5.8 Incorrect retention of electricity duty and non levy of interest**

Under the provisions of the Bombay Electricity Duty Act, 1958, every licensee which supplies electricity to consumers is required to collect duty from the consumers together with its own charges, if any, and pay it to Government by the prescribed date. In case of default, interest at the rate of 18 *per cent* per annum for the first three months and 24 *per cent* per annum thereafter is chargeable on the amount of duty remaining unpaid till the date of payment.

Maharashtra State Electricity Board (MSEB) collected electricity duty aggregating Rs 704.35 crore during the period from April 2005 to March 2006 from the consumers but had not remitted the amounts to Government account. Government, by notifications dated 24 February 2006 and 31 March 2006, adjusted electricity duty of Rs 302.94 crore and Rs 372.97 crore respectively due from MSEB against the subsidy payable by Government to the board. Report on recovery of the balance amount of Rs 28.44 crore had not been received. Further, interest amounting to Rs 73.15 crore was not levied and demanded by the Chief Engineer (Electrical).

After this was pointed out in May 2006 the Chief Engineer (Electrical) stated in September 2006 that interest was recoverable from MSEB. Further action taken was awaited (December 2006).

The matter was reported to Government in May 2006; their reply had not been received (December 2006).