

CHAPTER V : Other Tax Receipts

5.1 Results of audit

Test check of records of departmental offices conducted during 2003-2004 revealed short realisation or loss of revenue amounting to Rs 626.39 crore in 5,146 cases as detailed below:

Sl. No.	Nature of receipt	No. of cases	Amount (in crore of rupees)
1.	Entertainments Duty	1,085	1.44
2.	Review on Levy and collection of entertainments duty	1	5.30
3.	State Education Cess and Employment Guarantee Cess	261	30.69
4.	Tax on Buildings (with larger residential premises)	30	7.16
5.	Repair and Reconstruction Cess	242	1.10
6.	Profession Tax	2,109	0.53
7.	Electricity Duty	121	571.58
8.	State Excise	1,297	8.59
Total		5,146	626.39

During the course of the year 2003-2004, the departments concerned accepted under-assessments *etc.* in 3,185 cases involving Rs 575.53 crore, of which 408 cases involving Rs 573.44 crore related to 2003-2004 and the rest in earlier years. The departments recovered Rs 1.93 crore.

A review on **Levy and collection of entertainments duty** with financial effect of Rs 5.30 crore and few illustrative cases having financial effect of Rs 688.15 crore are given in the following paragraphs:

SECTION A ENTERTAINMENTS DUTY

5.2 Review on levy and collection of entertainments duty

5.2.1 Highlights

There was wide variation in the number of cable connections disclosed by the operators and that estimated to be serviced as per census figures during the period 1998-1999 to 2002-2003.

(Paragraph 5.2.7)

Non-levy of surcharge on payment for admission to three water parks in Mumbai and Thane Districts resulted in non-recovery of surcharge of Rs 1.15 crore for periods between April 2000 and March 2003.

(Paragraph 5.2.8)

Failure to withdraw exemption to 14 films for non-fulfillment of prescribed conditions resulted in Government forgoing revenue of Rs 1.15 crore during the year 2002-03.

(Paragraph 5.2.9)

Incorrect grant of exemption to adhoc entertainments resulted in non/short recovery of entertainments duty, surcharge and penalty aggregating to Rs 96.09 lakh.

(Paragraph 5.2.10 and 5.2.12)

5.2.2 Introduction

The levy and collection of entertainments duty (ED) is governed by the Bombay Entertainments Duty Act (BED Act), 1923 and the Rules made thereunder. As per the provisions of the Act and the Rules made thereunder, duty at prescribed rates is levied and paid to the State Government on all payments for admission to any entertainment¹.

The BED Act empowers the Government to exempt any entertainment from ED by general or special order. The Commissioners of Police (upto January 2001) or the District Collectors, as the case may be, grant exemption to those entertainments which are organized for philanthropic or charitable purposes, educational or partly for educational and partly for scientific purposes. The power to grant exemption by general or special order to any entertainment or class of entertainments from liability to ED is exercised by the Revenue & Forests Department (R&FD) (Social Welfare, Cultural Affairs, Sports and Tourism Department upto January 2001).

¹ An entertainment includes any exhibition, performance, amusement, game or sport to which people are admitted on payment.

5.2.3 Organisational set-up

The implementation of the Act involves two aspects namely, licensing and collection of duty. In Aurangabad, Mumbai, Nagpur, Nashik and Pune the Commissioner of Police is the licensing authority and the District Collector (DC) is responsible for collection of duty. In other districts, the functions of licensing and collection of duty are carried out by the DC. At Taluka level, the Taluka Magistrate is declared as prescribed officer and he is responsible for issuing licences for touring talkies. The DCs are assisted by Resident Deputy Collectors (RDC), Entertainment Duty Officers and Entertainment Duty Inspectors (EDI) for recovery of tax.

5.2.4 Audit objectives

The review was conducted to ascertain -

- the adequacy and effectiveness of the system and procedure for conducting extensive and organised survey to detect unauthorised or illegal performance of any entertainment.
- whether entertainments duty and surcharge (SC), wherever applicable, had been correctly levied and collected on all payments for admission to any entertainment.
- whether internal control and monitoring system existed at Government and division level.

5.2.5 Scope of audit

With a view to examine whether ED was correctly levied and collected, records of the R&FD, Mantralaya, Mumbai, two Dy. Commissioner (ED) offices² out of six and nine RDC offices³ out of 35 for the period 1998-99 to 2002-03 were test checked between December 2003 and March 2004. Records of films exempted from duty by the R&FD during 2002-03 were also examined. Results of test check of records in these offices are detailed in the following paragraphs.

5.2.6 Trend of revenue

The budget estimates and actuals under the Head of Account 'ED' for the years 1998-99 to 2002-03 were as follows:

(Amount in crore of rupees)				
Year	Budget estimates	Actuals	Increase/Decrease	Percentage of variation (Col 4 to Col 2)
1	2	3	4	5
1998-1999	140.10	160.79	(+) 20.69	15
1999-2000	163.10	185.92	(+) 22.82	14
2000-2001	176.10	200.92	(+) 24.82	14
2001-2002	210.10	247.15	(+) 37.05	18
2002-2003	233.31	279.15	(+) 45.84	20

² Konkan and Pune Divisions

³ Ahmednagar, Aurangabad, Jalna, Kolhapur, Mumbai City, Mumbai Suburban, Pune, Thane and Yeotmal (Including units covered in local audit during 2003-04)

The Department attributed the increase in revenue to upward revision in the rate of ED payable by cable operators and inclusion of certain entertainments under the purview of the Act.

5.2.7 Absence of survey of cable connections to detect evasion of tax

Mention was made in paragraph 5.2.10 of the Report of the Comptroller and Auditor General of India (Revenue Receipts) for the year ended 31 March 1998 regarding the absence of a periodical, comprehensive and organised survey to check evasion of duty by cable operators and the need to evolve some more practical alternative for computing duty.

The R&FD vide circular dated 12 May 1998 had directed that a special survey campaign be undertaken under the supervision of the Additional Collector of the District for a period of two months commencing from July 1998. The purpose of the campaign was to verify the correctness of the connections declared by the cable operators and to detect the connections not declared. Further, the DC was to review every 15 days the progress of the survey and report to the Government through the Divisional Commissioner. Except for districts in Pune Division wherein a survey was conducted during the period 21 May 2001 to 30 June 2001 in none of the other districts covered in audit any survey was undertaken. Even in Pune, the increase in connections was not commensurate to the population as detailed in the following para. Thus a satisfactory system has not been evolved yet.

Test check by audit in eight districts revealed that the number of cable connections serviced by the cable operators during various periods between 1998-99 and 2002-03 varied between 0.20 lakh and 3.74 lakh as detailed in the following table. However, as per the population of these districts based on the census figures for 1991 and 2001, considering each household as consisting of five members and also assuming that 50 *per cent* of the households are situated in areas having no cable connectivity (error/leverage margin), there appears to be wide variation in the number of connections disclosed by the cable operators and that being serviced. Failure of Government to conduct extensive survey of cable connections resulted in non-detection of connections and consequential loss of revenue. The revenue potential for the periods mentioned on the shortfall in connections estimated worked out to Rs 169.87 crore. If the statistics for the whole State were computed, the revenue involved would be substantial.

(Amount in crore of rupees)

Sl. No.	Name of the District	Upset price Revenue potential Rs.	Year	No. of connections estimated	No. of connections as per Govt./ Deptt.	Shortfall in connections (5 - 6)	Rate of ED per connection per month	Amount Rs.
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1.	Mumbai (city)	<u>19.57</u> 11.98	1998-1999*	3,17,489	88,638	2,28,851	15	3.78
			1999-2000	3,17,489	1,07,771	2,09,718	15	3.77
			2000-2001	3,17,489	1,21,734	1,95,755	30	7.05
			2001-2002	3,32,684	1,39,211	1,93,473	30	6.96
			2002-2003	3,32,684	1,51,012	1,81,672	30	6.54
								28.10
2.	Mumbai (Suburban)	<u>28.23</u> 30.92	1998-1999*	6,75,100	1,71,545	5,03,555	15	8.31
			1999-2000	6,75,100	1,95,465	4,79,635	15	8.63
			2000-2001	6,75,100	2,24,147	4,50,953	30	16.23
			2001-2002	8,58,756	2,86,322	5,72,434	30	20.61
			2002-2003	8,58,756	3,08,523	5,50,233	30	19.81
								73.59
3.	Pune	<u>11.56</u> 8.67	1998-1999*	5,53,253	19,837	5,33,416	5	2.93
			1999-2000	5,53,253	68,109	4,85,144	5	2.91
			2000-2001	5,53,253	1,56,358	3,96,895	10	4.76
			2001-2002	7,22,422	2,40,754	4,81,668	10	5.78
			2002-2003	7,22,422	2,40,754	4,81,668	10	5.78
								22.16
4.	Thane	<u>22.22</u> 9.75	1998-1999*	5,24,912	1,91,911	3,33,001	5	1.83
			1999-2000	5,24,912	2,24,697	3,00,215	5	1.80
			2000-2001	5,24,912	3,50,377	1,74,535	10	2.09
			2001-2002	8,12,883	3,65,988	4,46,895	10	5.36
			2002-2003	8,12,883	3,74,074	4,38,809	10	5.27
								16.35
5.	Nashik	<u>3.73</u> 5.99	2001-2002	4,98,792	74,952	4,23,840	10	5.09
			2002-2003	4,98,792	85,793	4,12,999	10	4.95
								10.04
6.	Nagpur	<u>7.32</u> 4.86	2001-2002	4,05,144	65,265	3,39,879	10	4.08
			2002-2003	4,05,144	65,423	3,39,721	10	4.08
								8.16
7.	Aurangabad	<u>3.52</u> 3.50	2001-2002	2,92,055	43,550	2,48,505	10	2.98
			2002-2003	2,92,055	43,550	2,48,505	10	2.98
								5.96
8.	Amravati	<u>1.16</u> 3.13	2001-2002	2,60,606	32,903	2,27,703	10	2.73
			2002-2003	2,60,606	29,232	2,31,374	10	2.78
								5.51
Total								169.87

From the table it would be seen that the revenue potential for the year 2002-03 in five out of the eight districts determined by audit was lower than the upset price fixed by Government when calling (July 2003) for tenders for recovery of ED from cable operators by auction.

* Rates effective from 1 May 1998.

After this was pointed out, Government reiterated (March 2004) that due to paucity of staff and heavy workload on the EDI, extensive survey of cable connections was not possible. Also, Government had not succeeded in its move to recover duty on cable connections through auction. The reply of Government is not tenable as Government was aware of the paucity of staff when issuing the circular in May 1998 and had therefore specifically directed that other staff be diverted to the ED branch for a temporary period for conducting the survey. The inaction on the part of Government was in disregard of the revenue potential involved.

5.2.8 *Non-levy of surcharge on water parks*

Under the provisions of the BED Act, ED on water park was exempted for the first three years from the date of its commencement. For the subsequent two years, ED at the rate of five *per cent* and from the sixth year onwards at the rate of 10 *per cent* on the admission fees was to be recovered. Further, SC at the rate of five *per cent* where payment for admission does not exceed one rupee and in all other cases at the rate of 10 *per cent* in respect of entertainments other than an amusement park is leviable.

Test check of records of Mumbai Suburban and Thane Districts revealed that though ED was recovered from three water parks⁴, no SC was levied and collected. This resulted in non-recovery of Rs 1.15 crore for various periods between April 2000 and March 2003.

After this was pointed out in March 2004, Government stated in October 2004 that orders had been issued in July 2004 for recovery of SC. Further report has not been received (February 2005).

5.2.9 *Incorrect exemption to films*

Under the provisions of the BED Act, Government may by general or special order, exempt any entertainment or class of entertainments from liability to pay ED. The rules framed under the Act require that exemption be granted to films which have been awarded the Presidents Gold Medal or on the recommendations made by an Advisory Committee appointed by the State Government, provided, it considers that the film fulfills criteria of educational, cultural or social purpose of a high order.

The producer 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 as most responsible for the educational, cultural or social contribution of such film as nominated by the Advisory Committee.

The producer is also required to submit a weekly return to the DCs specifying particulars of payments made to the nominated person(s) with a copy thereof to Government. Further, any exemption from liability to pay ED granted for exhibition of any such film should be withdrawn, if the producer fails to comply with the undertaking.

Mention was made in paragraphs 5.2.9, 5.2 and 5.6 of the Report of the Comptroller and Auditor General of India for the years ended 31 March 1998,

⁴ Suraj Water Park, Tikuji-Ni-Wadi and Water Kingdom

31 March 1999 and 31 March 2002 of Government of Maharashtra (Revenue Receipts) respectively of the loss of revenue aggregating Rs 38.99 crore during the periods between 1992-1993 and 2001-2002 due to films being exhibited as tax free despite non-fulfillment of the prescribed conditions.

In reply to the audit observation, the Cultural Affairs Department stated (November 1998) that the provisions in the rule were outdated and defective and that action would be taken to amend the rule in consultation with the R&FD. However, Government had not taken any remedial measures in this direction (March 2004).

A scrutiny of the records of the R&FD granting exemption from ED during the year 2002-03 to 14 films revealed that:

- in none of the cases the committee had nominated any person or persons responsible for the educational, cultural or social value of the film, and
- weekly returns as prescribed were not submitted by the producer to the DCs with copy thereof to the Government.

As the essential conditions subject to which exemption from payment of ED granted were not fulfilled, the exemption orders declaring the films as tax free were required to be withdrawn under the rules. However, such action was not taken by the Government. Consequent revenue forgone on account of exemption from ED granted to the 14 films⁵ in six divisions (35 districts) as furnished by the DCs amounted to Rs 1.15 crore as detailed in the following table:

Sl. No.	Division	ED forgone (in lakh of rupees)
1.	Nagpur	1.79
2.	Pune	8.15
3.	Nashik	4.25
4.	Konkan	96.79
5.	Aurangabad	0.91
6.	Amravati	2.92
TOTAL		114.81

Government stated in October 2004 that action had been initiated for amending the rules.

⁵ Dilwale Dulhaniya Le Jayenge, Hum Aapke Hain Kaun, Jo Jeeta Wahi Sikandar, Qayamat Se Qayamat Tak, Dil To Pagal Hai, Maya Memsab, Raja Hindustani, Mission Kashmir, Darr, Ghayal, Lagan, Parinda, Makadi and Chandani.

5.2.10 Non/short levy of duty on new year eve programme

Under the provisions of the Act, where the payment for admission to an entertainment was made by means of a lump sum amount paid as a subscription or contribution, ED was to be levied on 50 per cent of such lump sum at the specified rates. In addition, SC and penalty were leviable as per provisions in the Act.

Scrutiny of records of four districts⁶ revealed that in respect of programmes for which no permission was sought or where there was violation of the conditions for exemption, action to levy or recover ED alongwith SC and penalty amounting to Rs 76.90 lakh was not taken. A few illustrative cases are detailed below:

(Amount in lakh of rupees)

Sl. No.	Name of office	No. of cases	Nature of event	Nature of objection	Amount of ED, SC and penalty
1.	Deputy Collector, Mumbai Suburban District	2	i) Millennium celebration (December 1999)	Permission was sought for Indian Cultural Dances but Pop and Rock music was performed. No follow up action was taken to levy and recover ED, SC and penalty on failure of the organizers to respond to the show cause notice issued in February 2000.	31.74
			ii) New Year Eve (31 December 2001)	Permission was not obtained for conducting the show. Demand for Rs 26.70 lakh was raised in January 2002 and reference to Government made in July 2002 seeking clarification regarding liability of the organizers to pay ED was not followed up.	26.76
2.	Resident Deputy Collector, Pune	20	New Year Eve (31 December 2000 and 2001)	As against Rs 17.65 lakh only Rs 2.90 lakh was recovered. No follow up action was taken for recovery of balance amount.	14.75
Total:					73.25

After this was pointed out, it was stated (March 2004) that amount of ED, SC and penalty will be recovered from the organizers of the programmes. Further report has not been received (February 2005).

5.2.11 Non/short realisation of ED from cable/dish antenna operators

Under the provisions of the BED Act with effect from 1 May 1998, ED is payable by cable and dish antenna operators at the flat rate of Rs 15, Rs 10 or Rs 5 (increased to Rs 30, Rs 20 or Rs 10 with effect from 1 April 2000) per television set per month depending on whether the area is a municipal corporation, A and B class municipality or other area. A register is maintained in each office to note the connections serviced by each cable operator, ED recoverable and payments made there against.

⁶ Mumbai City, Mumbai Suburban, Pune and Thane.

A test check of records in 20 offices⁷ in 11 districts⁸ revealed that in respect of 394 cable and dish antenna operators, ED amounting to Rs 53.14 lakh was neither paid by the operators nor any demands were raised by the Department for various periods between May 1998 and March 2003. Further, in respect of 98 cable operators, duty of Rs 35.04 lakh was short recovered for the periods between April 1999 and March 2002. The under-assessment was due to failure to review the register containing data of connections serviced by each cable operator, ED recoverable and payments made there against.

After this was pointed out in audit the Department recovered ED of Rs 46.09 lakh from 314 cable/dish antenna operators. Report on recovery of the balance amount has not been received (February 2005).

5.2.12 Incorrect grant of exemption

Under the provisions of the BED Act, entertainments are exempt from levy of duty provided the Commissioner of Police (upto January 2001), RDC/Dist. Magistrate (as applicable) was satisfied that all the receipts of an entertainment are devoted to charitable purposes or the entertainment is of a wholly educational character or the entertainment is provided partly for educational and partly for scientific purposes by a society, institution or committee not conducted or established for profit. The organisers are required to render full and true account of the whole of the takings within one month or within such period as allowed by the prescribed officer after the date of entertainment.

Failure to comply with the conditions would entail forfeiture of the deposit amount besides legal action under the provisions of the Act and rules framed thereunder, in addition to payment of duty that would have been levied had exemption of ED not been granted. As exemption allowed has an impact on the revenue, it is essential to ensure that the purpose for which exemption is granted are clearly mentioned and fulfillment of the conditions followed up.

In Mumbai City, scrutiny of records relating to exemption from ED given by Government to Mehli Mehta Music Foundation for shows held in March 2003 revealed that neither accounts of the event nor certificate of utilisation of the funds were submitted by the organisation (March 2004). However, ED of Rs 19.19 lakh for non-fulfillment of the conditions was not levied and demanded.

After this was pointed out in January 2004, the Dy. Collector, Mumbai City stated that notice for recovery of the amount would be sent to the organisation. Further report has not been received (February 2005).

⁷ RDC: Amravati, Ahmednagar, Aurangabad, Jalgaon, Latur, Mumbai City, Pune Zone B, G & H, Thane, and Yeotmal.
Tahsildars: Andheri Zone I & III, Borivali Zone V, Kurla Zone VIII, IX, X, Miraj, Umardhed and Ulhasnagar.

⁸ Ahmednagar, Amravati, Aurangabad, Jalgaon, Latur, Mumbai City, Mumbai Suburban, Pune, Sangli, Thane, and Yeotmal.

5.2.13 Non-recovery of ED despite withdrawal of exemption

As per resolutions dated 1 August 1998 and 25 February 2003 permanent exemption granted to four hindi films⁹ was withdrawn by Government.

A test check of records in 17 offices¹⁰ in seven districts¹¹ revealed that ED amounting to Rs 8.04 lakh was neither paid by the proprietors of theatres nor were demands raised by the Department for exhibition of these films between July 2002 and March 2003.

After this was pointed out between September 2003 and January 2004, the Department intimated recovery of Rs 0.50 lakh. Report on recovery of the balance amount has not been received (February 2005).

5.2.14 Non-levy of penal interest on delayed payment of ED

Under the provisions of the BED Act, where a proprietor fails to pay the amount of ED within the prescribed period, he shall be liable to pay in addition to duty, penal interest at 18 *per cent* per annum for the first 30 days and 24 *per cent* per annum thereafter on such amount, from the date such amount becomes payable till the amount and interest is fully paid. The payment of ED is monitored with the help of the register maintained in each office.

Scrutiny of records in four offices¹² between March 2001 and December 2002 revealed that in respect of 15 theatres and five cable operators, penal interest amounting to Rs 14.40 lakh was not levied and demanded for delays ranging between one to 26 months in payment of ED for periods between 1998-1999 and 2001-2002. The non-levy of penal interest was due to failure to review the payments made by the theatre owners and cable operators.

After this was pointed out, the Department recovered Rs 14.22 lakh in 18 cases between October 2002 and November 2004. Report of action taken in the remaining cases has not been received (February 2005).

5.2.15 Non-realisation of ED from proprietors of dance bars

Under the provisions of the Act, ED is payable in advance by the tenth day of every calendar month by the proprietor of every dance bar in respect of every dance performance at the rate of Rs 10,000 per month within the limits of Municipal Corporation of Brihan Mumbai and Rs 5,000 per month outside the limits of Municipal Corporation of Brihan Mumbai. A register is being maintained in each office to note the ED recoverable from the proprietors of dance bars and payments made there against.

A test check of records in three offices¹³ in Mumbai Suburban and Thane Districts between May 2002 and October 2002 revealed that in respect of 19 dance bars, ED amounting to Rs 6.75 lakh was neither paid by the proprietors

⁹ Dil To Pagal Hai, Dilwale Dulhaniya Le Jayenge, Darr and Hum Aapke Hain Kaun

¹⁰ RDC: Jalna, Kolhapur, Thane, Aurangabad and Pune Zone K and D1-D2.

Tahsildars: Dy. Collector Mumbai City Zone VI, VIII, XI, Borivali Zone V, VI, VII, VII-A, Kurla Zone IX, X, XII and Thane.

¹¹ Jalna, Mumbai City, Mumbai Suburban, Kolhapur, Pune, Thane and Aurangabad.

¹² RDC Aurangabad, Nashik and Solapur

Tahsildar Borivali VII A.

¹³ Tahsildar Kurla Zone VIII & X., R.D.C. Thane

nor were any demands raised by the Department for various periods between April 2001 and March 2002. The non-realisation of ED was due to failure to review the register.

After this was pointed out, the Department recovered between June 2002 and March 2003, ED of Rs 3.15 lakh from the proprietors of seven dance bars. Report on recovery of the balance amount has not been received (February 2005).

5.2.16 Non-forfeiture of security deposit

Under the Bombay Entertainments Duty Rules, 1958, every organizer of an entertainment shall furnish such security to the prescribed officer as that officer may require. If an organizer fails to submit return and accounts or to pay the ED due within 10 days after the date of entertainment or such extended period not exceeding one month as the prescribed officer may allow, the prescribed officer may after giving the organiser a weeks notice, forfeit the security deposit to the State Government.

In Mumbai (City), Mumbai (Suburban) and Pune Districts, security deposits amounting to Rs 86.88 lakh were collected during the period between April 1998 and March 2003 from the organisers of 79 performances such as new year eve programme, fun fair, music concert *etc.* However, despite failure on the part of the organizers to submit return and accounts or pay duty for periods ranging from one year to five years after the date of entertainment, the deposits were not forfeited and remitted to Government account but were lying in the personal ledger account/cash chest.

Further, in Mumbai City reconciliation of the balances of security deposit was not carried out with the balances as per RBI records.

After this was pointed out, the Department stated in March 2004 that action would be initiated and balance reconciled. Report of action taken has not been received (February 2005).

5.2.17 Non-furnishing of security deposit by the proprietors of dance bars.

As per Government circular dated 31 January 2001, security deposit (SD) of Rs one lakh from the proprietor of a dance bar in the jurisdiction of Greater Mumbai Municipal Corporation (GMMC) and of Rs 50,000 in case of a dance bar outside the jurisdiction of GMMC in the form of bank guarantee/national saving certificates was required to be obtained.

A test check of records in Konkan Division revealed that out of 406 dance bars functioning in the division, SD of Rs 2.50 lakh (Rs 1 lakh each in two cases and Rs 0.50 lakh in one case of Raigad) was obtained from only three dance bars. No SD was obtained from the remaining 403 dance bars.

After this was pointed out in January 2004, the Department stated that permission to dance bars was granted by the Collector under clause 4(2) (b) of the BED Act, subject to the proprietor of the dance bar obtaining performance licence from the police authority. Most of the proprietors were not interested in obtaining performance licence, hence, permission under clause 4(2)(b) was not granted which resulted in non-furnishing of SD by the proprietors of dance

bars. The reply is not tenable as non-adherence of the prescribed condition led to unauthorised functioning of the dance bars.

5.2.18 Working of vigilance squad and internal control

For proper implementation of the Act, a vigilance squad headed by a Assistant Commissioner (Entertainments) assisted by two EDIs is functioning in each Divisional Commissionerate.

A scrutiny of records of Konkan and Pune Divisions in January 2004 and March 2004 revealed that compliance reports to 327 out of the 973 inspection notes in Konkan Division and 53 out of 705 inspection notes in Pune Division pertaining to the period 1997-98 to 2002-03, forwarded to the concerned Collectors for necessary action were awaited (March 2004). These included non-recovery of Rs 23.86 lakh in four cases in Konkan Division and Rs 14.16 lakh in 35 cases in Pune Division forwarded to the Collectors between July 1998 and March 2003. This indicated absence of an effective internal control mechanism to follow up and recover the dues.

5.2.19 Conclusions/recommendations

Audit check revealed that in the absence of organised survey, the Department had no control mechanism to detect illegal or unauthorised performance of entertainments.

Government may consider the following steps to enhance revenue and improve collection:

- conduct extensive and organised survey, if necessary, in co-ordination with other agencies carrying out surveys to detect illegal or unauthorised performance of entertainments. For this purpose Government may create posts of EDIs.
- maintain complete data base of places of entertainments/cable operators at Divisional level to monitor and exercise overall control over assessment and collection of duty.
- reinforce the existing vigilance squad.

The above points were reported to Government in May 2004; Government accepted (September 2004) the recommendations proposed by audit.

SECTION B STATE EDUCATION CESS AND EMPLOYMENT GUARANTEE CESS

5.3 Short/non-remittance of cess

Under the provisions of the Maharashtra Education and Employment Guarantee (Cess) Act, 1962, and the 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 the payment to the State Government of any sum under the Act, the State Government may after holding such enquiry, fix a period for the payment of such sum. The Act also empowers the 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 to such bank/treasury from all liabilities to the MC.

It was noticed that five MCs, had not remitted revenue amounting to Rs 22.79 crore relating to State Education Cess (SEC) of Rs 9.29 crore and Employment Guarantee Cess (EGC) of Rs 13.50 crore, collected during various periods falling between 1998-99 and 2002-03 as detailed in the following table:

(Amount in crore of rupees)

Sl. No.	Name of Corporation	Period of collection	Amount of collection		
			EC	EGC	Total
1.	Amravati	1998-99 to 2001-02	0.65	0.02	0.67
2.	Kalyan-Dombivali	March 2001	0.29	0.02	0.31
3.	Mumbai				
	(i) (City)	2002-03	--	4.36	4.36
	(ii) (Eastern Suburb)	2002-03	1.83	2.28	4.11
	(iii) (Western Suburb)	2002-03	3.76	6.49	10.25
4.	Nagpur	March 2003	2.53	0.30	2.83
5.	Solapur	March 2003	0.23	0.03	0.26
Total			9.29	13.50	22.79

After this was pointed out, an amount of Rs 2.49 crore (EC Rs 2.42 crore and EGC Rs 0.07 crore) was remitted/recovered by adjustment against grant due to four MCs¹⁴ between May 2001 and December 2003. Report of action taken for the balance amount has not been received (February 2005).

The matter was reported to Government in May 2004, their reply has not been received (February 2005).

**SECTION C
TAX ON BUILDINGS
(With Larger Residential Premises)**

5.4 Non-levy of tax on buildings with larger residential premises

Under the provisions of the Maharashtra Tax on Buildings (with Larger Residential Premises) (LRP) (Re-enacted) Act, 1979 (MTOB, Act), tax is leviable (with effect from 1 April 1974) on all buildings in corporation area containing residential premises with floor area exceeding 125 square metres and whose rateable value exceeds one thousand five hundred rupees. The rate of tax is 10 *per cent* of the annual rateable value of the residential premises and is collected in the same manner in which property tax is collected by the MCs. The Municipal Commissioner is required to furnish within three months

¹⁴ Amravati, Kalyan-Dombivali, Mumbai, Solapur.

from the date of expiry of every year to the State Government a return showing the aggregate amount of tax assessed by the assessing authority in respect of that year and the aggregate amount of tax and penalty collected in that year.

It was noticed from assessment records in 10¹⁵ municipal wards of Brihan Mumbai MC that tax amounting to Rs 88 lakh in respect of 3,133 properties for the year 1999-2000, 2000-2001 and 2001-2002 was not demanded resulting in non-recovery of tax of Rs 88 lakh. This indicated absence of monitoring at Mantralaya level.

After this was pointed out, the MC raised demands for the years 1999-2000, 2000-2001 and 2001-2002 in July 2001, July 2002 and August 2002 respectively and recovered Rs 21 lakh in 906 cases for the year 1999-2000, Rs 30 lakh in 1,023 cases for the year 2000-01 and Rs 2 lakh in 103 cases for the year 2001-02 between July 2001 and October 2003. Report on recovery of the balance amount has not been received.

The matter was reported to Government in May 2004; their reply has not been received (February 2005).

5.5 Non-remittance of tax

Under the provisions of the MTOB (LRP) Act, tax recovered by a 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 under the Act, the State Government may after holding such enquiry, fix a period for payment of such sum. The Act also empowers the 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 Government shall be sufficient discharge to such bank/treasury from all liabilities to the MC.

It was noticed in audit that four MCs¹⁶ had not remitted revenue amounting to Rs 6.35 crore collected on account of tax on buildings (with larger residential premises) during the years between 1999-2000 and 2002-2003. In none of the cases, the bank/treasury was directed to pay the sum to the State Government. Further the non-remittance of tax by the MC was not monitored at Mantralaya level.

After this was pointed out, the Amravati MC remitted the collection of Rs 0.01 crore in November 2002. The Pune MC and Solapur MC stated in August 2003 and December 2003 that the amount would be credited to Government account. Further report had not been received (February 2005).

The matter was reported to Government in March 2004; their reply has not been received (February 2005).

¹⁵ Andheri, Bandra, Chembur, Dahisar, Ghatkopar, Kandivali, Kurla, Mulund, Parel and Santacruz.

¹⁶ Amravati, Mumbai, Pune and Solapur.

SECTION D REPAIR CESS

5.6 Short levy of repair cess

Under the provisions of the Maharashtra Housing and Area Development (MHAD) Act, 1976, repair and reconstruction cess is leviable at slab rates as a percentage of the rateable value of the buildings in the city of Mumbai as prescribed in the second schedule to the Act. When a building is structurally repaired, the cess is leviable at enhanced rates depending upon the slab of expenditure incurred by the Board. The permissible limit towards cost of repairs to be borne by the Board was enhanced from Rs 750 to Rs 1,000 per square metre with effect from May 1998 but the rate of cess leviable was not prescribed.

In Mumbai, it was noticed in the assessments of 123 properties, in F (South) and B wards that the buildings were repaired by incurring expenditure in the slab of Rs 750 to Rs 1,000 per square metre and the rate of cess was to be enhanced on various dates between April 1999 and March 2002. Despite the rate of cess for repairs of expenditure of Rs 750 per square metre being prescribed, cess was continued to be levied at the rate applicable to the lower slab of Rs 300 to Rs 500 per square metre. This resulted in short levy of cess of a minimum of Rs 41.19 lakh for the periods between 1999-2000 and 2001-2002 at the rate applicable for the permissible expenditure limit of Rs 750 per square metre.

After this was pointed out, the Dy. Assessor & Collector, Brihan Mumbai MC issued instructions in February 2004 to the Asstt. Assessors and Collectors of the wards concerned to raise additional demand for the amounts short recovered. Report on action taken and recovery effected has not been received (February 2005).

The matter was reported to Government in April 2004; their reply has not been received (February 2005).

5.7 Non-remittance of repair cess

Under the provisions of the MHAD Act, 1976 (effective from 5 December 1977) repair and reconstruction cess recovered by the Brihan Mumbai MC 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 there from five *per cent* of the amount of cess recovered towards cost of collection. The Act empowers the Government to direct the bank or treasury in which the earnings of the MC are deposited to pay such sums to the State Government. Any such payment made in pursuance of the orders of Government shall be sufficient discharge to such bank/treasury from all liabilities to the MC.

It was noticed that the Brihan Mumbai MC, had not remitted repair cess amounting to Rs 26.48 crore collected by it during the period between April 2003 and December 2003 to Government Account (March 2004). However, no action was taken to direct the bank/treasury for recovery of the dues.

The matter was reported to Government in April 2004; their reply has not been received (February 2005).

SECTION E PROFESSION TAX

5.8 Non-realisation 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 certificate of enrolment from the Profession Tax Officer and pay tax annually at the rates prescribed in the Schedule to the Act.

A test check of records in 10 Profession Tax Offices¹⁷ revealed that profession tax amounting to Rs 13.14 lakh in respect of 567 persons enrolled under various entries covered under the schedule to the Act for various periods between 1998-99 and 2001-02 was neither paid by them nor demanded by the Department.

After this was pointed out between June 1999 and December 2002, the Department recovered Rs 2.68 lakh in 125 cases (between June 1999 and July 2004). Report of recovery of the balance amount has not been received (February 2005).

The matter was reported to Government in April 2004; their reply has not been received (February 2005).

SECTION F ELECTRICITY DUTY

5.9 Incorrect retention of electricity duty

Under the provisions of the Bombay Electricity Duty Act, 1958, every licensee who supplies electricity to the consumers is required to collect the electricity duty from the consumers together with his own charges and pay it to the State Government by the prescribed date. Further, if the duty collected is not deposited by the prescribed date, interest at the rate of 18 *per cent* per annum for the first three months and at the rate of 24 *per cent* per annum thereafter is chargeable on the amount of duty remaining unpaid till the date of payment.

The Maharashtra State Electricity Board (MSEB) had collected electricity duty aggregating Rs 570.61 crore for the period from April 2003 to February 2004 from the consumers but had not remitted the amounts to Government Account. The interest payable on the unpaid duty upto end of March 2004 amounted to Rs 60.49 crore.

¹⁷ Ahmednagar, Barshi, Beed, Kalyan, Khamgaon, Kolhapur, Malegaon, Mumbai, Osmanabad and Parbhani.

After this was pointed out, the Department stated that despite reminders in November 2003, February 2004 and March 2004, MSEB had not submitted the quarterly returns and challans evidencing payment of duty.

Government in reply to an audit enquiry in May 2004 stated that electricity duty payable by MSEB during the year 2003-04 had not been recovered by book adjustment against the grant payable to them.

The matter was reported to Government in May 2004; their reply has not been received (February 2005).