

CHAPTER III

***STATE EXCISE
DUTIES***

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EXECUTIVE SUMMARY

Increase in tax collection	In 2011-12, the collections of State Excise Duty increased by 16.31 <i>per cent</i> over the previous year.
Lack of a Structured Internal audit wing	The Department did not have a structured internal audit wing to plan audit in accordance with scheduled audit plan. In response to an audit observation regarding absence of Internal audit programme, Government replied (July 2011) that it was being chalked out. No further response has been received (January 2013).
Action taken by the Department in respect of observations pointed out by us in earlier years	During the period five year period from 2006-07 to 2010-11, we had pointed out non/short levy, irregular adjustment of Earnest Money Deposit (EMD) etc., with revenue impact of ₹ 66.60 crore in 337 cases. Of these, the Department/Government had accepted audit observations in 36 cases involving ₹ 20.81 crore and recovered ₹ 15.65 crore in 12 cases.
Results of audits conducted by us in 2011-12	<p>In 2011-12, we test checked the records of 68 offices relating to Prohibition and Excise Department and found preliminary audit observations relating to non/short levy of additional licence fee, irregular adjustment of EMD, excess drawal of pay and allowances etc., involving ₹ 26.60 crore in 101 cases.</p> <p>The Department accepted underassessments and other deficiencies of ₹ 1.15 crore in 29 cases, of which 10 cases involving ₹ 1.10 crore were pointed out during the year 2011-12 and the rest in the earlier years. An amount of ₹ 17.31 lakh was recovered in 24 cases during the year 2011-12.</p>
What we have highlighted in this Chapter?	During the year 2011-12, we observed non levy of duty and other irregularities as a result of the test check of records relating to bar licenses, census records, challan registers and the auction of shops in the offices of Prohibition and Excise Department, where we found that the provisions of the Acts/Rules were not observed. In this Chapter, we present illustrative cases involving

tax effect of ₹ 2.40 crore relating to ‘non-levy of additional licence fees payable by bars/restaurants with additional enclosures’ and ‘irregular adjustment of EMD towards resultant loss’ selected from the preliminary audit observations.

Our conclusion

The Department needs to re-look into weaknesses in the system and strengthen its internal controls. It also needs to initiate action to recover the loss from irregular adjustments of EMD, where audit’s contention was accepted by the Department. Further, the Department may consider clearly specifying the definition of ‘contiguity’, so as to ensure consistent treatment of all licensees. The Department should also focus on improving its internal audit mechanism.

3.1 Tax administration

The Prohibition and Excise Department is governed by the Andhra Pradesh Excise Act, 1968, the Narcotic Drugs and Psychotropic Substances Act, 1985, the Andhra Pradesh Prohibition Act, 1995 etc. The Principal Secretary to Government, Revenue Department is the controlling Authority at Government level. The Commissioner, Prohibition and Excise Department is the head of the Department in all matters connected with administration. All the 23 districts of the State are divided into 53 excise districts. Each of the excise districts is under the charge of a Prohibition and Excise Superintendent who is assisted by the Assistant Excise Superintendent and other staff. Prohibition and Excise Inspectors are in charge of excise stations and check posts, while 23 Deputy Commissioners and Assistant Commissioners supervise the overall functioning of the offices of Excise Superintendents.

3.2 Trend of receipts

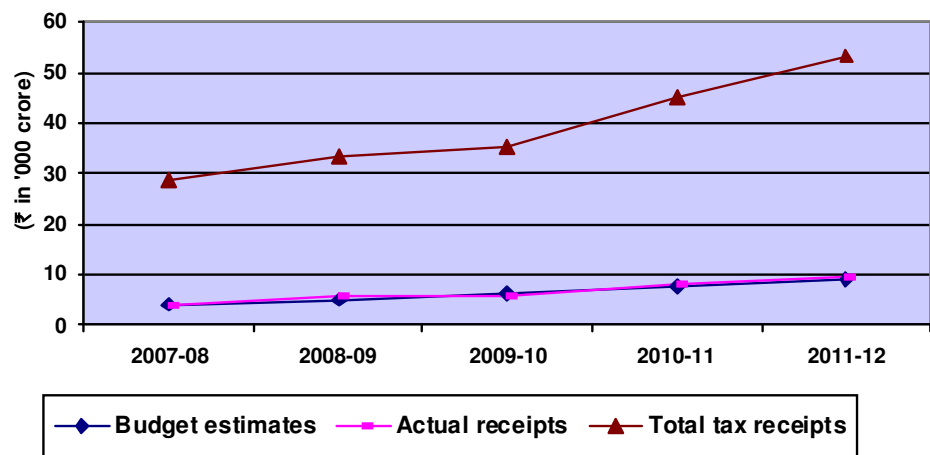
Actual receipts from State Excise Duty during the years 2007-08 to 2010-11 along with the total tax receipts during the same period is exhibited in the following table and graph.

Table 3.1: Receipts from State Excise Duty

(₹ 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
2007-08	4,125.00	4,040.69	(-) 84.31	(-) 2.04	28,794.05	14.33
2008-09	4,991.25	5,752.61	(+) 761.36	(+) 15.25	33,358.29	17.24
2009-10	6,260.00	5,848.59	(-) 411.41	(-) 6.57	35,176.68	16.63
2010-11	7,512.00	8,264.67	(+) 752.67	(+) 10.02	45,139.55	18.31
2011-12	9,014.40	9,612.36	(+) 597.96	(+) 6.63	53,283.41	18.04

Graph 3.1: Budget estimates, actual receipts and Total tax receipts



As seen above, while the total tax receipts of the State have increased by 85.05 per cent during the last five years, increase in the receipts from State Excise Duty has been recorded as 137.89 per cent. The contribution of the State

Excise Duty in the total tax receipts has also increased from 14.33 *per cent* to 18.04 *per cent* during this period.

3.3 Cost of collection

The figures of gross collection in respect of State Excise Duty, expenditure incurred on collection and the percentage of such expenditure to gross collection during the years 2009-10, 2010-11 and 2011-12, along with the relevant all India average percentage of expenditure on collection to gross collection, are mentioned below:

Table 3.2: Cost of collection of State Excise Duty

(₹ in crore)					
Head of revenue	Year	Gross collection	Expenditure on collection of revenue	Percentage of cost of collection to gross collection	All India average percentage for the previous year
State Excise Duty	2009-10	5,848.59	183.78	3.14	3.66
	2010-11	8,264.67	233.64	2.83	3.64
	2011-12	9,612.36	263.81	2.74	3.05

Although there is an increase in the cost of collection in absolute terms, the increase in the gross collections of the Department was much higher, resulting in a lower cost of collection in percentage terms.

3.4 Impact of Local Audit

During the last five years, audit through its audit reports had pointed out non/short levy, non/short realisation and non levy of interest with total revenue implication of ₹ 66.60 crore in 337 cases. Of these, the Department/Government had accepted audit observations in 36 cases involving ₹ 20.81 crore, and had since recovered ₹ 15.65 crore in 12 cases. The details are shown in the following table:

Table 3.3: Impact of Local audit on State Excise Duty

(₹ in crore)							
Year	No. of units audited	Amount objected		Amount accepted		Amount recovered	
		No. of cases	Amount	No. of cases	Amount	No. of cases	Amount
2006-07	95	20	4.45	0	0	0	0
2007-08	50	79	6.41	8	0.01	0	0
2008-09	58	77	10.32	2 ¹	0.00	2	0.00
2009-10	55	136	18.88	12	0.28	9	0.23
2010-11	55	25	26.54	14	20.52	1	15.42
Total	313	337	66.60	36	20.81	12	15.65

Recovery of ₹ 15.65 crore (75.21 *per cent*) against the money value of ₹ 20.81 crore relating to accepted cases during the period 2006-07 to 2010-11 indicates that the Government/Departmental machinery had acted promptly to recover the Government dues in respect of the cases accepted by them.

¹ Insignificant amount i.e. less than ₹ one lakh.

3.5 Working of Internal Audit Wing

Internal audit is an important part of internal control mechanism for ensuring proper and effective functioning of a system for detection and prevention of control weaknesses. The orders issued by the Government of Andhra Pradesh from time to time stipulate, among others, that it is the responsibility of the Accounts branch of the Head of the Department to conduct internal Audit of the Regional Offices, District Offices, Unit Offices etc., periodically (at least once in a year) and furnish reports to the Commissioner.

The fact of not conducting any internal audit of the offices of Deputy Commissioners (23)/Assistant Commissioners (28)/Prohibition and Excise Superintendents (53) and absence of an internal audit programme was brought out in the stand-alone Audit Report on the 'Functioning of the Prohibition and Excise Department' (Paragraph 4.6). In response to our observation regarding absence of internal audit programme, Government had replied (July 2011) that it was being chalked out. No further response has been received (January 2013).

3.6 Results of Audit

During the year 2011-12, test check of the records of 68 offices of the Prohibition and Excise Department revealed preliminary audit findings relating to non-levy/short realisation of duty and other irregularities involving ₹ 26.60 crore in 101 cases which fall under the following categories:

(₹ in crore)			
Sl. No.	Category	No. of cases	Amount
1	Non-levy of additional licence fee	33	9.63
2	Loss of excise duty	2	3.70
3	Irregular adjustment of Earnest money deposit	10	1.11
4	Excess drawal of pay and allowances	13	0.86
5	Non-levy of penal interest on belated payments	11	0.49
6	Short collection of stamp duty and registration fees	12	0.43
7	Other irregularities	20	10.38
Total		101	26.60

During the year 2011-12, the Department accepted underassessments and other deficiencies of ₹ 1.15 crore in 29 cases, of which 10 cases involving ₹ 1.10 crore were pointed out during the year 2011-12 and the rest in earlier years. An amount of ₹ 5.41 lakh was realised in 19 cases.

After the issue of two draft paragraphs, the Government reported (June 2012) recovery of ₹ 11.90 lakh in respect of five offices.

A few illustrative cases involving ₹ 2.40 crore are mentioned in the succeeding paragraphs.

3.7 Audit observations

During scrutiny of the records in the offices of Prohibition and Excise Department, we observed several cases of non-observance of the provisions of the Acts/Rules, resulting in non levy of additional licence fee and irregular adjustment of EMD as mentioned in the succeeding paragraphs in this Chapter. These cases are illustrative and are based on a test check carried out by us. We pointed out such omissions in audit each year, but not only do the irregularities persist; these remain undetected till an audit is conducted. There is a need for the Government to consider directing the Departments to improve the internal control system, including strengthening internal audit so that such omissions can be avoided, detected and rectified.

3.8 Non-levy of additional licence fees payable by bars/restaurants with additional enclosures

As per Section 28 of the Andhra Pradesh (AP) Excise Act, 1968, read with Rule 10 of AP Excise (Grant of licence of selling by bar and conditions of licence) Rules, 2005, the enclosures for consumption of liquor, which are not contiguous, shall attract levy of an additional licence fee at 10 per cent for each such additional enclosure.

In terms of explanation given below the Rule, the word 'enclosure' means an area of consumption of liquor which is contiguous in utility for consumption'. If one consumption enclosure is separated from another enclosure by non-contiguity and interposition of areas of different utilities other than consumption of liquor, it attracts additional license fee.

We noticed (between August 2011 and January 2012) during test check of the records relating to bar licences, census records, challan register etc., of nine offices² of Prohibition and Excise Superintendents (PESs) that the concerned PESs did not levy 10 per cent additional licence fee amounting to ₹ 1.42 crore for the years 2008-09 to 2010-11 on 29 bars and restaurants with non-contiguous consumption enclosures.

After we pointed out the cases, the Government replied (June 2012) that

- Restaurants/Bars were functioning with one entrance to reach liquor consumption halls and the total consumption area was under one roof;
- they were not separated by areas of different utilities other than consumption of liquor; hence, 10 per cent additional license fee was not levied;
- corridor, counter, staircase, washbasin, kitchen, parking etc. were mandatory for issue of 2B license and were not to be treated as other utilities.

² Adilabad, Guntur, Jagtial, Machilipatnam, Nalgonda, Narasaraopet, Ongole, Parvathipuram and Srikakulam.

The replies are not acceptable, as enclosures for consumption of liquor were separated by enclosures utilised for purposes other than for the consumption of liquor. As such, these were not contiguous and attracted levy of additional fee. Further, subsequent audit scrutiny also revealed that the Department had collected additional license fee in similar cases³; which is contrary to the reply furnished to us.

The Department may consider clearly specifying the definition of ‘contiguity’, so as to ensure consistent treatment of all licensees.

3.9 Irregular adjustment of Earnest Money Deposit (EMD) towards resultant loss

Under Rule 12 of Andhra Pradesh Excise (Lease of right of selling by shop and condition of license) Rules 2005, the tenderer shall be required to deposit as earnest money a sum equal to 5 per cent of the upset price fixed and notified by the auctioning authority for each shop notified for auction in the form of a demand draft. As per Section 17(3) of the AP Excise Act read with Rule 20 of the above mentioned Rules, in case of failure to pay 1/6th of the lease amount and/or furnish the Fixed Deposit Receipts (FDRs)/Bank Guarantees (BGs) as required under Rule 19 within the time specified, the auction shall be cancelled by the auctioning authority, and amounts already paid shall be forfeited to the Government. The right of sale is to be given to the next highest tenderer if the tender amount is equal to or higher than the upset price or re-auctioned, as the case may be, or alternate arrangements are to be made at the risk of the original auction purchaser, who shall continue to be liable in respect of the lease till the next auction purchaser takes over or re-auction is carried out, as the case may be.

We noticed (between July 2011 and January 2012) during the scrutiny of files relating to auction of liquor shops for the years 2008-10 and 2010-12 of five offices⁴ of PESs in 24 cases that the first/second bidder failed to attend/pay 1/6th lease amount on the day of auction. Therefore, the shops were allotted to the second/third highest bidder, whose bid amount was lesser than the first/second highest bidder by a sum of ₹ 9.44 crore. As per the Rules, alternate arrangements are to be made at the risk of the original

auction purchaser. However, the Department incorrectly computed the resultant loss by adjusting EMD of ₹ 98.27 lakh paid by the first bidder, which already stood forfeited to the Government, thus extending undue favor to the first highest bidders. This incorrect computation of resultant loss led to loss of revenue of ₹ 98.27 lakh.

³ Passage between two enclosures/consumption halls on the same floor, consumption halls separated by lawn, counter between two consumption halls, office & toilets between two consumption halls.

⁴ Amalapuram, Khammam, Kothagudem, Machilipatnam and Visakhapatnam.

After we pointed out the cases, Government intimated (June 2012) that the Commissioner had issued instructions (February 2012) to all the Prohibition and Excise Superintendents to forfeit the EMD wherever there was a monetary loss on account of the highest bidder not complying with the conditions of the auction, and to revise the demand by not taking into account the EMD money while computing the resultant loss. It was further replied that P&ES Amalapuram, Khammam and Kothagudem had forfeited the EMD and revised the demand by correctly computing the resultant loss. P&ES Machilipatnam forfeited the EMD and requested the District Collector to take immediate action for realisation of dues under the provisions of AP Revenue Recovery Act, 1864 by sale of immovable properties of the defaulters.