

CHAPTER IV
TAXES ON VEHICLES

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4.1 Tax administration

The receipts from the Transport Department are regulated under the provisions of the Motor Vehicles Act, 1988, the Central Motor Vehicles Rules, 1989, the Tamil Nadu Motor Vehicles Rules, 1989 and the Tamil Nadu Motor Vehicles Taxation Act and Rules, 1974. The Department is under the administrative control of the Transport Commissioner of the State.

4.2 Results of Audit

Test check of records of departmental offices conducted during the period from April 2016 to March 2017 revealed under assessment of tax, fees and other observations amounting to ₹ 7.30 crore in 140 cases, which broadly fall under the following categories:

Table 4.1

			(₹ in crore)
Sl. No.	Category	No. of cases	Amount
1	Non/short collection of tax	98	6.82
2	Non/short collection of penalty	10	0.30
3	Others	32	0.18
	Total	140	7.30

During the course of the year 2016-17, the department accepted under assessments and other deficiencies in 67 cases and recovered ₹ 97.66 lakh, out of which, ₹ 19.21 lakh involved in 18 cases was pointed out during the year and the rest in earlier years.

Few illustrative cases involving ₹ 80.22 lakh are discussed in the following paragraphs.

4.3 Audit Observations

4.3.1 Short realisation of tax due to misclassification of Private Service Vehicles as Educational Institution Vehicles

As per Section 2 (11) of the Motor Vehicles Act, 1988 (MV Act), “educational institution bus” means an omnibus, which is owned by a college, school or other educational institution and used solely for the purpose of transporting students or staff of the educational institution in connection with any of its activities. As per item 8(a) of First Schedule to Tamil Nadu Motor Vehicles Taxation Act, 1974 (TNMVT Act), the rate of tax in respect of vehicles owned by schools is ₹ 50 per person per quarter and in respect of vehicles owned by colleges and other educational institutions, the rate of tax is ₹ 100 per person per quarter.

The Honourable Madras High Court held in January 2008 that the educational institution must own the vehicle and vehicles held in the name of Trust cannot be treated as ‘educational institution vehicles’.

On a scrutiny of permit registers, we observed that in five⁵⁸ Regional Transport Offices (RTOs) 30 vehicles owned by Trusts/Societies were classified as educational institution vehicles (EIVs) and permits were accordingly issued. The vehicles were classifiable as “Private Service Vehicles” and attract tax of ₹ 500 per seat per quarter. The incorrect issue of permits and collection of tax at the rates applicable to EIVs resulted in short realisation of revenue of ₹ 20.41 lakh pertaining to the year 2015-16.

The matter was referred to the Government in July / August 2017. Government accepted (December 2017) the audit observation pertaining to Chennai (West) and stated that ₹ 5.74 lakh was collected in respect of nine vehicles. The Government further stated that field officers concerned were instructed to collect the difference of tax in respect of remaining vehicles. Reply in respect of the remaining cases was awaited (January 2018).

4.3.2 Non-collection of tax in respect of Construction Equipment Vehicles

As per Section 3 of the TNMVT Act, tax shall be levied on every motor vehicle used or kept for use in the State of Tamil Nadu at the rate specified for such vehicle in the Schedules to the Act. Clause 6C of the First Schedule to the TNMVT Act specifies levy of tax for Construction Equipment Vehicles at ₹ 10,000 per annum.

On a scrutiny of records (between April 2016 and February 2017) in 26⁵⁹ RTOs followed by further verification of payment of tax in “e-services” of the

⁵⁸ Chennai (West), Chennai (North West), Chengalpet, Marthandam, Redhills and Tenkasi

⁵⁹ Chennai (North-East), Chennai (North-West), Chennai (South-West), Chennai (South), Chennai (West), Coimbatore (Central), Coimbatore (North), Coimbatore (South), Cuddalore, Dharmapuri, Dindigul, Gobichettipalayam, Kanchipuram, Madurai (North), Madurai (South), Marthandam, Meenambakkam, Redhills, Salem (West), Sankari, Sholinganallur, Srirangam, Tenkasi, Theni, Villupuram and Virudhunagar

Department, we noticed that tax was not collected in respect of 1,033 construction equipment vehicles pertaining to the year 2015-16.

The classification of construction equipment vehicles as non-transport vehicles involving payment of tax annually anywhere in the State results in lack of departmental control to ensure due payment of tax by the owners of these vehicles.

Eight⁶⁰ RTOs replied (November 2016 and January 2017) that tax of ₹ 10.40 lakh was collected in respect of 104 vehicles and action was initiated in the remaining cases by issue of notices and communication of the list of vehicles to the Enforcement officials, Unit Offices and Check Posts, besides blacklisting the vehicles in the server to prevent further transaction of the vehicles.

Government stated (January 2018) that it was decided to collect life time tax in respect of construction equipment vehicles, as these categories of vehicles are classified as non-transport vehicle to avoid non-collection of tax in future.

4.3.3 Non-collection of life time tax from owners of old tourist motor cab

As per Section 3 of the TNMVT Act read with Class 5-A of the First Schedule, tax of ₹ 6,500 for five years was payable in respect of tourist motor cab. By an amendment made in April 2012, Seventh Schedule was introduced providing for levy of life time tax in respect of tourist motor cab. The rate of tax in respect of old tourist motor cabs was fixed at 8.5 *per cent* of the cost of vehicle, if the cost of vehicle did not exceed ₹ 10 lakh and at 14.5 *per cent* of the cost of vehicle, if the cost of the vehicle exceeded ₹ 10 lakh. The registered owners of such vehicles were required to pay life time tax at the specified rates at the time of renewal of permit or during the currency of the existing permit.

Our scrutiny (January 2017) of the Permit Register in the office of the RTO, Chennai (Central) along with *VAHAN* data revealed that owners of 18 old tourist motor cabs which were due for renewal during the year 2015-16 had not renewed the same. Since these vehicles were covered by valid permits as of April 2012, the owners of these vehicles were liable to pay life time tax in respect of these vehicles, notwithstanding the non-renewal of the permits thereafter. The Department, however, failed to issue demand notices for recovery of life time tax from the owners of the vehicles. The amount of life time tax due in respect of these eighteen vehicles calculated on the basis of details of cost of vehicles available in the records was ₹ 11.18 lakh.

The matter was referred to the Government in August 2017. Government accepted (December 2017) the audit observation and stated that demand notices were issued to the owner of the vehicles and efforts are being taken to collect life time tax. Further report regarding collection particulars was awaited (January 2018).

⁶⁰ Chennai (West), Coimbatore (Central), Coimbatore (North), Coimbatore (South), Cuddalore, Theni, Villupuram and Virudunagar

4.3.4 Non-realisation of taxes from the owners of maxi cabs and goods vehicles

As per Section 3 of the TNMVT Act, tax shall be levied on every motor vehicle used or kept for use in the State of Tamil Nadu at the rate specified for such vehicle in the Schedules to the Act. As per Section 8 of the TNMVT Act, the tax due under this Act shall be paid within such period, not being less than seven days or more than 45 days from the commencement of the quarter, half-year as may be prescribed. Section 15 of the TNMVT Act provides for payment of penalty, if the tax due in respect of any motor vehicle was not paid within the prescribed period. Rule 3 of the TNMVT Rules provides that so long as a transport vehicle is covered by permit issued by any transport authority, the vehicle shall be deemed to be kept for use in the State. Rule 8 of the TNMVT Rules provides for collection of penalty equal to the amount of quarterly tax where the delay in payment of tax is beyond 45 days after the expiry of the prescribed period. As per Section 15-A of the TNMVT Act, the licensing officer may, at any time, within a period of five years, from the expiry of the period to which the tax relates, issue notice to the owner of the motor vehicle and after making such inquiry as he may consider necessary, direct such owner or other person to pay the whole or any portion of such tax, which has not been paid.

Generation of reports from *VAHAN* database regarding non-payment of taxes followed with further verification (April 2016) in “e-Services” of the Department revealed that in the office of the RTO, Chennai (North-East), the owners of 62 goods vehicles and two maxi cabs did not pay quarterly tax amounting to ₹ 7.90 lakh relating to the year 2015-16. However, no action was initiated by the RTO for recovery of tax from the defaulting vehicle owners. This resulted in non-realisation of tax of ₹ 7.90 lakh. Besides, penalty of ₹ 7.90 lakh for delay in payment of tax was also leviable.

The matter was referred to the Government in August 2017. Government stated (January 2018), that tax was due for only one quarter as the permit was cancelled in the same quarter due to non-payment of tax. The Government further stated that efforts were made for collection of tax, besides blocking the vehicles in the computer to avoid further transaction of the vehicles.

The reply of the Government was not acceptable as verification of the e-Services website of the Transport Department did not indicate cancellation of permits for these vehicles. In respect of seven goods vehicles, quarterly tax for the year 2015-16 was collected based on the audit observation.

4.3.5 Loss of revenue due to Misclassification of “Contract Carriages” as “Private Service Vehicles”

As per Section 2(33) of the MV Act, ‘Private Service Vehicle’ (PSV) means a motor vehicle constructed or adapted to carry more than six persons excluding the driver and ordinarily used by or on behalf of the owner of such vehicle for the purpose of carrying persons for, or in connection with, his trade or business otherwise than for hire or reward. As per Section 2 (30) of the Act *ibid*, ‘owner’

in relation to a motor vehicle, which is the subject of an agreement of lease means the person in possession of the vehicle under that agreement.

Government of Tamil Nadu (GoTN), while clarifying (September 2002) on the issue of PSV permits to vehicles owned by the companies on lease, stipulated that the company should enter into an agreement with the registered owner and take over their vehicle on lease for the company's use. GoTN issued instructions in 2004 that there should be a lease deed evidencing transfer of vehicle and the lessee (in the capacity of "owner" of the vehicle in pursuance of the agreement) shall also have the liability to pay all taxes, fees, penalties, fines, damages, insurance claims and other necessities and requirements arising out of the Motor Vehicles Act and its related rules.

During test check of records in the office of the Regional Transport Officer, Chennai (South), we noticed that permits were issued to five motor vehicles classifying them as PSVs based on the lease agreement entered into between the Company and the original owner of the vehicles. Accordingly, tax of ₹ 500 per seat per quarter applicable to PSV as per class 8 (b) of the First Schedule to the TNMVT Act was collected in respect of these vehicles on the basis of the permits issued.

Scrutiny of the agreement, however, revealed that the identity of the specific vehicle, which was proposed to be given on lease was not mentioned. The liability of payment of tax vested with the original owner of the vehicle, which was in contravention of the instructions of the Government. There was no evidence for the lessee having taken possession of the vehicle. The deed, therefore, did not conform to the stipulations of GoTN for issue of PSV permits to leasehold vehicles and also, the essentials of a lease deed, which should clearly contain specific details of property leased out and the consideration (not being null) for lease, were also not met. The deed also negotiated and agreed on cost of operation, the cost being paid by the lessee to the lessor, who would operate the fleet. This not only confirmed that the vehicles continued to be in possession of the lessor but also that the vehicles were operated as contract carriages, for hire or reward. Thus, issue of PSV permits to these vehicles was not in order. These vehicles should have been treated as contract carriages and tax of ₹ 3,000 per seat per quarter should have been collected as per Part II of Schedule VII of the TNMVT Act.

The incorrect classification resulted in a loss of revenue of ₹ 22.43 lakh for the period 2015-16, since the department had collected only ₹ 500 per seat per quarter applicable for PSV instead of ₹ 3,000 per seat per quarter due for contract carriages.

The Government, to whom the matter was referred (August 2017) stated (November 2017) that the vehicles could not be treated as contract carriages as the agreement was between the companies and the original owners and not like contract carriages, where the agreement was between the end user and the permit holder. The Government further stated that since the vehicles were used only for the purpose for which the permit was issued, these could not be classified as contract carriages. The Government, however, stated that revised lease agreement format is now being insisted comprising the vehicle number given under lease and stipulation for payment of all taxes, fees, insurance claim, etc. by the lessee in the capacity of the owner of the vehicle.

The reply was not acceptable as the agreements entered into between the owners and the companies did not involve transfer of ownership of the vehicles to the companies. The conditions mentioned in the agreements were clearly contractual. The end use of the vehicle shall not justify the incorrect classification of the vehicles by the department.