

CHAPTER IV STATE EXCISE

4.1 Results of audit

Test check of the records of district excise offices during the year 2008-09, indicated non/short realisation of excise duty and other irregularities amounting to Rs. 27.67 crore in 52 cases, which could be classified under the following categories:

(Rupees in crore)			
Sl. no.	Categories	No. of cases	Amount
1.	Short realisation of excise duty due to low yield of wort	1	18.99
2.	Non/short realisation of privilege fee, late fee, additional fee etc.	10	1.15
3.	Non/short levy of excise duty on chargeable wastage of rectified spirit/India Made Foreign Liquor	4	0.52
4.	Non/short realisation of establishment cost	4	0.26
5.	Other irregularities	33	6.75
Total		52	27.67

During the course of the year 2008-09, the department accepted underassessment and other deficiencies of Rs. 19.72 crore in 19 cases of which 17 cases involving Rs. 19.68 crore had been pointed out by audit during the year 2008-09 and the rest in the earlier years. An amount of Rs. 49.25 lakh involved in 18 cases has been realised at the instance of audit.

After issue of the draft paragraphs, the Excise Department recovered Rs. 7.71 lakh in full in one case during the year 2008-09.

A few illustrative audit observations involving Rs. 20.66 crore are mentioned in the succeeding paragraphs.

4.2 Audit observations

Scrutiny of the records in the offices of Superintendents of Excise indicated several cases of non-observance of the provisions of the Acts/Rules resulting in non/short levy of duty, license fee etc., as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on 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 such mistakes can be avoided.

4.3 Short realisation of excise duty due to low yield of wort

Manufacture of beer by breweries is regulated under the Bengal Excise (BE) Act, 1909, and the rules made thereunder. The average yield of wort¹ is prescribed under the executive instructions issued by the Government (Excise Manual) in 1918, which provides that 15.42 kilograms (kg) of malt or 14.52 kg of rice flake or 12.70 kg of sugar would produce 81.823 bulk litre (BL) of wort. Further, under the West Bengal Excise (Foreign Liquor) Rules, (WBEFL Rules) the minimum yield of beer should be 92 *per cent* of wort accepted for fermentation.

Scrutiny of the records of a brewery under the Superintendent of Excise (SE), Nadia in November 2008 indicated that the licensee company produced 7,17,66,915 BL of wort between 2004-05 and 2007-08 by consuming 98,59,906 kg malt, 42,21,816 kg rice flake and 17,12,157 kg sugar. However, as prescribed in the Excise Manual, the average yield should have been 8,71,41,281 BL of wort. Short fall of 1,53,74,366 BL of wort resulted in short yield of 1,41,44,417 BL of beer (calculated at minimum 92 *per cent*) leading to short realisation of excise duty of Rs. 18.39 crore.

The Government to whom the case was forwarded in December 2008 stated in July 2009 that a demand notice upon the licensee was issued in January 2009. But the licensee did not pay the dues citing an interim order of injunction of the High Court in favour of the licensee commenting that “duty is not leviable on wort which is neither fit for human consumption nor it is fermented: no alcohol is present there to levy excise duty”. The fact remains that audit has calculated short yield of wort from foodgrains etc. which resulted in short yield of beer and consequent short realisation of excise duty on it. Hence, the judgement cited above is not relevant to the audit observation. Further reply has not been received (October 2009).

4.4 Non-realisation of fee on import of spirit

Under the West Bengal Excise (Manufacture of Country Spirit in Labelled and Capsuled Bottles) Rules, 1979, a country spirit manufacturer shall pay a fee of 50 paise in case of bottling plants situated within the metropolitan area of Kolkata and a fee of 60 paise in other cases, for each bulk litre (BL) of spirit imported by him from outside the State for use as country spirit.

¹ Wort means the liquid obtained by the mashing of grain or malt or by dissolving saccharin matter intended for fermentation but in which fermentation has not visibly begun.

Scrutiny of the records of four district excise offices² between November 2007 and September 2008 indicated that in seven cases, six³ manufacturers of country spirit imported 1,96,00,589 BL of rectified spirit from Bihar and Uttar Pradesh against 452 import permits issued by the Excise Commissioner (EC), West Bengal between April 2004 and March 2008. The excise authorities neither realised the fee at the time of receiving the spirit nor did they raise demand subsequently. This resulted in non-realisation of import fee of Rs. 1.13 crore.

The Government to whom the cases were forwarded between January and October 2008 stated in July 2009 that the matter of exempting the country spirit manufacturers from paying such fee is under consideration of the Government. The reply is untenable as until the order of exemption is issued by the Government, the fee is to be levied as per rules.

4.5 Non-realisation of excise duty due to non-destruction of unsold stock of foreign liquor

Under the West Bengal Excise (Foreign Liquor) Rules, 1998, no foreign liquor shall be manufactured or sold or offered for sale in West Bengal unless the brand names of the foreign liquor are registered with the EC. Such registration is renewable each year within one month from the last date of validity of registration. The stock of foreign liquor lying unsold in any licenced premises after the expiry of one month from the last day of validity of registration shall be destroyed by the Collector with the prior approval of the EC on realisation of excise duty on such stock in terms of the Government order issued in May 2007.

Scrutiny of the records of two foreign liquor bonded warehouses under the SE, Burdwan (West) in September 2008 indicated that 23,749.40 London proof litre (LPL)⁴ of different brands and measures of foreign liquor whose label registration had expired, was lying unsold in the warehouses. Both the licensees applied between July and September 2007 for reprocessing of the unsold liquor which were forwarded to the EC by SE, Burdwan (West) in October 2007. However, as per the provisions of the West Bengal Excise Rules, the SE should have destroyed the unsold liquor after realisation of excise duty with prior approval of the EC. Thus, the SE acted erroneously in forwarding the application for reprocessing the liquor. This resulted in non-realisation of excise duty of Rs. 42.52 lakh.

After the cases were pointed out, the department stated (July 2009) that an amount of Rs. 31.52 lakh has already been realised. Report on realisation of the balance amount has not been received (October 2009).

The cases were forwarded to the Government in October 2008 followed by reminders issued upto June 2009; their reply has not been received (October 2009).

² Collector of Excise, Kolkata (South), SE, Burdwan (West), SE, Hooghly and SE, Jalpaiguri.

³ M/s Asansol Bottling and Packaging Co. Pvt. Ltd., M/s Bhattacharya Bottling Plant, M/s Eastern Distilleries and Chemicals Ltd., M/s Farinni Eleven UP, M/s IFB Agro Industries Ltd. and M/s Monalisa Bottling Industries Pvt. Ltd.

⁴ London Proof or Proof means the strength or proof as ascertained by means of Sykes hydrometer and denotes that spirit which at the temperature of 51° Fahrenheit weighs exactly 12/13th part of an equal measure of distilled water.

4.6 Non-realisation of excise duty on chargeable wastage of rectified spirit during preparation of mother tincture

Under the Medicinal and Toilet Preparations (Excise Duties) Rules, 1956, the State Government may, from time to time, fix the percentage of wastage in the production of particular medicinal or toilet preparation. Any wastage in excess of the allowable limit is chargeable to duty. Under the rules *ibid* the EC had fixed the allowable percentage of wastage at four *per cent* in April 2003.

Scrutiny of the records of seven bonded warehouses/manufactories⁵ of mother tincture between May and June 2008 under the Deputy Commissioner of Excise (Special), West Bengal indicated that the manufacturers used 1,21,662.766 LPL of rectified spirit between 2004-05 and 2006-07, from which 99,885.861 LPL of mother tincture was produced. The wastage exceeded the allowable limit by 16,910.404 LPL for which excise duty of Rs. 29.73 lakh was chargeable. However, no demand has been raised by the excise officers posted in the warehouses/manufactories for realisation of the same, which resulted in non-realisation of excise duty of Rs. 29.73 lakh.

After the cases were pointed out, the department stated (July 2009) that a committee constituted by the EC for ascertaining the allowable wastage had submitted its report on which a decision was yet to be taken. However, the fact remains that until the Government decides on the recommendations of the committee, the maximum allowance of wastage as provided in the order of the EC (April 2003) remains valid. The department did not take action to review all these cases and levy duty on excess wastage.

The cases were forwarded to the Government in July 2008, followed by reminders issued upto June 2009; their reply has not been received (October 2009).

4.7 Non-realisation of late fee for delayed deposit of renewal fee for distillery licence

Under the BE Act and the rules made thereunder, the licence for a distillery may be renewed annually by the Collector of the district subject to the approval of the EC on an application made by the licensee before the expiry of the existing licence along with a copy of receipted challan showing deposit of Rs. 1 lakh as renewal fee. If the licensee applies for renewal after the expiry of the current licence, the Collector may grant the licence on realisation of a late fee of Rs. 600 per diem calculated from the date of expiry of the previous licence.

Scrutiny of the records of United Spirits Ltd, a distillery under the SE, Burdwan (West) in September 2008 indicated that though the licensee did not enclose the copies of receipted challan while applying for renewal of its licence, the licence for the licensing years 2003-04 to 2007-08 was renewed each year by the Collector. It was further noticed that the licensee deposited the renewal fees for five years in one instalment on 12 June 2007. For delay

⁵ Dr. S. C. Deb Homeo Lab, M/s Allen Laboratories Ltd., M. Roychowdhury & Co., Mahesh Laboratory (P) Ltd., Mega Cure Co. (P) Ltd., National Homeo Lab and N. P. Datta & Sons.

in payment of licence fee, late fee of Rs. 24.06 lakh though realisable from the licensee was not realised by the SE.

The Government to whom the matter was reported in October 2008 stated (July 2009) that as per definition of manufactory contained in the West Bengal Excise Rules, manufactory of foreign liquor includes the process of re-distillation for which separate distillery licence is not required. Further, though the licensee has deposited the renewal fee for renewal of the distillery licence, question of realisation of late fee for such delayed realisation did not arise. The reply is untenable as issue and renewal of licences for manufactory and distillery are dealt by separate set of rules⁶ and the fact that the department has issued a separate licence for the distillery also supports the audit contention. Thus, since the licensee has acquired separate distillery licence, late fee due to delayed payment of renewal fee for this licence, was realisable from the licensee.

4.8 Allowance of excess wastage of spirit during redistillation

Under the BE Act and the rules made thereunder, a licensee may undertake redistillation of rectified spirit (RS) for any purpose other than manufacturing of foreign liquor with the permission of the EC. The maximum limit of allowable wastage for RS, redistilled in a pot still is two *per cent*. Wastage in excess of two *per cent* is chargeable at the highest rate of duty applicable to IMFL.

Scrutiny of the records of four licensees⁷ of bonded manufactories/laboratories under the Deputy Commissioner of Excise (Special), West Bengal in May 2008 indicated that 54,270 LPL of extra neutral alcohol and 3,69,338.06 LPL of RS were redistilled by the licensees during the period from 2004-05 to 2007-08. Though the reported wastage of spirit during the process of redistillation was 19,115.54 LPL which was in excess of the norms by 10,643.25 LPL, the excise authorities allowed the wastage for the full quantity which led to short realisation of excise duty of Rs. 17.51 lakh.

After the cases were pointed out, the department stated (July 2009) that an amount of Rs. 40,000 has been realised from two licensees. In another case involving Rs. 59,000 it was stated that there had been no excess wastage beyond the allowable limit of two *per cent*. The reply is untenable as the actual wastage of the licensee exceeded the allowable limit by 320.90 LPL. Thus, duty was chargeable on the excess wastage. In the remaining case involving Rs. 16.52 lakh, it was stated that the matter was under consideration of the EC, WB.

The cases were forwarded to the Government in July 2008 followed by reminders issued upto June 2009; their reply has not been received (October 2009).

⁶ Rule 7 of WB (Excise) foreign liquor Rules regulates the issues relating to licence for manufactories while the issue and renewal of distillery licences is regulated by Rules 2 to 5 of the consolidated rules made under Section 86 of the BE Act.

⁷ M/s Angel Homeo Research Laboratory Pvt. Ltd., M/s Bengal Chemical and Pharmaceuticals Ltd., M/s Economic Research Laboratory and M/s Megacure Laboratories Pvt. Ltd.