

CHAPTER-V : STATE EXCISE DUTY AND FEES

EXECUTIVE SUMMARY

Marginal increase in tax collection	In 2010-11 the collection of excise revenue increased by 9.43 <i>per cent</i> as compared to the Budget Estimate which was attributed by the Department to opening of more new legal outlets, increase in lifting of IMFL / Beer and more utilisation of Mahua Flower.
Internal audit not conducted	Internal audit of the units under the Excise Department has been completed up to 2002-03 for 30 District Excise Offices (DEOs) and for the Excise Intelligence and Enforcement Bureau, Central Division, Northern Division and Southern Division up to the years 2001-02, 2002-03 and 1997-98 respectively. Non-completion of internal audit was attributed to the shortage of staff in the Internal Audit Wing (IAW). This resultantly had its impact in terms of the weak internal control in the Department leading to substantial leakage of revenue. It also led to the omissions on the part of the Superintendents of Excise remaining undetected till we conducted our audit.
Very low recovery by the Department against the observations pointed out by us in earlier years	During the period 2005-06 to 2009-10 we had pointed out non/short levy, non/short realisation of excise duty and fee etc., with revenue implication of ₹ 104.22 crore in 5,505 cases. Of these, the Department / Government accepted audit observations in 2,201 cases involving ₹ 26.46 crore but recovered only ₹ 5.08 crore in 714 cases. The average recovery position, being, 19.20 <i>per cent</i> , as compared to acceptance of objections was very low and it ranged between 0.23 <i>per cent</i> and 81.59 <i>per cent</i> .
Results of audit conducted by us in 2010-11	<p>In 2010-11 we test checked the records of 15 units relating to state excise duty and fees and found non / short realisation, non-levy, loss of revenue etc. involving ₹ 22.90 crore in 440 cases.</p> <p>The Department accepted non-levy / short realisation of duty of ₹ 8.02 crore in 138 cases pointed out by us during the year 2010-11. An amount of ₹ 17.80 lakh was recovered in 34 cases relating to 2010-11 and earlier years.</p>
What we have highlighted in this Chapter	In this Chapter we present illustrative cases of ₹ 1.53 crore selected from the observations noticed during our test check of records relating to assessment records of excise duty and fees in the office of the DEOs, where we found that the provisions of the Acts / Rules / Annual Excise Policies were not adhered to adequately.

It is a matter of concern that similar omissions have been pointed out by us repeatedly in the Reports (Revenue Receipts) of the CAG for the past several years, but the Department has not taken adequate corrective action. We are also concerned that though these omissions were apparent from the records which were made available to us, the DEOs were unable to detect these mistakes.

Our conclusion

The Department needs to improve the internal control system including strengthening of IAW so that weaknesses in the system are addressed and omissions of the nature detected by us are avoided in future.

It also needs to initiate immediate action to recover the non / short realisation, non-levy of excise duty and fees etc. pointed out by us, more so in those cases where it has accepted our contentions.

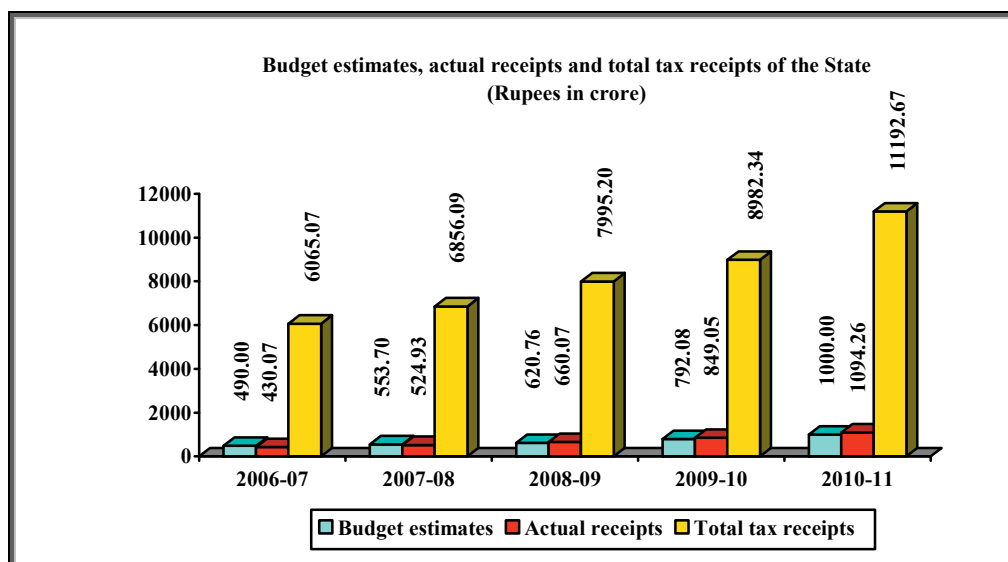
5.1.1 Tax administration

Levy and collection of excise duty, fee, penalty etc. is governed by the Bihar and Orissa Excise (B&OE) Act, 1915, Orissa Excise Rules, 1965, the Board's Excise (BE) Rules, 1965, Orissa Excise Exclusive Privilege (OEEP) Rules, 1970, the Orissa Excise (Exclusive Privilege) Foreign Liquor (OEEPFL) Rules 1989, Orissa Excise (Methyl Alcohol) Rules, 1976, the Board of Revenue (BOR)'s Excise (Fixation of Fees on Mahua Flower) (BEFFMF) Rules, 1976 and the Annual Excise Policies (AEPs) framed by the Government in Excise Department. The Excise Commissioner (EC) being the head of the Department administers the various provisions of the above Acts / Rules under the control of BOR as well as the overall control of the Principal Secretary of the Department. He is assisted by three Excise Deputy Commissioners (EDCs) at three divisions, 30 Superintendents of Excise (SEs) at 30 District Excise Offices (DEOs) and the field level staff thereunder.

5.1.2 Trend of receipts

Actual receipts from State Excise during the years 2006-07 to 2010-11 along with the budget estimates and total tax receipts during the same period is exhibited in the following table and graph.

(Rupees in crore)						
Year	Budget estimates	Actual receipts	Variation excess (+) shortfall (-)	Percentage of variation	Total tax receipts of the State	Percentage of actual receipts vis-à-vis total tax receipts
2006-07	490.00	430.07	(-) 59.93	(-) 12.23	6,065.07	7.09
2007-08	553.70	524.93	(-) 28.77	(-) 5.20	6,856.09	7.66
2008-09	620.76	660.07	(+) 39.31	(+) 6.33	7,995.20	8.26
2009-10	792.08	849.05	(+) 56.97	(+) 7.19	8,982.34	9.45
2010-11	1000.00	1094.26	(+) 94.26	(+) 9.43	11,192.67	9.78



The above table shows that the excise revenue increased from ₹ 430.07 crore in 2006-07 to ₹ 1,094.26 crore in 2010-11 and its contribution to the total tax receipt of the State varied between 7.66 and 9.78 *per cent*. The increase in collection during 2010-11 as reported (July 2011) by the EC was due to opening of more new legal outlets, increase in lifting of IMFL / Beer and more utilization of Mahua Flower.

5.1.3 Cost of collection

The gross collection of state excise revenue, expenditure incurred on collection and the percentage of such expenditure to gross collection during the years 2008-09, 2009-10 and 2010-11 along with the all India average percentages of expenditure for collection to gross collection in the respective previous years are mentioned below.

(Rupees in crore)				
Year	Gross collection	Expenditure on collection	Percentage of expenditure to gross collection	All India average percentage for the previous year
2008-09	660.07	24.76	3.75	3.27
2009-10	849.05	30.74	3.62	3.66
2010-11	1094.26	36.25	3.31	3.64

The percentages of the cost of collection during 2009-10 and 2010-11 were within the all India average percentages of previous years although it exceeded during 2008-09.

5.1.4 Impact of audit

Revenue impact

During the last five years (2005-06 to 2009-10) we pointed out non / short levy, non / short realisation of excise duty and fee etc., with revenue implication of ₹ 104.22 crore in 5,505 cases. Of these, the Department had accepted audit observations in 2,201 cases involving ₹ 26.46 crore and has since recovered ₹ 5.08 crore in 714 cases. The details are shown in the following table.

(Rupees in crore)								
Year	No. of units audited	Amount objected		Amount accepted		Amount recovered		Percentage of recovery to amount accepted
		No. of cases	Amount	No. of cases	Amount	No. of cases	Amount	
2005-06	33	1,603	9.84	712	4.29	443	3.50	81.59
2006-07	32	1,025	25.14	243	0.42	100	0.14	33.33
2007-08	31	531	9.66	232	3.42	118	1.31	38.30
2008-09	31	410	13.29	214	0.80	26	0.09	11.25
2009-10	27	1,936	46.29	800	17.53	27	0.04	0.23
Total	154	5,505	104.22	2,201	26.46	714	5.08	19.20

The recovery position as compared to acceptance of audit observations was low. **The Government may take appropriate steps to improve the recovery position, at least for the accepted cases immediately.**

5.1.5 Working of internal audit wing

As per the information furnished by the Department, during the last three years i.e. 2008-09 to 2010-11 the IAW functioning under the control of BOR completed the audit of the accounts up to 2002-03 for 30 DEOs. For the Excise Intelligence and Enforcement Bureau, Central Division, Northern Division and Southern Division, Internal audit has been completed up to the years 2001-02, 2002-03 and 1997-98 respectively. The reason for not conducting audit was attributed to shortage of manpower. **The Department may take steps to strengthen the IAW so as to ensure non-leakage of revenue and clear the backlog of internal audit.**

5.1.6 Results of audit

During the year 2010-11 we test checked the records of 15 units relating to state excise duty and fees and found non / short realisation, non-levy, loss of revenue etc., involving ₹ 22.90 crore in 440 cases which fall under the following categories.

(Rupees in crore)			
Sl. No	Categories	No. of cases	Amount
1.	Loss of revenue due to non-settlement / delay in settlement / non-renewal of excise shops	30	3.86
2.	Non / short realisation of excise duty / transport fee / licence fee / utilisation fee etc.	235	2.18
3.	Loss of revenue due to unrealistic determination of consideration money.	127	9.95
4.	Non-realisation / non-levy of initial fees (application fees, user charges and label registration fees) on transfer of license / import fee.	5	3.46
5.	Other irregularities	43	3.45
Total		440	22.90

During the year, the Department accepted non-levy / short realisation of duty of ₹ 8.02 crore in 138 cases pointed out in 2010-11. An amount of ₹ 17.80 lakh was recovered in 34 cases relating to 2010-11 and earlier years.

A few illustrative audit observations involving ₹ 1.53 crore are discussed in the following paragraphs.

5.2 Audit observations

We scrutinised the assessment records of excise duty and fees in the DEOs and found several cases of non-observance of the provisions of the Act / Rules / AEPs leading to non / short levy and realisation of excise duty, fees and fine etc., as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on a test check carried out by us. Some omissions on the part of the SEs are pointed out by us repeatedly, but not only do the irregularities persist; these remain undetected till an audit is conducted. There is need for the Department to improve the internal control system including strengthening of internal audit so as to avoid recurrence of such irregularities.

5.3 Non-observance of the provisions of the Acts / Rules / AEPs and instructions of Government

The B & OE Act, 1915 and Rules made thereunder by the Government as well as the BOR read with the Excise Manual, AEPs and notifications of the Government provide for levy and collection of excise duty and fees like depot licence fee, utilisation fee, import fee and transportation fee etc. at the prescribed rates.

The SEs while finalising the assessments did not observe the provisions of the above Acts / Rules etc. in some cases as mentioned in paragraphs 5.3.1 to 5.3.5 which resulted in non / short levy and realisation of excise duty / fees and fine etc. of ₹ 1.53 crore.

5.3.1 Short levy / realisation of depot licence fee from the Orissa State Beverage Corporation Ltd.

As per the instructions of the BOR (Revenue Commissioner), Orissa, the licences and premises for the country and foreign spirit should be separate and distinct. The Orissa State Beverage Corporation Limited (OSBC) has the exclusive right to carry on wholesale trade and distribution of Country Spirit (CS) from May 2001 onwards. The AEPs provide for levy and realisation of depot licence fee at the rate of rupees four lakh for the year 2005-06 and rupees five lakh for the years 2006-07 to 2009-10 *per annum* per depot which was required to be realised in advance as per the condition of the licence. The depot licences for the years 2005-06 and 2006-07 were to be issued by the EC, Orissa and 2007-08 onwards by the respective District Collectors as per the AEP.

During test check of the licence register, guard file of treasury challan and important circulars of the Government in the DEO, Khurda in September 2010, we noticed that the AEP for 2005-06 was notified by the Government on 28 February 2005. Accordingly a request was made by the SE, Khurda on 29 March 2005 to OSBC for depositing the depot licence fee in respect of

the CS depots at the rate of rupees four lakh each *per annum* for the year 2005-06; but the licensee did not pay the same. Despite the non-deposit of the Government dues, the SE, Khurda sent a proposal for issue of depot licences on 6 April 2005 to the EC, Orissa for necessary approval. We also observed that the EC, Orissa as well as the District Collectors issued / renewed the

licences in Form- DW-5¹ to open / operate the CS depots at different places for 2005-06 onwards up to 2009-10 without mentioning therein the chargeability of depot licence fee at the rates prescribed in the AEPs for the respective years. The Corporation was liable to pay depot licence fees of ₹ 76 lakh against the CS depots as detailed below.

Year	Place of CS Depot	No. of CS depot	Rate of depot licence fee (Rupees in lakh)	Licence fee realisable (Rupees in lakh)
2005-06	Balasore, Berhampur, Cuttack ² (Nirgundi) and Khurda	4	4.00	16.00
2006-07	Balasore, Cuttack (Nirgundi) and Khurda	3	5.00	15.00
2007-08	Balasore, Cuttack (Nirgundi) and Khurda	3	5.00	15.00
2008-09	Balasore, Cuttack (Nirgundi) and Khurda	3	5.00	15.00
2009-10	Balasore, Cuttack (Nirgundi) and Khurda	3	5.00	15.00
Total		16		76.00

As a result, the Government revenue of ₹ 76 lakh was not collected while issuing / renewing the licences for the CS Depots for the above years as required under the AEPs. After we pointed out this case, the SE, Khurda stated (March 2011) that short levy / realisation of licence fee as pointed out by us would be realised from the OSBC. Further reply is yet to be received (January 2012).

We brought the matter to the notice of the EC, Odisha (February and March 2011) and the Government (March 2011), their replies are yet to be received (January 2012).

5.3.2 Non-realisation of excise duty on account of non-lifting of the MGQ of liquor

As per the Orissa Excise (Exclusive Privilege) Foreign Liquor Rules 1989, when a licensee fails to lift the minimum guaranteed quantity (MGQ) of liquor during a month, he shall make good the loss of excise duty by remittance of an equal amount to the Government account by the fifth day of the succeeding month. The deficit amount is required to be collected at the end of the year with 10 *per cent* fine thereon, in case it is not collected alongwith the licence fee of the succeeding months of the year. Further as per the OER, 1965, licence for the retail sale of intoxicants shall not ordinarily be granted to a former licensee who is in arrears to the Government. As per the AEP for 2009-10, the excise duty on IMFL and beer was fixed at ₹ 140 per London Proof Litre (LPL) and ₹ 18 per Bulk Litre (BL) respectively.

During test check of the licence fee register and settlement file of the DEO, Khurda in September 2010, we found that the licence for IMFL shop at Kharvelnagar-III, Bhubaneswar was renewed by the Collector, Khurda (March 2009) in favour of the Secretary, Bhubaneswar Wholesale Co-operative Society, Alaka for the year 2009-10. The licensee did not lift the MGQ of 20,928 LPL of IMFL and 30,996 BL of beer fixed

1 Form No.5 of Distillery series issued for licence of country spirit depot.
2 The depot was permitted to open from 01.01.2006.

for the said year. Moreover, the licensee did not make good the loss of excise duty by remittance of the amount due to Government on account of non-lifting of MGQ of liquor every month. Hence, the licensee was liable to pay the excise duty of ₹ 38.37 lakh including fine of ₹ 3.49 lakh. However, the DEO did not raise the demand for realisation of the above dues. This resulted in non-realisation of excise duty of ₹ 38.37 lakh. We further observed that the licence for the year 2010-11 was also renewed by the Collector, Khurda on 24 March 2011 without realisation of the arrear dues in contravention of the provision of OER 1965.

After we pointed out the case, the SE, Khurda stated (May 2011) that the demand notice had been issued (April 2011). Details of realisation is yet to be received (January 2012).

We brought the matter to the notice of the EC, Odisha and the Government (March 2011), their replies are yet to be received (January 2012).

5.3.3 Non-levy of utilisation fee and fine for shortfall in utilisation of MGQ of molasses

As per the Orissa Excise (Exclusive Privilege) Rules, 1970 read with Government notification dated 31 March 2007, the licensee shall lift and utilise the entire MGQ of molasses fixed by the District Collector in a financial year on payment of utilisation fee (UF) notified by the Government in the AEP for the year. The licensee shall be liable to pay UF for the shortfall, in case he fails to lift the MGQ, along with a fine of 15 per cent of the UF payable for such shortfall. Further, in case of default in payment of the above mentioned UF and fine, the licence of the distillery shall be cancelled.

During test check of the licence register and statement of transactions of molasses in production of alcohol furnished by M/s. Aska Co-operative Sugar Industries Ltd. (ACSIL) in the DEO, Ganjam in September 2010, we found that ACSIL lifted and utilised 15,396.119 MT of molasses as against the MGQ of 33,614.277 MT fixed by the Collector, Ganjam for the years 2007-08

to 2009-10. This resulted in short lifting of 18,218.158 MT of molasses during the above mentioned years for which the licensee was liable to pay UF of ₹ 18.91 lakh and fine of ₹ 3.53 lakh aggregating to ₹ 22.44 lakh. Though the licensee defaulted regularly in paying the fees towards short lifting / utilisation of the MGQ of molasses, the SE, Ganjam neither levied and realised the duty from the licensee nor cancelled the licence as per the provision of the above Rules.

After we pointed out the case (September 2010), the SE, Ganjam, Chatrapur demanded (March 2011) the Government dues, as pointed out by us, against the above distillery. Details of realisation is yet to be received (January 2012).

We brought the matter to the notice of the EC, Odisha (February 2011) and the Government (March 2011), their replies are yet to be received (January 2012).

5.3.4 Short realisation of transportation fee on mohua flower from the licensees of outstill shops

The Orissa Excise (Exclusive Privilege) Rules, 1970 read with the Orissa Excise (Mohua Flower) Rules, 1976 and the AEPs for the years 2008-09 and 2009-10 provide for realisation of transportation fee at the rate of ₹ 15 per quintal of Mohua Flower (MF) against the MGQ of MF fixed by the District Collector for lifting and utilisation by a licensee during a year.

During test check of the licence register, storage and utilisation register of MF, Administrative Reports and quarterly progress reports of three³ DEOs between January and September 2010, we noticed that although the

utilisation fee at the prescribed rate was realised on the entire MGQ, transportation fee was realised only on the quantity of MF utilised in respect of 58 outstill⁴ shops. This resulted in short realisation of transportation fee amounting to ₹ 15.45 lakh⁵.

After we pointed out the above lapses, the SE, Sambalpur replied (January 2010) that the matter was referred to the EC, Odisha for clarification. The SE, Jharsuguda replied (August 2011) that demand notices were issued to the concerned Exclusive Privilege (EP) holders of the shops but the amount was yet to be realised. The SE, Ganjam replied (June 2011) that an amount of ₹ 3.14 lakh was realised between December 2010 and March 2011. However, the EC, Odisha stated (June 2011) that if a licensee fails to lift the MGQ fixed, he is liable to pay utilisation fee on short lifting of MGQ of Mohua flower and transportation fee is one such excise revenue linked to MGQ. He further stated that based on the audit objections demand notices were issued earlier to the EP holders for realisation of transportation fee on short lifted quantity of MF. Against such demand notices, writ petitions were filed before the Hon'ble High Court where on the Hon'ble Court had granted stay orders and thus the realisation of transportation fee may not be acted upon till the stay is vacated. The reply is not tenable as the stay orders of the Hon'ble High court were limited to the particular petitioners for particular period only. In none of the cases pointed out by us, stay orders have been issued so far by the Hon'ble Court. Moreover, the SE, Jharsuguda issued demand notices against the shops and the SE, Ganjam realised ₹ 3.14 lakh towards such fee as discussed above.

We brought the matter to the notice of the Government (March 2011), their reply is yet to be received (January 2012).

3 Ganjam, Jharsuguda and Sambalpur.

4 2008-09 : Jharsuguda (12), Sambalpur (29) and 2009-10 : Ganjam (17).

5 Ganjam (Chhatrapur)- ₹ 4.98 lakh, Jharsuguda-₹ 3.44 lakh and Sambalpur- ₹ 7.03 lakh.

5.3.5 Non-levy of utilisation fee and import fee

As per the AEP for 2008-09, utilisation fee and import fee on molasses used for industrial and other purposes were increased to ₹ 150 and ₹ 75 per MT from ₹ 125 and ₹ 70 per MT respectively fixed in the AEP 2007-08.

During test check of the report on stock and disposal of molasses, transport pass register, No Objection Certificates (NOCs) issued by the EC in the DEO, Jajpur in August 2009, we found that a licensee, M/s. Jindal Stainless Ltd., Kalinganagar, Jajpur procured 999.170 MT of molasses during April to July 2008 against NOC originally issued by the EC, Odisha in March 2008 for importing 1000 MT by 10 May 2008 which was subsequently extended twice in May and June 2008. But the utilisation fee and import fee aggregating to ₹ 2.25 lakh as per the AEP for 2008-09 was not demanded by the SE, Jajpur up to the date of audit.

After we pointed out the case, the SE, Jajpur demanded the above dues in October 2009 and reminded the licensee on 17 June 2011 to deposit the amount within seven days. The details of realisation is yet to be received (January 2012).

We brought the matter to the notice of the EC, Odisha (February 2010) and the Government (March 2011), their replies are yet to be received (January 2012).