

CHAPTER III - STATE EXCISE

3.1 Results of audit

Test check of the records of the State Excise department during 2008-09 revealed cases of non/short realisation of licence fee, duty, loss of revenue etc. amounting to Rs. 92.93 crore in 87 cases, which fall under the following categories:

(Rupees in crore)

Sl. no.	Category	No. of cases	Amount
1.	Non/delayed settlement of excise shops	12	69.39
2.	Non-renewal/re-settlement of exclusive privilege for whole sale supply of country spirit/spiced country spirit	5	0.54
3.	Undue financial benefits due to unauthorised concession	4	0.37
4.	Non/short lifting of liquor	3	0.25
5.	Other cases	63	22.38
Total		87	92.93

The department accepted non/short realisation of licence fee, duty, loss of revenue etc. of Rs. 38.32 crore in 63 cases pointed out in audit during 2008-09.

A few illustrative audit observations involving Rs. 75.56 crore are mentioned in the succeeding paragraphs:

3.2 Audit observations

Scrutiny of records in the offices of Excise and Prohibition Department relating to revenue received indicated several cases of non-observance of the provisions of the Acts/Rules resulting in non/short levy of license fee and fees as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on a test check carried out in audit. Such omissions are pointed out in audit each year, but not only do the irregularities persist; these remain undetected till an audit is conducted. There is need for the Government to improve the internal control system so that occurrence of such cases can be avoided.

3.3 Non-observance of provisions of Act/Rules

The Bihar Excise Act, 1915 (adopted by the Government of Jharkhand) and Rules made thereunder provide for:

- i) manufacture of potable liquor and supply it to wholesale/retail vendors in prescribed time schedule.*
- ii) renewal of licences for vendors/contractors; and*
- iii) payment of annual licence fee for wholesale supply of country spirit, spiced country spirit, retail excise shops, sale of IMFL in hotels, bars, restaurants, clubs etc.;*

The State Excise and Prohibition Department did not observe some of the above provisions which resulted in non/short levy of license fee of Rs.75.44 crore as mentioned in the succeeding paragraphs.

3.3.1 Non-renewal and non/delayed settlement of wholesale country spirit/spiced country spirit and retail excise shops

Under section 22-D and 30 of Jharkhand Excise Act, Government may grant to any person/persons on such conditions and for such terms and conditions and for such period as it may think fit, the exclusive/special privilege for supplying country liquor/spiced country liquor, on wholesale basis, after sacheting/ bottling it. The departmental instructions further provide that before the expiry of the period for which licence for retail sale of spirit was issued, the Collector shall prepare a list, showing the licences proposed to be granted for retail sale of spirit for the next period of settlement.

3.3.1.1 Non-renewal of exclusive privilege for wholesale supply of country spirit

The Government of Jharkhand, Excise and Prohibition Department issued tender notification in February 2005 for wholesale supply of country spirit to retail vendors for the period from 1 April 2005 to 31 March 2008 on annual renewal basis. Non-renewal of licence by the grantee provides for cancellation of licence, forfeiture of security money and resettlement of grant with other bidders.

Test check of records of five¹ excise districts between August 2008 and February 2009 indicated that five grantees were granted exclusive privilege for wholesale supply of country spirit in these districts for the period from 1 June 2005 to 31 March 2008, on annual renewal basis. The licensees did not get their licences renewed for the year 2007-08. No action was taken by the department against the defaulter grantees. This resulted in loss of licence fee amounting to Rs. 85.10 lakh.

3.3.1.2 Non-finalisation of tender/non-renewal of licence for wholesale supply of spiced country spirit

Under the provisions of Jharkhand Excise Act and Rules made thereunder, sanction of exclusive privilege may be granted to any person for manufacture and wholesale supply of spiced country spirit from approved warehouses within specified area. Under the above provisions, the Commissioner of Excise, Jharkhand, Ranchi issued a tender notification in February 2005. In accordance with terms and conditions of tender notification, if any loss is caused to the Government by the tenderer, his security money would be forfeited and loss may be recovered from him under Public Demands Recovery Act.

Test check of the records of four excise zones² between May 2008 and February 2009 indicated that tender for wholesale supply of spiced country spirit was not finalised for the period from 2006-07 to 2007-08 in Dumka excise zone with any bidder. In Dhanbad excise zone, the department did not float/call for tender for 2007-08 and in two excise zones, the licensees did not get their licences renewed for 2007-08. Non-finalisation of tender/issue and non-renewal of licence for manufacturing and wholesale supply of spiced country spirit by the department resulted in loss of licence fee amounting to Rs. 38.75 lakh for the years 2006-07 and 2007-08.

3.3.1.3 Non-renewal and non/delayed settlement of excise shops

By a notification issued in February 2004, under the provisions of Jharkhand Excise Act, the Government adopted a new excise policy, effective from 2004-05. Under the new policy, retail shops are required to be settled in two groups, one for country spirit/spiced country spirit and other for India made foreign liquor/beer for a block of three years, i.e., from July 2004 to March 2007. The Excise Commissioner issued instructions from time to time to the Deputy Commissioners to extend/renew licence period of retail licensees after March 2007, for the year 2007-08. The instruction stipulated that in case of non-extension of retail shops to the licencees, those should be operated departmentally, to check the loss of revenue.

Test check of records of Jamshedpur and Ranchi excise districts between June 2008 and February 2009 indicated that licences of Group I expired on 31 March 2007. The shops were neither resettled for operation nor were run departmentally during 2007-08 and excise shops remained closed. This

¹ Bokaro, Dhanbad, Gumla-cum-Simdega, Hazaribag-cum-Koderma-cum-Chatra and Ranchi.

² Dhanbad, Dumka-cum-Jamtara, Jamshedpur and Ranchi.

resulted in loss of revenue of Rs. 22.68 crore as mentioned in the following table:

(Rupees in crore)

<u>Excise district Group</u>	<u>Period</u>	<u>Annual licence fee Excise duty</u>	<u>Loss of revenue in shape of licence fee & duty</u>
<u>Jamshedpur</u> Group I	2007-08	<u>11.13</u> 0.96	12.09
<u>Ranchi</u> Group I	2007-08	<u>9.72</u> 0.87	10.59
Total			22.68

3.3.1.4 Loss of revenue due to partial operation of excise shops

Under the provisions of Jharkhand Excise Act and Rules made thereunder, the Commissioner of Excise, Department of Excise and Prohibition, Government of Jharkhand issued instructions in March 2007 to operate all excise shops departmentally in the absence of bidders.

Test check of records of seven excise districts between June 2008 and January 2009 indicated that retail excise shops of Group I & II in these districts were operated partially by district excise authority. Whereas, as per the Government instructions, all unsettled excise shops were to be operated departmentally till settlement of the shops with other bidders. This resulted in loss of Government revenue of Rs. 50.54 crore as mentioned in the following table:

(Rupees in crore)

<u>Excise district Group</u>	<u>Period</u>	<u>Annual licence fee Excise duty</u>	<u>Total</u>	<u>Revenue earned by partial operation of the excise shops</u>	<u>Loss of revenue</u>
<u>Bokaro</u> Group-I and II	2007-08	<u>17.18</u> 1.82	19.00	4.51	14.49
<u>Dhanbad</u> Group-I	2007-08	<u>19.19</u> 1.35	20.54	0.80	19.74
<u>Dumka-cum-Jamtara</u> Group-I and II	2006-07	<u>0.73</u> 0.07	0.80	0.01	0.79
	2007-08	<u>3.71</u> 0.44	4.15	1.14	3.01
<u>Giridih</u> Group-I and II	2007-08	<u>1.75</u> 0.10	1.85	0.65	1.20
<u>Hazaribag-cum-Koderma-cum-Chatra</u> Group I	2007-08	<u>6.85</u> 0.58	7.43	0.18	7.25
<u>Palamu-cum-Garhwa-cum-Latehar</u> Group I	2007-08	<u>1.19</u> 0.10	1.29	0.25	1.04
<u>Sahibganj-cum-Pakur</u> Group-I and II	2005-06	<u>0.35</u> 0.04	0.39	0.00	0.39
	2006-07	<u>1.16</u> 0.10	1.26	0.01	1.25
	2007-08	<u>1.28</u> 0.10	1.38	0.00	1.38
Total			58.09	7.55	50.54

3.3.1.5 Acceptance of invalid bank guarantee

Under the provisions of Jharkhand Excise Act and Rules made/notifications issued thereunder, the licensees of Group-I and II excise shops are required to furnish bank guarantee equivalent to an amount of two months' reserve fee. By a circular in June 2004 Government amended the conditions of sale notification. The circular provides that the bank guarantee is to be pledged in favour of concerned Deputy Commissioner valid upto May 2007. In case of violation of the terms and conditions of licence, bank guarantee is to be invoked and the amount remitted to the Government account.

Test check of records of Sahebganj-cum-Pakur excise district in June 2008 indicated that retail excise shops of both Groups (I & II) were settled with a licensee for the period from 20.08.2004 to 31.03.2007 on furnishing a bank guarantee of Rs. 34 lakh pledged in favour of Deputy Commissioner, Sahebganj. Further, the licensee did not deposit advance monthly licence fee. Subsequently, the licence was cancelled by the Deputy Commissioner in April 2005 and request for invoking the bank guarantee and crediting the amount into Government account was made with the concerned bank. The request was turned down by bank authorities on the ground that the time barred bank guarantee was not in the name of the licensee. As the bank guarantee was not in the name of the licensee, the settlement of retail excise shops of both groups was irregular. This act of the departmental authorities in granting licence with invalid bank guarantee resulted in non-realisation of licence fee of Rs. 34 lakh.

The matter was reported to the department and to the Government in April 2009; their replies have not been received (January 2010).

3.3.2 Short realisation of licence fee from retailers

Under section 38 of Jharkhand Excise Act and rules made thereunder, licences of excise retail shops and bar and restaurant are granted on payment of licence fee at the prevailing rate as prescribed by the Commissioner of Excise. The Government, by issue of a notification in July 2004, revised the annual licence fees for the sale of India made foreign liquor in a hotel, bar, restaurant, club etc. with effect from 31 July 2004.

Test check of records of office of Dhanbad excise district in December 2008 indicated that the licence fee of eight bars and restaurants was realised at pre-revised rate during 2007-08. The licensees were liable to pay a licence fee of Rs. 40 lakh against which licence fee of Rs. 16 lakh was recovered. The department did not realise the licence fee at correct rate which resulted in short realisation of revenue of Rs. 24 lakh.

After the case was pointed out in December 2008, the department stated that the matter would be examined and action would be taken.

3.3.3 Short levy due to incorrect fixation of reserve price

Government of Jharkhand adopted a new excise policy, effective from 2004-05. Under the new policy, retail shops are required to be settled in two groups; one for all the country spirit/spiced country spirit and other for India made foreign liquor/beer for a block of three years, i.e., from July 2004 to March 2007 and extended up to March 2008. The reserve fee was required to

be fixed after adding the amount of duty on the annual minimum guaranteed quota of excise shops with that of the auction money (reserve fee in case of unsettled shops). Further, it also provides that the licence fee for next financial year is to be fixed by increasing 10 *per cent* of the licence fee of preceding year. The licensee is required to deposit two months' advance licence fee, at the time of award of licence.

Test check of records of Palamu-cum-Garhwa-cum-Latehar excise district in July 2008 indicated that at the time of renewal of licences of Group I and II excise shops during 2005-06 to 2007-08, the department had incorrectly fixed the reserve/licence fee at Rs. 40.32 lakh, Rs. 44.36 lakh and Rs. 48.79 lakh instead of correct licence fee of Rs. 40.85 lakh, Rs. 44.93 lakh and Rs. 49.43 lakh per month respectively. The reserve fee fixed by the department was the same as licence fee. Though, incorrect fixation of reserve fee for 2004-05 was pointed out in January 2006, no action was taken by the department to rectify the error and realise the licence fee correctly for subsequent years. This resulted in non-levy of differential licence fee amounting to Rs. 18.78 lakh.

After the case was pointed out in July 2008, the department stated that licence fee was realised at the rate fixed earlier. The reply is not in accordance with the provisions of the excise policy. Further response has not been received (January 2010).

The matter was reported to the Government in April 2009; their replies have not been received (January 2010).

3.3.4 Non-realisation due to short supply of country liquor to retailers

Under the provisions of Jharkhand Excise Act and Rules made/notifications issued thereunder, grantee of exclusive privilege for wholesale supply of country spirit is required to manufacture liquor and supply it to retail vendors within two months from the date of issue of letter of grant by Excise Commissioner. In case of failure to supply country spirit in bottles, grant of tender may be cancelled, security money forfeited and loss of Government revenue was to be recovered from the grantee under Public Demands Recovery Act.

Test check of records of Sahebganj-cum-Pakur excise districts in June 2008 indicated that two licensees of retail shops of Group-I (country spirit) were allowed remission of licence fee of Rs. 21.83 lakh from 1 October to 8 December 2005 by the Member, Board of Revenue, Jharkhand, due to non-supply of liquor by the wholesale supplier and non-fixation of wholesale price of country spirit. The licence fee though, recoverable from the wholesale supplier, was not recovered resulting in loss of revenue of Rs. 21.83 lakh.

The matter was reported to the Government in April 2009; their replies have not been received (January 2010).

3.4 Irregular allowance of operational wastage of rectified spirit

Under the provisions of Jharkhand Excise Act and Rules made thereunder, allowance of wastage on account of deficiencies found in production, racking,

blending and storage is not admissible in the case of a manufacturer of India made foreign liquor, who has his own distillery.

Test check of records of Ranchi excise district in February 2009 indicated that a manufacturer of India made foreign liquor, holding a licence for his own distillery, had claimed and was allowed wastage on account of deficiencies found in production, racking, blending and storage of 1,15,677 London proof litre of rectified spirit during 2007-08, in violation of rules. This resulted in non-realisation of excise duty amounting to Rs. 11.57 lakh leviable on the total quantity of wastage allowed.

The matter was reported to the department and to the Government in April 2009; their replies have not been received (January 2010).

3.5 Non/delayed institution of certificate cases

Under the provisions of Jharkhand Excise Act, read with Bihar and Orissa Public Demands Recovery Act, arrears of excise revenue can be recovered as arrears of land revenue. The Jharkhand Excise Act does not provide for levy of interest for late payment of dues. As per the Public Demands Recovery Act, interest on public demand to which certificate relates shall be charged at the rate of 12 *per cent* per annum from the date of signing of the certificate upto the date of realisation. Any delay in institution of certificate proceedings would result in loss of revenue, in the form of interest.

Test check of records of Sahebganj-cum-Pakur excise districts in June 2008 indicated that arrears amounting to Rs. 42.17 lakh, pertaining to the period from 2003-04 to 2004-05 were outstanding as on 31 March 2008. Certificate cases for recovery of the arrears of Rs. 42.17 lakh were not instituted or delayed by two to three years. Non/delayed institution of certificate cases against the defaulters resulted in loss of revenue of Rs. 10.38 lakh in form of interest, calculated for the period from 2004-05 to 2007-08, besides non-recovery of arrears amounting to Rs. 42.17 lakh

The matter was reported to the department and to the Government in April 2009; their replies have not been received (January 2010).

3.6 Absence of provision for levy of import fee

Under the provisions of the Jharkhand Excise Act and Rules made/notification issued thereunder, import of rectified spirit shall be made on pre-payment of duty in the districts of import, by a person holding a licence for medical or surgical purpose, manufacture of perfumes and toilet preparations, medicines and chemicals, compounding and blending of foreign liquor, hospital and dispensaries and for defence services requirements. Besides, in absolutely necessary cases other than those mentioned above, passes for import of rectified spirit shall be issued under the specific order of the Excise Commissioner. The Excise Commissioner is empowered to permit import of country spirit/extra neutral alcohol from distilleries. No import fee is leviable on rectified spirit but this fee is leviable on import of spirit/extra neutral alcohol.

Test check of records of eight excise districts³ between May 2008 and February 2009 indicated that import passes were issued by the Excise Commissioner for import of rectified spirit to grantees of exclusive privileges and to a distillery for import of 49,73,600 London proof litre during 2005-06 to 2007-08. Though the power granted under the Act/rules was to be applied only in specified exceptional cases, it was applied in all the cases. Importantly, the entire quantity of the rectified spirit imported by the grantees of exclusive privilege and the distillery was utilised for wholesale supply of country spirit, India made foreign liquor and extra neutral alcohol. In the absence of a provision for levy of import fee, the same could not be levied resulting in foregoing of revenue amounting to Rs. 1.99⁴ crore.

The matter was reported to the department and to the Government in April 2009; their replies have not been received (January 2010).

Keeping in view, the quantity of the rectified spirit imported, the Government may consider formulating a provision in the Excise Act for levy and collection of import fee on import of rectified spirit.

³ Chaibasa, Dhanbad, Dumka-cum-Jamtara, Giridih, Hazaribag-cum-Koderma-Chatra, Palamu-cum-Garhwa-cum-Latehar, Ranchi and Sahebganj-cum-Pakur.

⁴ Based on fee leviable on import of IMFL @ Rs. 4 per LPL
49,73,600 X 4= 1.99 crore.