

the Acts /Rules/ Annual Excise Policies were not adequately adhered to.

It is a matter of concern that similar omissions have been pointed out by audit repeatedly in the Audit Reports for the past several years, but the Department has not taken adequate corrective action. Though these omissions were apparent from the records which were made available to audit, the DEOs failed to detect these mistakes.

### **Conclusions**

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 audit are avoided in future.

The Department also needs to initiate immediate action on the recommendation in the PA and to recover the non / short-levy/realisation of excise duty and fees etc. pointed out by audit, more so in those cases where the Department has accepted the audit contentions.

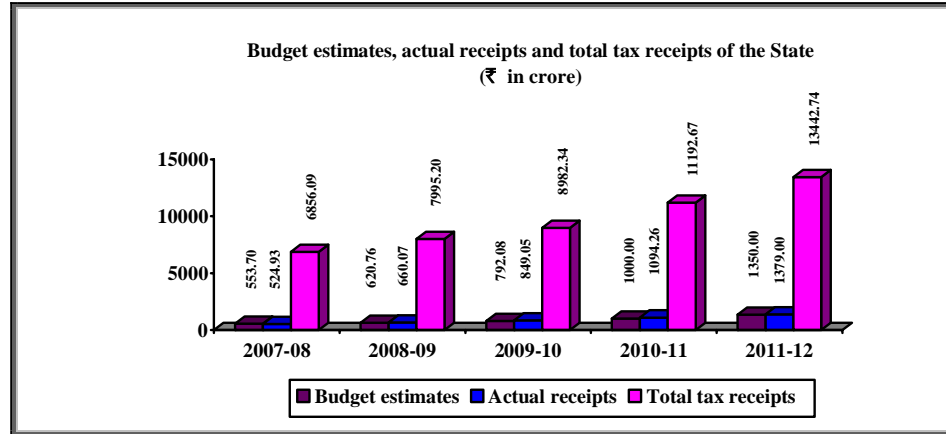
### **5.1.1 Tax administration**

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 Deputy Commissioners of Excise (EDCs) at division level, Superintendents of Excise (SEs) at district level, Officers and staff at field level thereunder.

### **5.1.2 Trend of receipts**

Actual receipts from State Excise during the years 2007-08 to 2011-12 along with the budget estimates and total tax receipts during the same period is detailed in the following table and graph.

(₹ 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	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	1,000.00	1,094.26	(+) 94.26	(+) 9.43	11,192.67	9.78
2011-12	1,350.00	1,379.00	(+) 29.00	(+) 2.15	13,442.74	10.26



The above table shows that the excise revenue increased from ₹ 524.93 crore in 2007-08 to ₹ 1,379 crore in 2011-12 and its contribution to the total tax receipt of the State varied between 7.66 and 10.26 *per cent*. The reasons for increase in collection during 2011-12 were attributed by the Department to opening of new legal outlets, increasing trend in lifting of IMFL, Beer and higher utilisation of Mohua Flower.

### 5.1.3 Analysis of arrears of revenue

The arrears of Excise revenue was ₹ 21.03 crore as on 31 March 2012. The details of arrears outstanding for more than five years were not available with the Department. However, arrears of ₹ 14.26 crore was covered by certificate proceedings; ₹ 2.29 crore was stayed by the Supreme Court/ High Court/ other judicial authorities; ₹ 0.87 crore was under dispute; ₹ 0.03 crore was proposed to be written off and the remaining ₹ 3.58 crore was under other stages of recovery.

**We recommend that the Department may pursue for speedy disposal of certificate proceedings.**

### 5.1.4 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 2009-10, 2010-11 and 2011-12 along with the all India average percentages of expenditure for collection to gross collection in the respective previous years are given in the table below.

(₹ in crore)				
Year	Gross collection	Expenditure on collection	Percentage of expenditure to gross collection	All India average percentage for the previous year
2009-10	849.05	30.74	3.62	3.66
2010-11	1,094.26	36.25	3.31	3.64
2011-12	1,379.00	38.36	2.78	3.05

The percentages of the cost of collection during 2009-10 to 2011-12 were within the all India average percentages.

### 5.1.5 Impact of Audit

#### Revenue impact

During the last five years (2006-07 to 2010-11), we pointed out non / short-levy, non / short-realisation of excise duty and fee etc., with revenue implication of ₹ 117.28 crore in 4,342 cases. Of these, the Department accepted audit observations in 1,722 cases involving ₹ 31.57 crore and has since recovered ₹ 1.90 crore in 309 cases. The details are given in the following table.

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	
2006-07	32	1,025	25.14	262	0.51	100	0.14	27.45
2007-08	31	531	9.66	268	4.63	118	1.31	28.29
2008-09	31	410	13.29	247	0.86	52	0.09	10.47
2009-10	27	1,936	46.29	800	17.53	29	0.04	0.23
2010-11	15	440	22.90	145	8.04	10	0.32	3.98
<b>Total</b>	<b>136</b>	<b>4,342</b>	<b>117.28</b>	<b>1,722</b>	<b>31.57</b>	<b>309</b>	<b>1.90</b>	<b>6.02</b>

The recovery position (6.02 per cent only) 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.**

### 5.1.6 Working of Internal Audit Wing

The internal audit of the units under the Department was being conducted by the Internal Audit Wing (IAW) of the Board of Revenue alongwith that of other offices under the Revenue Department to ensure correct assessment, prompt collection and timely deposit of excise revenue to Government account and to arrest leakage of such revenue. Since it is one of the major revenue earning Departments of the State, it was required to create the IAW in the Department (September 2010) for internal audit of its units from 2010-11 onwards. The internal audit for 2008-09 and 2009-10 only was completed in four<sup>2</sup> out of 31 DEOs by the end of March 2011.

**The Department may take appropriate steps to clear the backlog of internal audit.**

<sup>2</sup> Balasore, Bolangir, Dhenkanal and Nabarangpur.

### 5.1.7 Results of Audit

During the year 2011-12, a Performance Audit (PA) on Working of Excise Department covering 12 districts was conducted and test check of records of 15 units relating to State Excise Duty (SED) was done wherein non/short-levy/realisation, loss of revenue etc., involving ₹ 1002.59 crore in 28,193 cases were noticed.

During the year, the Department accepted non-levy/short-realisation of SED of ₹ 15.27 crore in 26,570 cases pointed out in 2011-12. An amount of ₹ 0.45 crore was recovered in 50 cases relating to 2011-12 and earlier years.

**After issue of draft paragraphs, the Department recovered ₹ 7.81 lakh (May 2012) pertaining to two cases pointed out by audit during 2011-12.**

## **5.2 Performance Audit on “Working of Excise Department”**

### **Highlights**

- Molasses is being manufactured, stored and sold by the sugar factories without the necessary licence.  
**{Paragraph 5.2.7.1(i)}**
- Allowance of excess wastage than the norm prescribed under the Excise Technical Manual in manufacture of Beer led to loss of revenue of ₹ 2.80 crore.  
**{Paragraph 5.2.7.3(i)}**
- Delay in supply of Country Spirit (CS) in bottles led to revenue loss of ₹ 4.80 crore.  
**(Paragraph 5.2.8.2)**
- Revenue of ₹ 246.16 crore could not be earned due to non levy of transport fee on IMFL, Beer and CS.  
**{Paragraph 5.2.8.5 (ii)}**
- Renewal of excise shops without enhancement of Consideration Money (C.Money) led to revenue loss of ₹ 85.08 crore and incorrect fixation of C.Money led to further loss of ₹ 80.76 crore..  
**(Paragraphs 5.2.9.1 and 5.2.9.3)**
- Levy of State Excise Duty at lower rate on Canned Beer led to revenue loss of ₹ 13.88 crore.  
**(Paragraph 5.2.9.7)**
- Seized hemp plants with large revenue potential were not disposed off through auction.  
**(Paragraph 5.2.9.12)**
- Monitoring and control measures in the areas of recording complaints, periodical inspection of Excise shops, sugar factories and manufacturing units, enforcement activities was weak. Low rates of conviction in the excise offence cases were also noticed.  
**(Paragraph 5.2.10)**
- Internal Control Mechanism is poor and Internal Audit is in arrears in respect of 232 units as on 31 March 2011, Manpower deployment for regulatory and enforcement activities including internal audit was inadequate.  
**(Paragraphs 5.2.10.5, 5.2.10.5(ii) and 5.2.10.6)**

### 5.2.1 (a) Introduction

The objective of the Excise Department is to generate revenue resources of the State as per the Excise Laws of the State and as detailed in the Annual Excise Policies (AEPs). The existing demand of consumers is to be met by legitimate and safe supply of liquor of good quality in reasonable quantities without compromising with the social values under strict vigilance on illegal production, import, possession, sale, consumption or export.

The State Government derives the power to levy and collect Excise Revenue under Article 246(3) read with Entries 51 and 66 of List II of the Seventh Schedule of the Constitution of India. The rate of State Excise Duty (SED) and Fees are fixed by the Government / Board of Revenue (Board) under the Bihar and Odisha Excise (B&OE) Act, 1915 and Rules made thereunder and notified in the AEP of the Government.

### (b) Policy framework and strategy

The Government formulates the AEPs for each financial year. Licences are issued to import, produce, possess and sell/export intoxicants for levy and collection of State Excise Duty (SED) and Fees to enhance the revenue of the State as well as curbing the consumption of such intoxicants by the consumers. The regulatory activities are carried out by the District Excise Officers (DEOs) and Enforcement Squads. Public Awareness Campaigns are also conducted involving Non-Government Organisations, Self Help Groups and Panchayat Raj Institutions to create awareness among the people about the dangers in consumption of Illicitly Distilled and Spurious Liquor.

### 5.2.2 Organisational setup

The administration of the Excise Laws and the policy decisions thereon rest with the Department headed by the Principal Secretary. The Board of Revenue implements the same with the assistance of one Excise Commissioner (EC), three Deputy Commissioners of Excise (EDCs), 31 Superintendents of Excise (SEs), 34 Dy. Superintendents of Excise (DSEs), 80 Inspectors of Excise (IEs), 205 Sub-Inspectors of Excise (SIEs), 187 Assistant Sub-Inspectors of Excise (ASIEs) and 1,127 Excise Constables. The Collector of the district is the head of excise administration in the district. The SEs, also known as the DEOs carry out all the excise functions under the overall supervision/guidance of the Collectors of the respective districts.

### 5.2.3 Audit objectives

A Performance Audit (PA) on “**Working of Excise Department**” was conducted to ascertain whether;

- The provision/system for regulating levy and collection of State Excise Duty, Fee etc under the Acts and Rules administered by Excise Department were being complied with and implemented effectively.
- The internal control mechanism was adequate and effective for preventing leakage of Excise Revenue as per the Rules and Regulations of the Department.

#### **5.2.4 Audit criteria**

The following Act/Rules/Policies/Notification/instructions etc., governing the levy and collection of excise revenue of the State were used as sources of audit criteria.

- i) Bihar and Orissa Excise (B and OE) Act, 1915,
- ii) Orissa Excise Rules (OER), 1965,
- iii) Board's Excise Rules (BER), 1965,
- iv) The Orissa Excise (Exclusive Privilege) FL Rules, 1989,
- v) The Orissa Excise Exclusive Privilege Rules, 1970,
- vi) Orissa Excise (Mohua Flower) Rules, 1976,
- vii) The Board's Excise (Fixation of Fees on Mohua Flower) Rules, 1976,
- viii) Orissa Excise (Methyl Alcohol) Rules, 1976; and
- ix) Annual Excise Policies (AEPs), Circulars, notifications and instructions of the Department/Board/Commissionerate issued from time to time.

#### **5.2.5 Scope and methodology**

We conducted the audit during March to July 2012 covering the period from 2006-07 to 2010-11 by way of test check of the records of the Department, the Commissionerate of Excise, three Deputy Commissionerates, 12<sup>3</sup> DEOs out of 30 selected on the basis of revenue collection and all the six<sup>4</sup> depots of Orissa State Beverages Corporation Ltd. (OSBC) situated in the selected districts. Entry Conference was held on 22 March 2012, where the objectives of the audit, audit criteria, scope and the methodology of audit etc. were discussed with the Principal Secretary and Excise Commissioner (EC) of the Department. In the 12 districts test checked, two Distilleries, three Breweries, ten Bottling Units and five Sugar Factories are located. The aspects of production, procurement, storage, sale of intoxicants, monitoring and enforcement measures taken by the Department were examined in the audit. Similar observations noticed in the regular audit during the year and previous years but not featuring in the earlier Audit Reports, have also been included. Exit Conference was also held on 3 January 2013 with the Principal Secretary and EC of the Department where all the significant audit observations were discussed and the responses of the Department are incorporated in the Report at appropriate places.

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<sup>3</sup> Angul, Balasore, Baragarh, Bolangir, Cuttack, Dhenkanal, Ganjam, Jajpur, Khurda, Mayurbhanj, Rayagada and Sambalpur.

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## Audit Observation

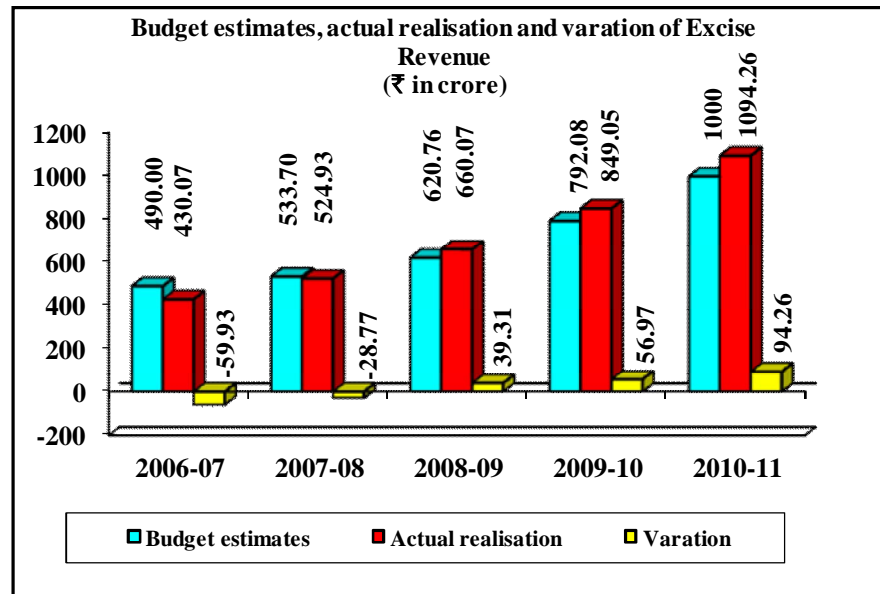
### 5.2.6 Trend of Excise Revenue

The Orissa Budget Manual stipulates that the Estimates of Revenue receipts should be based on the demand of the current year including any arrear of the past years and probability of their realisation during the year. We noticed that Controlling Officers of the Department required to submit the Estimates of Revenue on realistic basis did not furnish the same to the Finance Department (FD) for inclusion in the Revenue Budget of the State. However, as ascertained from the FD, the Budget Estimate (BE) of the ensuing year was prepared on the basis of the trend of realisation of revenue in the past years. The BE, actual realisation and the variations are detailed below:

(₹ in crore)

Year	Budget estimates	Actual realisation	Variation [Excess (+), Short-fall (-)]	
			Amount	Percentage
2006-07	490.00	430.07	(-) 59.93	(-) 12.23
2007-08	553.70	524.93	(-) 28.77	(-) 5.20
2008-09	620.76	660.07	(+) 39.31	(+) 6.33
2009-10	792.08	849.05	(+) 56.97	(+) 7.19
2010-11	1,000.00	1,094.26	(+) 94.26	(+) 9.43
<b>TOTAL</b>	<b>3,456.54</b>	<b>3,558.38</b>		

(Source: Finance Accounts and Audit Reports)



Excise Revenue of ₹ 3,456.54 crore was estimated for collection during the last five years ending with March 2011, against which ₹ 3,558.38 crore was collected. The variation between the BE and actuals ranged between (-) 12.23 per cent (2006-07) and 9.43 per cent (2010-11). The Department may analyse the reason for variation and ensure reduction in the gap in the ensuing years.



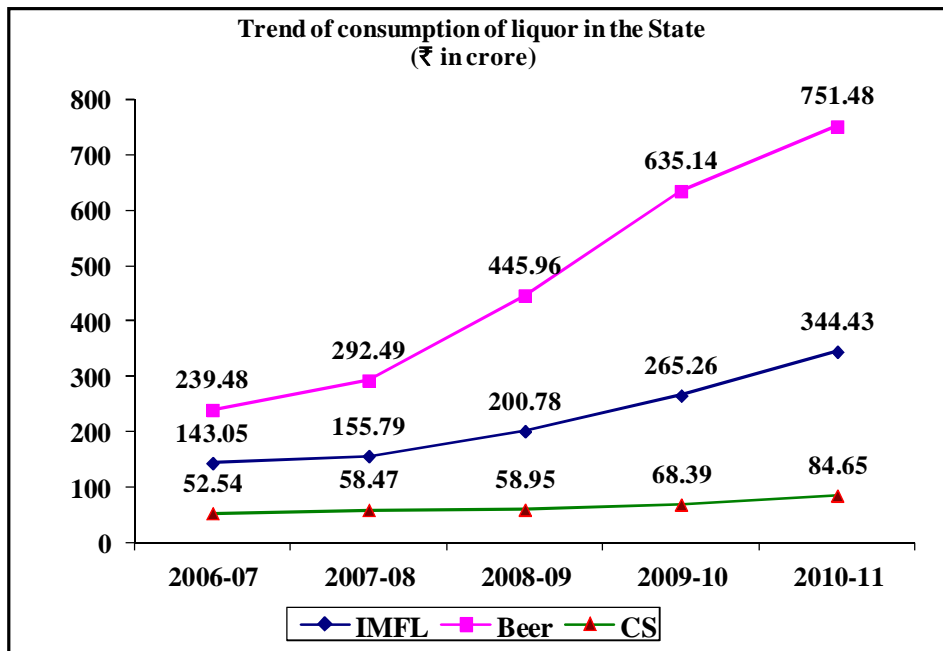
**5.2.6.1 Trend of lifting and consumption of liquor in the State.**

Year-wise position of lifting and consumption of liquor (IMFL, Beer, CS) in the State through the retail outlets and per capita consumption thereof during the period covered under audit are given in the table below:

**Total lifting of liquor:**

Year	IMFL (in lakh LPL)	Beer (in lakh BL)	CS (in lakh LPL)
2006-07	143.05	239.48	52.54
2007-08	155.79	292.49	58.47
2008-09	200.78	445.96	58.95
2009-10	265.26	635.14	68.39
2010-11	344.43	751.48	84.65

Source: Information supplied by the EC, Odisha



**Per capita consumption of liquor**

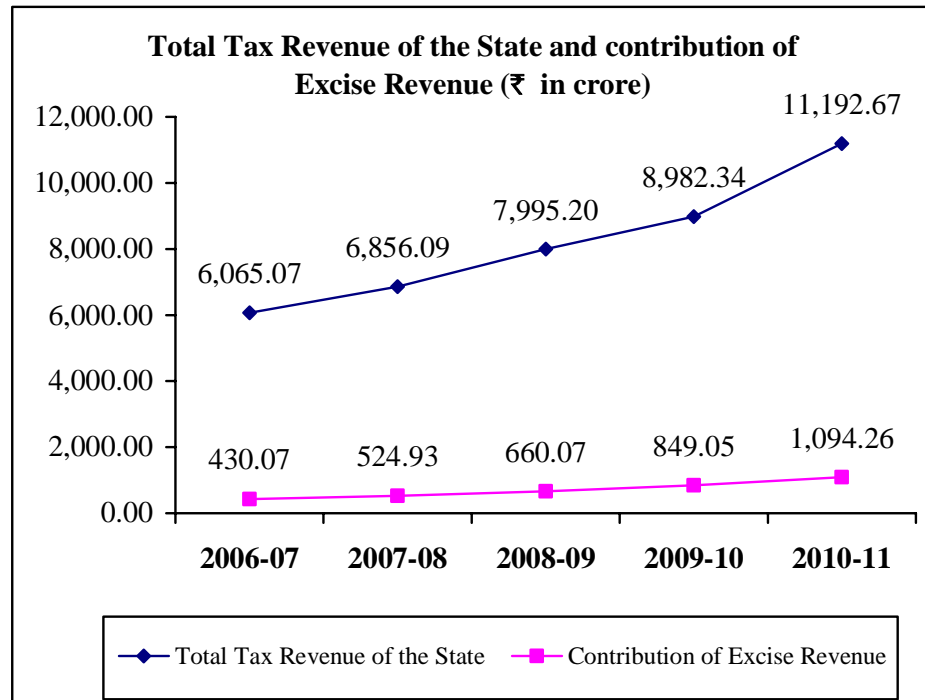
The projected population of the State during 2006-07 was 3.89 crore and it increased to 4.19 crore as per the latest Census Report. Thus, the average annual growth rate of population was 1.40 per cent. The average percentage of annual growth rate of consumption of liquor during the above period was 48.15 per cent for IMFL, 62.76 per cent for Beer and 31.70 per cent for CS.

### 5.2.6.2 Contribution of Excise Revenue to total Tax Revenue of the State

Contribution of Excise Revenue to the total Tax Revenue of the State for last five years was as under:

(₹ in crore )

Year	Total Tax Revenue of the State	Contribution of Excise Revenue	Percentage of Excise Revenue to the total Tax Revenue
2006-07	6,065.07	430.07	7.09
2007-08	6,856.09	524.93	7.66
2008-09	7,995.20	660.07	8.26
2009-10	8,982.34	849.05	9.45
2010-11	11,192.67	1,094.26	9.78



The contribution of Excise Revenue to the total Tax Revenue of the State increased steadily from 7.09 (2006-07) to 9.77 per cent (2010-11).

The reason for such increase was attributed to opening of more retail excise outlets leading to increase in lifting of alcohol by the retail shops and increase in the use of Mahua Flower (MF) by the Out Still (OS) shops.

### 5.2.6.3 Components of Excise Revenue

Excise Revenue consists of SED on intoxicants, Consideration Money (C Money) and Licence Fee (LF) of excise shops<sup>5</sup>, Utilisation Fee (UF) on Mohua Flower (MF), UF on Molasses, Import Fee (IF), Export Fee (EF), Transportation Fee (TF), Bottling Fee (BF), Franchise Fee (FF) and other

<sup>5</sup> India Made Foreign Liquor (IMFL) off and on shops, Country Spirit (CS ) shops, OS Shops and Bhang Shops etc.,

receipts from fines and penalties. The major component wise receipts of Excise Revenue during the last five years are given in the table below:

(₹ in crore)

Year	Total Excise Revenue of the State	Component of Excise Revenue						BF/ FF	Other receipts
		Total SED	Percentage of SED to the total Excise Revenue	C Money & LF	Percentage of C Money and LF to the total Excise Revenue	UF on MF & Molasses	IF/ EF/ TF		
2006-07	430.07	236.91	55.09	141.50	32.90	16.44	9.65	15.21	10.36
2007-08	524.93	303.17	57.75	157.83	30.07	18.89	9.28	21.57	14.19
2008-09	660.07	393.79	59.66	177.70	26.92	20.57	19.35	29.84	18.82
2009-10	849.05	510.10	60.08	219.37	25.84	24.10	31.66	40.53	23.29
2010-11	1,094.26	700.43	64.01	248.74	22.73	24.65	38.86	50.15	31.43
<b>TOTAL</b>	<b>3,558.38</b>	<b>2,144.40</b>	<b>60.26</b>	<b>945.14</b>	<b>26.56</b>	<b>104.65</b>	<b>108.8</b>	<b>157.3</b>	<b>98.09</b>

During the last five years, the contribution of SED to the total Excise Revenue of the State varied between 55.09 per cent in 2006-07 and 64.01 per cent in 2010-11. The percentage of revenue under C.Money/LF to the total Excise Revenue showed a decreasing trend. The reasons and their impact on the decreasing trend have been discussed in detail in sub-paragraph 5.2.9.3 of this Report. The contribution of all other fees and other receipts to the total Excise Revenue of the State during the period 2006-11 showed increasing trends.

#### 5.2.6.4 Arrears of Excise Revenue

The year wise arrears of Excise Revenue during the period covered under audit is given in the table below:

(₹ in crore)

Year	Opening Balance of arrears	Addition	Total arrears due for collection	Realisation	Closing Balance of arrears
2006-07	29.00	2.31	31.31	1.28	30.03
2007-08	30.03	0.41	30.44	9.57	20.87
2008-09	20.87	0.39	21.26	0.26	21.00
2009-10	21.01	0.69	21.70	0.24	21.46
2010-11	21.46	0.58	22.04	0.23	21.81

(Source: Information furnished by the Department)

Out of the total arrears of ₹ 21.81 crore as of 31 March 2011, ₹ 11.57 crore was under certificate cases, ₹ 4.47 crore was subjudice, ₹ 1.40 crore was under dispute, ₹ 0.48 crore was under process for write off and the balance ₹ 3.89 crore, representing 17.83 per cent, was at various stages of recovery.

Total arrears outstanding in the 12 selected districts as of March 2011 stood at ₹ 10.55 crore.

<sup>6</sup> The total revenue receipt was as per finance account whereas the component-wise figures were as per that furnished by the Department/Excise commissioner.

## 5.2.7 Production of intoxicants

Deficiencies noticed in the production processes of intoxicants are discussed in the following sub-paragraphs:

### 5.2.7.1 Production of Molasses

#### (i) *Molasses is being manufactured, stored and sold by the sugar factories without the necessary licence*

Molasses, a by-product of Sugar Refinery is an intoxicant under Section 2 of the B & OE Act, 1915. As per the Sections 13, 16, 19 and 20 of the Act, no intoxicant can be manufactured, stored, possessed and sold except under the authority and subject to the terms and conditions of the licence granted by the Collector of the district. AEP for 2010-11 prescribed License Fee at the rate of ₹ one lakh for trading of Molasses. The EDC is required to inspect the sugar factories at least once in a year. In the event of unlawful import, export, transport, manufacture, possession and sale etc., of Molasses penalty of ₹ 20,000 to ₹ 50,000 per case is leviable against the offender under section 47 (g) (i) of the above Act by initiating cases for prosecution and conviction by the Court of Law.

During scrutiny of the licence fee register of DEOs, we noticed that during 2010-11 all the five sugar factories in test checked districts were engaged in manufacture and storage of Molasses. Three<sup>7</sup> of them were engaged in trading of Molasses without any licence and without depositing the prescribed Licence Fees.

Molasses Rules were not framed so far and the EC functioning as the

Controller of Molasses issued No Objection Certificates for procurement of Molasses from these sugar factories without ensuring that the licences were issued for trade of Molasses. None of the five sugar factories was inspected by the respective EDCs during the period covered under the audit to detect such lapses. Despite the clear provision in the Act and AEP for initiating cases for prosecution in the event of unlawful trading and sale of Molasses, the EC and the respective Collectors did not take any action against the sugar factories. Thus, Collectors and EC failed to comply with provisions of the Act regarding regulation and control of trading in Molasses, besides foregoing Licence Fee of ₹ 3 lakh and minimum penalty of ₹ 0.60 lakh.

On this being pointed out, the EC stated (July 2012) that the matter would be brought to the notice of the Government for necessary action. The reply is silent on the inaction of the EC and EDC to enforce the provision of the Excise Laws.

<sup>7</sup> Baragarh Coop. Sugar Industries, Baragarh, Bijayananda Coop. Sugar Mills, Bolangir and Laxmipati Balaji Suguar and Distillery Pvt. Ltd. Baramba.

**(ii) Non-realisation of Utilisation Fee on Molasses**

As per Rule 6D of the Orissa Excise (Exclusive Privilege) Rules, 1970 read with the Annual Excise Policy for 2010-11, for shortfall in utilisation of the annual Minimum Guaranteed Quantity (MGQ) of Molasses fixed by the Collector, the licensee is required to pay the Utilisation Fee (UF) on the quantity of shortfall at the rate of ₹ 130 per MT along with a penalty of 15 per cent of such UF. In the event of non-payment of the dues, the licence is liable for cancellation and the amount to be realised as arrear land revenue under the Orissa Public Demand Recovery (OPDR) Act 1962.

During scrutiny of the copies of the licences and the pass register of the DEO, Ganjam with the stock utilisation register of Molasses of the Officer in Charge (OIC) of Aska Cooperative Sugar Industries Ltd (ACSIL) we noticed that ACSIL did not utilise any Molasses against the MGQ of 11,361.60 MT fixed for the year 2010-11. Thus, there was total shortfall in utilisation of Molasses for which UF of ₹ 14.77 lakh and penalty of ₹ 2.22 lakh was to be realised from ACSIL. Though one OIC was posted at the Distillery with full time duty and there was a provision for monthly and quarterly inspections by the SE and

EDC respectively, the short-realisation was not detected by them for raising the demand against the licensee.

On this being pointed out, the amount was demanded in November 2011. However, the same is yet to be realised (January 2013). No steps were taken for realisation of the Government dues through initiation of proceedings under the OPDR Act, 1962.

**5.2.7.2 Production of other intoxicants**

**(i) Short-realisation of Licence Fee**

As per the AEPs, the licensee of a Distillery and Bottling unit is required to pay Licence Fee at the prescribed slab rate on the basis of annual production capacity declared by him. As per the condition of the licence, the final assessment towards licence fee should be made after receipt of the report from the Director of Industries (DI) confirming the production capacity.

During scrutiny of the register of licences, copy of licence, stock taking reports and payment particulars in support of payment of licence fees in the DEO, Ganjam, we noticed that the licences of ACSIL were renewed on realisation of ₹ 13 and ₹ 25 lakh respectively considering the annual production capacities of

intoxicants<sup>8</sup> between 15 and 30 lakh London Proof Litres (LPLs) during 2006-07 and between 10 and 30 lakh LPLs during 2010-11. However, during the above two years, the licensee produced 53.82 lakh LPL and ₹ 84.07 lakh LPL of CS respectively for which licence fees of ₹ 16 and ₹ 40 lakh were realisable from ACSIL. Thus, there was short-realisation of ₹ 18 lakh towards differential licence fee. Further, the SE did not obtain the confirmation of the declared production capacity from the Director of Industries for raising extra

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<sup>8</sup> CS, RS and DS.

demand of Licence Fee through assessment. Licences were, thus, issued/renewed without verifying the confirmed production capacity of the unit.

On pointing this out, the SE, Ganjam agreed (June 2012) to raise the differential demand for realisation of the amount.

**(ii) Non-provision for licence fee for other place of storage**

As per Section 16 of the B and OE Act, 1915, no person shall, except under the authority and subject to terms and conditions of licence granted by the Collector, deposit or store any 'intoxicant' in any warehouse or other place of storage established, authorised or continued under the Act. In the event of violation of the Act, penalty was leviable under Section 47 of the Act. 'Spirit' comes under the category of intoxicant as per Section 2 of the Act. The AEPs for the years from 2006 to 2011 prescribed a licence fee of ₹ 5 lakh per annum for the warehouse of the licensee whereas no such fee was prescribed for other place of storage by the licensee.

During scrutiny of the records of EC, we noticed that a Distillery<sup>9</sup> under the control of DEO, Dhenkanal engaged in production of spirit from Molasses during 2006 to 2011 was not issued with any licence by the Collector for storage of intoxicant. Though the Distillery unauthorisely stored the intoxicants in the storage tanks which was to be termed as "other place of storage", the OIC posted at the Distillery and the SE, Dhenkanal did not initiate any action as per provisions of the Act against the licensee. Thus, due to non-prescription of Licence Fee in the AEPs, and non-issue of

storage licence for other place of storage, there was a loss of revenue of ₹ 25 lakh.

After we pointed this out, the EC stated (July 2012) that compliance would be furnished after receiving necessary reply from the SE, Dhenkanal.

**5.2.7.3 Wastage in production**

**(i) Excess wastage in production of Beer**

Sub Rule 1 of Rule 47 of the BER, 1965 provides for allowance towards wastage of Beer up to 10 *per cent* of the monthly charge on which SED is not leviable. However, in para 208 of the Excise Technical Manual (ETM) five *per cent* wastage is allowed in the process of manufacturing of Beer.

During scrutiny of the production particulars of three<sup>10</sup> breweries in two districts we noticed that, the average percentage of wastage varied between 2.8 and 9.24 *per cent* during 2006 to 2011. Though there was a wide gap between the percentage of wastage prescribed in the rules and

technical manual, there was no system to analyse and revise the percentage of wastage according to the specific condition prevailing in the breweries.

<sup>9</sup> M/s Shakti Sugar Limited, Distillery Unit, Dhenkanal.

<sup>10</sup> Denzong Breweries (2.80%), Khurda, United Breweries Ltd. (6.29%), Khurda and Maikal Breweries (9.24%), Bolangir.

The Department has not examined the variation in the percentage of wastage which had direct impact in the production figures and hence on the revenue collection. By limiting the wastage to the percentage prescribed in the ETM the Department would have realised additional revenue of ₹ 2.80 crore towards SED and BF. Further, though 46 years have elapsed since implementation of above rules and the process of manufacture of alcohol including Beer has undergone several technical changes, the Department is yet to short out the discrepancies of wastage percentage prescribed in the Excise Technical Manual and the BER.

After we pointed this out, EC stated (July 2012) that the matter would be brought to the notice of Government for necessary action.

**Audit recommends for re-fixation of the wastage percentage after proper technical evaluation of the process prevailing in the breweries.**

**(ii) Loss due to shortfall in yield of Beer**

As per para 208 of ETM five percent wastage is allowed in manufacture of Beer. As per Para 243 of the ETM, in the event of variation in the output, the reason for low output is required to be recorded by the excise officer in the brew register. If no satisfactory explanation of low output, if any, is forthcoming, the SED may be levied on the shortfall from the standard output as per the rate prescribed in the AEPs. As per the AEP for 2007-08, SED at the rate of ₹ 21 per BL and BF at the rate ₹ three per BL is leviable on Beer.

(a) During scrutiny of the brew register of a Brewery<sup>11</sup> under DEO, Khurda, we noticed that by feeding specific inputs<sup>12</sup> in 16 charges<sup>13</sup> during 5-12 April 2007, the Brewery obtained 16,000 BL of wort from each charge for production of Beer. However, with increase of inputs by 10 *per cent* in the next 12 charges during 13-20 April 2007, the Brewery obtained the same quantity of wort per charge i.e. 16,000 BL.

As inputs were increased by 10 *per cent*, there should have been proportional increase in the output. Hence, non-increase in the output is not clear. However, audit calculated the short-fall in the output by 19,200 BL at the rate of 1,600 BL per charge which resulted in loss of SED ₹ 3.83 lakh and BF of ₹ 0.55 lakh even after allowing the permissible wastage at the rate of five *per cent* on 19,200 BL as per the ETM. The OIC did not record any reason for the above shortfall in the yield of wort. The EDC though required to inspect the unit in each quarter did not inspect the unit. The SE, Khurda also failed to notice this during his monthly inspection.

(b) Similarly during scrutiny of records of another Brewery<sup>14</sup> under the same DEO, we noticed that though the input quantities remained same in 73 charges during May, June 2007 and February 2009, the outturn varied from charge to charge. This resulted in under exhibition of outturns by 82,500 BL of wort, which would have a net yield of 78,375 BL of strong Beer after

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<sup>11</sup> Denzong Breweries, Khurda.

<sup>12</sup> 200 kg of malted corn 400 kg of Rice flake and 400 kg of Sugar.

<sup>13</sup> Input of specified quantity of rice flake, malted corn and sugar fed in one occasion for producing Beer.

<sup>14</sup> United Brewery Khurda.

allowing maximum permissible wastage at the rate of five *per cent*. OIC posted at the Brewery as well as the SE did not examine this to raise the demand which resulted in loss of revenue of ₹ 19.15 lakh towards SED (₹ 16.46 lakh) and BF (₹ 2.69 lakh).

After we pointed out the above cases, the SE stated (June 2012) that compliance would be furnished on proper verification of the case. However, in the Exit Conference the Department accepted our observation in both the cases.

**(iii) Non-realisation of SED on wastage of spirit in transit**

Intoxicants like ENA are imported into the State, by the bottling units for manufacturing IMFL under the permit issued by the EC and import pass issued by the respective SE. Rule 32 of the BER, 1965 provides for permissible wastage of spirit ranging between 0.1 *per cent* to 2 *per cent* on the basis of duration of transit. The period of transit though includes the day of arrival at the receiving point; excludes the date of despatch. The OIC posted at the bottling unit is required to supervise the storage of the intoxicant, record the stock endorsement on the pass and submit a copy of pass to the respective SE to keep watch over the intoxicant for which the pass was issued, actual receipt, wastage, period of journey etc. and issue intimation for demand of SED, wherever necessary if wastage is more than the permissible limit. The consignee is required to pay the SED on receipt of intimation from the concerned Excise Officer. The AEPs for 2007-09 prescribed SED at the rate ₹ 140 per LPL for IMFL obtained from ENA.

**(a)** During scrutiny of spirit stock register and copies of the transport passes in connection with transportation of ENA in respect of two<sup>15</sup> bottling units under the DEO Khurda, we noticed (May 2012) that the units imported 1,40,000 BL of ENA during 2007-09 in seven passes on which wastage up to 800 BL was permissible. However, they availed wastage of 1,517 BL of ENA which was in excess by 717 BL over the permissible limit.

The SE did not notice this excess wastage availed and hence did not intimate the consignee to pay the SED of ₹ 1.67 lakh.

After we pointed out the case, the SE, Khurda agreed (June 2012) to raise the demand for realisation of the amount.

<sup>15</sup> Oriental Bottling and Utkal Distilleries at Khurda.



(b) During scrutiny of ENA pass register and the stock account of spirit maintained by Sri Shakti Distillery, Rayagada under DEO Rayagada, we

Rule 32 of BER, 1965 prescribes the limit for transit wastage of ENA/Spirit between 0.1 and two per cent on the basis of the journey period. In case of abnormal wastage, the S.E is required to collect the SED which may be refunded in the event of waiver order received from the EC. As per the AEP for 2006-07, SED at the rate ₹ 125 per LPL was to be levied on IMFL obtained from ENA.

noticed (June 2012) that a tanker carrying 10,000 BL ENA of 169<sup>0</sup> proof strength left Kasipur (Uttaranchal) on 11 July 2006 for Rayagada, Odisha and met with an accident on the way on 13 July 2006. However, only 3,955 BL of ENA was received at the destination on 24 July 2006. Thus, there

was a shortage of 6,045 BL of ENA against admissible wastage of 130 BL at the rate of 1.3 *per cent* on 10,000 BL of ENA transported during 13 days of journey. This resulted in excess wastage of 5,915 BL (9,996 LPL) of spirit on which SED of ₹ 12.50 lakh was leviable. The SE, Rayagada was required to intimate the consignee for payment of the above SED on the basis of the endorsement of the OIC recorded on the copy of the pass received, but he failed to do so though he was aware of such excess wastage of ENA through the OIC of the unit.

After we pointed out the case, the EC agreed (July 2012) to instruct the concerned SE to take necessary action for realisation of the amount.

## CHAPTER-V : STATE EXCISE DUTY AND FEES

### EXECUTIVE SUMMARY

<b>Marginal increase in tax collection</b>	In 2011-12 the collection of Excise Revenue increased by 2.15 <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.
<b>Working of Internal audit</b>	The Internal Audit Wing (IAW) of the Department was created only in September 2010 for audit of its units from 2010-11 onwards. The internal audit for 2008-09 and 2009-10 covered only four <sup>1</sup> out of 31 DEOs by the end of March 2011. This had its impact in terms of the weak internal control in the Department leading to substantial leakage of revenue. It also led to omissions on the part of the Superintendents of Excise remaining undetected till audit was again conducted.
<b>Recovery by the Department against the observations pointed out by audit in earlier years</b>	During the period 2006-11 audit pointed out non/short-levy, non/short-realisation of State Excise Duty (SED) and Fee etc., with revenue implication of ₹ 117.28 crore in 4,342 cases. Of these, the Department accepted audit observations in 1,722 cases involving ₹ 31.57 crore; but recovered only ₹ 1.90 crore in 309 cases. The average recovery position, being 6.02 <i>per cent</i> , as compared to acceptance of objections, was very low and it ranged between 0.23 and 28.29 <i>per cent</i> .
<b>Results of audit in 2010-11</b>	In 2011-12, Performance Audit (PA) on the “ <b>Working of Excise Department</b> ” was conducted which revealed several systemic deficiencies and non / short-realisation, non-levy, loss of revenue etc. involving ₹ 958.35 crore. In 2011-12, test check of records of 15 units revealed non/short-realisation, non-levy, loss of revenue etc. involving ₹ 44.24 crore in 28,192 cases. The Department accepted non-levy / short-realisation of duty of ₹ 15.27 crore in 26,570 cases pointed out by audit during the year 2011-12. An amount of ₹ 0.45 crore was recovered in 50 cases relating to 2011-12 and earlier years.
<b>Highlights</b>	In this Chapter, Illustrative cases with revenue implication of ₹ 225.80 crore selected from the observations noticed in the PA and during test check of records relating to assessment records of SED and Fees in the District Excise Offices (DEOs) are highlighted, where audit noticed that the provisions of

<sup>1</sup> Balasore, Bolangir, Dhenkanal and Nabarangpur.

#### 5.2.7.4 Establishment cost and extra-hour operation charges

##### (i) *Non-realisation of establishment cost and extra-hour operation charge*

As per Rule 20 of BER, 1965, all operations in a Distillery, Bottling Unit, Brewery which requires the presence of an excise officer shall be stopped on Sundays, other public holidays and specially declared holidays. As per the provisions of Rule 34 of the above Rules, the production unit may function for the second shift with prior permission of the EC and additional staff shall be posted as determined by the EC. The cost of the Excise establishment shall be borne by the unit with payment of extra hour fee at the rate of ₹ 1,000 for each hour of operation beyond the scheduled hours in addition to the overtime fees payable to the excise staff at the rate of one seventh of a day's pay per hour. The EC instructed the DEOs in February 1989 for realisation of cost of establishment from the licencees of FL bonded warehouses including the warehouse of the FL manufacturers.

During scrutiny of production register, establishment charge claim files and correspondences on extra hour operations of 12 manufacturing units located in five<sup>16</sup> districts we noticed, that in three<sup>17</sup> districts, an amount of ₹ 1.05 crore was not realised towards establishment cost (₹ 6.95 lakh) and extra hour of operation charge for 9,467 hours (₹ 98.18 lakh) against five<sup>18</sup> manufacturers.

Though the SEs, being the Drawing and Disbursing Officers were aware of the staff posted in

the bottling units and the extra hour operation through the monthly reports obtained from the OICs concerned, they did not act promptly to raise the demand and collect the Government dues.

After we pointed out the case, the SE, Sambalpur and Bolangir agreed (April and May 2012) to raise the demand. The SE, Ganjam stated (June 2012) that the demand has been raised, whereas the SE, Khurda stated (June 2012) that demand would be raised after verification.

<sup>16</sup> Balasore, Bolangir, Ganjam, Khurda and Sambalpur.

<sup>17</sup> Bolangir, Ganjam and Sambalpur.

<sup>18</sup> ACSIL, Maikal Breweries, Hi-tech bottling, United Spirits and Fortune spirits

**(ii) Non-raising of demand for establishment cost against Distillery**

As per Rule 20 of BER, 1965 read with para 30 of Board's instructions, an Excise Officer shall be posted in the distillery to supervise the operations. The EC instructed (January 1990) the Collectors to realise the cost of establishment from Bottling units and Warehouses; but did not include the Distilleries in the order.

From the information obtained from the DEO, Dhenkanal in connection with reimbursement of establishment charges, we noticed that an amount of ₹ 19.64 lakh was paid by the SE Dhenkanal towards pay and allowances of an OIC and a constable posted at Sakti Sugar & Distillery Ltd. for the period from January 2006 to March 2011. However, the SE, Dhenkanal did not raise any demand for reimbursement of the above establishment charges against the distillery in the absence of

instructions from EC for deposit of the same into Government account.

After we pointed this out, the EC stated (July 2012) that action would be taken for realisation of establishment cost from the Distillery.

**5.2.7.5 Non-levy of Excise Duty on breakage in the warehouse**

The B&OE Act 1915 and Rules made thereunder do not provide for any warehouse breakages. Hence, the OIC is required to ensure that the stock account of the brewery should reflect the opening stock, beer produced, beer issued and closing stock without any warehouse breakage.

From the stock taking report of Maikal Breweries under the DEO, Bolangir, we noticed (May and September 2012) that the Brewery exhibited breakage of 492.501 cases of Beer in its warehouse during 2006-11 on which SED of ₹ 0.68 lakh was to be levied and realised. The SE Bolangir as well as OIC of Brewery failed to notice this for which demand for ₹ 0.68 lakh was not raised.

During the Exit Conference the Department accepted the observation of audit.

**5.2.7.6 Excise Adhesive Label (EAL)**

As per Rule 115B of the BER, Excise Adhesive Label (EAL) shall be affixed to each bottle/can of IMFL/Beer and on each pouch/container of CS. In the case of IMFL and Beer imported from outside the State, one Inspector of Excise (IE) shall have his store or office in the Registered Office of OSBC. The OSBC in each case of import permit for procurement of stock from outside the State shall present the pass to the above IE with a requisition as to the number of EALs required to be issued to ensure that no bottle/can is received from outside the State without affixture of EAL. The IE is required to maintain the detailed accounts of the EALs received, issued, used and damaged, collect the EAL fee on the date of issue and credit the same to the Government account.

During scrutiny of records of EAL stock register of SE, Khurda and IE, OSBC, we noticed that the accounts on utilisation and balance of the labels with the manufacturer of other States, from where IMFL/Beer are imported to the State, was not available with the IE specifically posted at OSBC. There is no mechanism to monitor such account by the SE/EC. In the absence of proper accounts of the EALs issued by the IE posted at OSBC and details of their utilisation,

there was ample scope for misuse of the labels and consequent leakage of revenue.

**Audit suggests that the Department should devise a mechanism to monitor EAL accounts of IE vis-à-vis the number of bottles of IMFL/Beer imported to the State in order to check possible misuse of the labels.**

## **5.2.8 Storage and transportation of intoxicants**

The Distilleries as well as wholesalers of Molasses import a part of their requirement from other States on the basis of No Objection Certificate from the EC.

### **5.2.8.1 Registration of brand label**

#### **(i) Inadequacy of Annual Excise Policies**

As per Rule 41A of BER, 1965, FL manufactured in the State or imported into the State shall not be stored in a warehouse or issued for sale unless the brand names and labels are approved and permits are issued by the EC on payment of the prescribed fees. The permit once issued shall remain in force up to 31 March of the financial year. The AEPs provide for realisation of application fee at the rates of ₹ 5,000 (2006-07 and 2007-08) and ₹ 10,000 (2008-09 onwards) besides annual Label Registration Fees (LRF) at the prescribed slab rates on the basis of quantity of IMFL supplied to OSBC during the preceding calendar year. There is no slab rate for supply of IMFL of defence brand as such fees at the flat rate of ₹ 10,000 per brand are separately prescribed for military canteens in the AEPs. Beer is also treated as FL as per Section 4 of B and OE Act, 1915.

During scrutiny of the label approval orders of the EC and cross check of the data on calendar year-wise supply of FL to OSBC, we noticed that one<sup>19</sup> manufacturer under DEO Bolangir obtained approval for a new label (Maikal 5000) for the year 2008-09 in August 2008 on payment of label registration fee at the minimum slab rate of ₹ 50,000. Based on the supply of 1,100 cases of Beer to

OSBC in the calendar year 2008, the label for the next year 2009-10 was also renewed on payment of ₹ 50,000. However, the licensee produced 1.11 lakh cases of Beer in 2009-10, for which LRF of ₹ 2.20 lakh was leviable, As the manufacturer disposed of the entire stock by 31 March 2010, he did not register the label for 2010-11. In the absence of provision in the AEP for realisation of differential LRF for production in excess of the quantity for which the label was approved, there was loss of LRF of ₹ 1.70 lakh.

After we pointed out the case, the EC replied (July 2012) that it was the prerogative of the manufacturer to register the brand labels and he can do little on the present provision in the AEP. However, he assured that the observation would be intimated to Govt. for taking a policy decision on the matter.

The observation was discussed in the Exit Conference and it was accepted by the Department.

**Audit recommends introduction of a provision under AEP for payment of additional Label Registration Fee for excess production/supply of IMFL/Beer of the brand in the financial year for which label was originally registered on the basis of supply in the preceding calendar year.**

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<sup>19</sup> Maikal Breweries, Bolangir.

**(ii) Non/short-levy and realisation of label registration fee**

During scrutiny of the approval orders of the EC on label registration, data on calendar year-wise supply of Beer/IMFL manufacturing units collected from the concerned DEOs and arrival (receipt) figures of liquor at OSBC depots, we noticed that there was non/short-levy and realisation of ₹ 1.40 lakh towards label registration fee and application fee during the period 2007-11 in respect of six brands pertaining to three<sup>20</sup> manufacturers due to improper application of the slab rates prescribed in AEPs on the basis of quantity supplied to OSBC during the corresponding previous calendar year.

After we pointed out these cases, the EC agreed (July 2012) to take steps to realise the amount in the case of two manufacturers and in respect of one<sup>21</sup> manufacturer, he stated that it was a typographic error.

Failure to compute the LRF correctly and lack of care in making entry in the approval orders on label registration resulted in revenue of ₹ 1.40 lakh remaining unrealised.

This was brought (October 2012) to the notice of the Government. The reply is awaited (January 2013).

**5.2.8.2 Loss of Bottling fee**

In the AEP for 2002-03, the Government decided to supply CS of 40 degree Under Proof (UP) strength in bottles and instructed to ASCIL, to switch over the supply from poly packs to bottles in phases. The objective behind this was to supply unadulterated CS of good quality to the consumers, while earning extra revenue on account of BF. However, ACSIL, the sole supplier of CS, was unable to supply the CS in bottles. The AEPs for the years 2004 to 2011 provided for entire supply of CS in bottles instead of poly packs (pouches) with effect from 1 July 2004 and realise bottling fee at the rate of 25 paise per bottle.

During scrutiny of records of EC and DEO, Ganjam, we noticed that the Government directed (June 2004) the EC to submit proposal for grant of exclusive privilege to manufacture and supply of CS in bottles by other units as ACSIL was unable to supply the same in bottles.

Despite the reluctance of ACSIL to supply CS in bottle, the EC as well as Govt. did not engage any other unit to supply CS in bottles. Finally, ACSIL started supplying CS partly in bottles with effect from February 2009 and continued

with the same arrangements till March 2011. Between July 2004 and March 2011, the unit supplied 25.69 crore pouches each containing 200ml. of CS. Due to non-supply of CS in bottles with effect from July 2004 up to March 2011, there was loss of revenue of ₹ 6.42 crore<sup>22</sup>, out of which ₹ 4.80 crore<sup>23</sup> pertains to the period covered under the Audit.

<sup>20</sup> Heritage Distilleries, Nimapara, Oriental Bottling (P) Ltd., Khurda and United Sprits Limited Ltd. Ganjam.

<sup>21</sup> Heritage Distilleries, Nimapara.

<sup>22</sup> (0.25 x ₹ 25.69 crore).

<sup>23</sup> (0.25 x ₹ 19.21 crore).

After we pointed out the case, the EC stated (July 2012) that ACSIL was a cooperative organisation, for which decision regarding switching over to the supply of CS in bottles was delayed. However, the Government's decision of June, 2004 should have been carried out by coordination between the Departments of Excise and Co-operation to ensure availability of unadulterated CS and thereby avoid loss of revenue.

#### **5.2.8.3 Non-levy of penalty on short-supply of country spirit**

As per AEPs, the authorised supplier of CS will be penalised to the extent of ₹ 10 lakh, if he fails to make timely supply of CS. ACSIL is the sole manufacturer authorised to supply CS in the State. The quantity of CS to be supplied during a specified period and periodicity of penalty were not specified in the AEP.

During scrutiny of records of the EC, Odisha, DEOs, Ganjam and Cuttack, we noticed that the ACSIL could not supply the required quantity of CS in 2009-10 and 2010-11 as per market demand. So the CS shop licensees could not lift their MGQ for those years from ACSIL through the depots of OSBC. Hence, it was liable to be penalised with ₹ 20

lakh at rate of ₹ 10 lakh per annum for short-supply of CS. A penalty of ₹ 10 lakh was realised from ACSIL for the year 2008-09 based on the audit observations in para 5.3.4 of the Audit Report for the year ended 31 March 2010. However, no penalty was levied by the Commissioner for 2009-10 even after lapse of more than two years.

After we pointed out the case, the EC stated (July 2012) that the matter was under enquiry.

#### **5.2.8.4 Non-realisation of depot Licence Fee**

As per the AEPs for the year 2006-11 OSBC is required to pay annual depot licence fee at the rate of ₹ 5 lakh per depot for the depots established by the Corporation as per the licence issued by the Collector of the concerned district.

During scrutiny of the records of DEO, Sambalpur in April 2012, we noticed that OSBC was operating two depots<sup>24</sup> at different places of Sambalpur, during the period covered under the audit against payment of annual depot licence

fee for one depot only. As the depots are functioning at different locations and premises, OSBC was to pay the annual depot licence fee for both the depots. The Collector, being the licencing authority, did not insist on OSBC for obtaining two licences for two depots on payment of prescribed depot licence fee. Thus there was non-levy/realisation of ₹ 25 lakh for the years 2006-07 to 2010-11.

After we pointed this out, the SE Sambalpur, while attributing reasons for separate location of depots to lack of accommodation, stated (April 2012) that passes were issued from and accounts were kept at the depot at Bohidar Nuapali. The reply is not tenable as the licence was not obtained for the second depot against payment of prescribed depot licence fee.

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<sup>24</sup> IMFL depot at Bohidar Nuapali and Beer depot at Bareipali.



After we pointed out the case, the EC stated (July 2012) that the matter would be brought to the notice of the Government for necessary action.

### 5.2.8.5 Transport fee on intoxicants

#### (i) Non-realisation of Transport Fee on RS

As per section 12(1) of B & OE Act, 1915, no intoxicants can be transported without obtaining a pass for the purpose. IMFL, Beer CS and RS are defined as intoxicants under Section 2 of the Act and hence pass is issued for their transportation. As per the AEPs, Transport Fee (TF) on RS used for the purpose, other than preparation of IMFL/CS, is to be levied at the rates ranging between ₹ 4 and ₹ 5 per BL during the period 2006-11. Since levy of TF was not exempted for transportation of RS to Hospitals and Charitable Institutions, the pass for such spirit was required to be issued by the SE on realisation of requisite fee from the applicant.

During scrutiny of the pass issue registers, we noticed that in eight<sup>25</sup> districts, 77 passes were issued for transport of 71,352.75 BL of RS to Hospitals and Charitable Institutions (CIs) on which, TF of ₹ 3.38 lakh was leviable. However, despite issuing the transport pass, the SEs concerned did not realise the fees in advance.

After we pointed out the cases, the SE Bargarh, agreed (June 2012) to raise demand after due examination, whereas the SE, Jajpur agreed (June 2012) to take action after examination of the matter. The SEs Ganjam, Mayurbhanj and Rayagada stated

(June and July 2012) that necessary steps would be taken after obtaining clarification from the EC. The replies of SE, Angul, Balasore and Bolangir are yet to be received (January 2013). The replies are not tenable as the SEs should have obtained the clarification before issuing passes.

#### (ii) Revenue could not be earned due to want of provision for Transport Fee on IMFL, Beer and CS

The AEPs for the years from 2006-11 do not provide for levy of TF on IMFL, BEER and CS, though such fees are provided for transportation of other intoxicants like RS, ENA, and DS at the minimum rates ranging between ₹ 2.50 and ₹ 3 per BL.

From the data available with OSBC, we noticed that during the period covered under audit, 3,042.78 lakh BL (338.09 lakh cases<sup>26</sup>) of IMFL, 4,623.17 lakh BL (592.71 lakh cases<sup>27</sup>) of Beer and 701.40 lakh BL (140.28 lakh cases<sup>28</sup>) of CS were lifted by the retailers of the State from OSBC.

Transport fee in the name of permit fee and movement fee were levied in the States of Punjab and Jharkhand for transportation of IMFL and Beer. For want of provision in the AEPs for levy of TF for such intoxicants by the Department, revenue of ₹ 246.16 crore could not be earned.

<sup>25</sup> Angul, Balasore, Baragarh, Ganjam, Jajpur, Mayurbhanj and Rayagada.

<sup>26</sup> One case of IMFL= 9BL

<sup>27</sup> One case of Beer = 7.8 BL

<sup>28</sup> One case of C.S. = 5 BL

**5.2.8.6 Loss of revenue due to non collection of differential duty on belated arrival of stock at the OSBC depots**

As per Section 17 of B&OE Act, 1915, no intoxicant shall be removed from any distillery, brewery, warehouse or other place of storage, unless the SED levied and paid as per the AEPs or bond has been executed for the payment thereof. OSBC procures stock of IMFL and Beer on payment of the SED from the manufacturers on presentation of the pass. After obtaining the stock, one copy of pass with the endorsement of stock arrival particulars is required to be submitted to the pass issuing authority (SE, Khurda) for his record and reference. The Officer-in-charge (OIC) posted in each OSBC depot was not authorised to record the stock arrival reports.

From a scrutiny of the pass issue register of SE, Khurda, we noticed that the copies of the FL 16 with endorsements of stock of arrivals were not being received by the SE, Khurda. As a result, monitoring the arrival of the consignments within the validity period of the passes issued could not be done.

We noticed that the validity period of passes issued in March 2010 on

realisation of SED at the prevailing rates expired on 31 March 2010, but in a number of cases the consignments were received in the OSBC depots and recorded on the Goods Received Note (GRN) after 1 April 2010 i.e. after expiry of the validity period. Government revised the rate of SED on IMFL from ₹ 140 to ₹ 150 per LPL with effect from 1 April 2010 and OSBC also revised the prices at which stock was to be issued to the retailers after inclusion of SED at higher rates fixed. However, the differential duty amounting to ₹ 50 lakh on the stock received on or after 1 April 2010 on the basis of the passes issued in March 2010 should have been realised from OSBC. Neither the Corporation deposited the amount nor the SE, Khurda raised any demand for such differential duty. The OIC posted in the OSBC depots failed to detect such cases and did not insist for revalidation of the passes before storing the intoxicants. Thus, failure in internal control mechanism of the Department resulted in non-realisation of differential SED of ₹ 50 lakh.

After we pointed out the case, the SE, Khurda replied (June 2012) that OSBC was paying the differential duty without any calculation sheet. The reply is not tenable because the SE, Khurda did not watch the correctness of the amount due and the amount paid by OSBC consequent to the revision of duty from 1 April 2010.

### 5.2.8.7 *Non-realisation of differential duty on closing stock of IMFL/Beer from OSBC Ltd.*

Government entrusted the wholesale trading of IMFL and Beer to OSBC Ltd. as per the Notification of 1 February 2001. The entire stock obtained by OSBC was stored in its depot and issued from the depots to the retailers at the issue price inclusive of SED. In the AEP for the year 2010-11, the SED was revised upwardly for IMFL by ₹ 10 and for Beer by ₹ 1 to ₹ 3 based on brand of Beer.

Consequent upon the revision of SED, OSBC revised the issue price of IMFL and Beer with effect from 1 April 2010 and collected the enhanced ED from the retailers on the closing stock as on 31 March 2010. However, the enhanced ED so collected was not deposited by OSBC to the SE Khurda. As on 31 March 2010, there was a balance of 15.84

thousand LPL of IMFL, 36.60 thousand BL of Beer, on which differential SED of ₹ 1.96 crore was to be deposited by OSBC. The SE did not take any action to realise the amount from OSBC even after 27 months of enhancement of the duty.

After we pointed out the case, the SE, Khurda replied (May 2012) that demand notice has been issued to the OSBC and the realisation was awaited.

### 5.2.9 **Settlement of Excise shops and retail sale of intoxicant**

Retail sale of intoxicants is made to public only through the licensed outlets. The licencees of IMFL 'On' and 'Off' and CS shops obtain their required quantity of liquor from OSBC. The outstill licencees procure mohua flower, produce OS liquor and sell the same to the consumers in their shops. The Bhang stores functioning under the SEs lift Bhang from the Central Bhang Gola (Store) of the EC. The Bhang<sup>29</sup> shop licencees lift the required quantity of Bhang from the Bhang stores. Besides the LF, Government have prescribed SF, TF etc. on some intoxicants. To safeguard the State revenue, Government have also fixed MGQ for the licencees and the lifting and sale of the intoxicants are monitored by the networks of excise administration functioning throughout the State.

#### 5.2.9.1 *Renewal of excise shops without enhancement in consideration money/licence fee led to revenue loss*

As per para 3 A of sale notice circulated by Govt. in September 1999, the EP holder shall pay monthly consideration money at the increased rate of 10 per cent over the previous year's consideration money (C.Money).

During scrutiny of licence fee register and settlement files of all types of excise shops of selected 12 DEOs and AEPs, we noticed that the new excise shops were settled for 2005-06 as per the revised system of lottery introduced from 1 April 2005, whereas the old shops were settled on

renewal basis at the rates enhanced by 10 per cent of the highest Consideration Money (C.Money) of the preceding three years. However, during the year 2006-07 such old shops were settled at

<sup>29</sup> Bhang means the leaves of a wild hemp plant called as cannabis sativa.

the same rate of C.Money for the previous year i.e. 2005-06 without enhancement of C.Money on the ground that 10 *per cent* increase over the highest of preceding three years was not a regular practice and non-participation of bidders for the shops in Sundargarh district. Such explanation for a single district was not applicable for the 30 districts of the State. Due to renewal of old shops without enhancement of C.Money there was loss of revenue of ₹ 85.08 crore during the period covered under the audit.

After we pointed out the cases, the EC and the DEOs replied (April to July 2012) that the shops were renewed for 2006-07 as per the provision of the AEP.

The fact however, remains that the reply is silent as to why there was no increase when the terms and condition of the sale notice clearly stipulated that, the C.Money for the year 2006-07 was to be increased by 10 *per cent* of the previous year.

#### **5.2.9.2 Non-implementation of zonal system**

To introduce the Maximum Retail Price (MRP) for liquor, the annual Excise Policy for 2004-05 envisaged a zone wise uniform licence fee for the shops with effect from 1 October 2004 by reviewing the potentials of existing IMFL shops and formation of four types of zones by proper identification of their locations by the SEs concerned.

We noticed that during 2004-05, the zone wise fixation of uniform licence fee could not be introduced upto the date of audit though MRP was introduced since 2008-09.

The exact loss due to non-adoption of zones could not be worked out by audit in the absence of any data on formation

of zones.

**The matter may be examined by the Government and uniform licence fee may be fixed at the earliest date by formation of zones.**

#### **5.2.9.3 Loss due to incorrect fixation of Consideration money**

The AEPs prescribe the MGQ in LPL/BL of lifting of intoxicants like IMFL/Beer by a licenced Excise off shop against payment of ₹ 1,000 towards C.Money during a financial year. The C.Money of a shop is to be determined on the basis of demand survey in the area and taking into consideration the C.Money of the nearby existing shops.

(a) During scrutiny of the records on settlement of shops of the selected DEOs, we noticed that no survey was made to assess the actual demand in the areas, where the shops are settled by the Department. From the shop-wise details of C Money fixed, its MGQ and actual lifting for the period covered in audit

furnished by eleven districts<sup>30</sup> we noticed that majority of the shops lifted more than the MGQ fixed for IMFL/Beer.

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<sup>30</sup> Baragarh district did not furnish the annual lifting position of IMFL 'Off' shops and Ganjam and Sambalpur districts furnished the information partially.

Though actual lifting of liquor was more than the MGQ fixed, the Department was getting C.Money on the basis of MGQ fixed only. This was due to incorrect fixation of MGQ and C.Money without the demand survey of shops. Further, there was no system in existence or provision in the AEPs for re-fixation of the monthly C.Money in the event of abnormal excess lifting of liquor than the MGQ fixed.

Scrutiny of the cost structure of IMFL/Beer for 2007-08 further revealed that licence fee of ₹ five per 180 ml bottle of IMFL and 650 ml bottle of Beer and ₹ 20 for 750 ml bottle of scotch was included therein. Consequently, the licence fee of ₹ 80.76 crore collected during the period 2007-11 on account of sale of IMFL/Beer in excess of MGQ through the MRP went to the retailers as an additional benefit instead of credit of the same to Government account. However, Government had to forgo this revenue due to incorrect fixation of MRP.

#### 5.2.9.4 Non/Delayed Settlement/Abolition of Excise shops

##### (i) Loss of revenue due to non-settlement of IMFL 'OFF' shops

According to the AEPs for 2006-07 to 2010-11, all the existing IMFL, 'OFF', 'Country Spirit' and 'Out Still' shops were to be renewed for the next year with the applicable C.Money of the shop. Where the shops are not renewed, the Collector of the district may take immediate steps to settle the unsettled shops by way of inviting application and drawal of lottery. In case the above shops remain unsettled even after the drawal of lottery, those may be allowed to run through any Government Undertaking, Co-operative organisation from 2006-07 onwards in the interest of revenue of the Department.

During test check of licence fee register, AEPs and settlement files etc. of seven<sup>31</sup> excise districts, we noticed that 15 IMFL 'OFF' shops and two CS shops remained unsettled during the last five years, which resulted in loss of Excise Revenue of ₹ 14.75 crore consisting of C.Money (₹ 2.86 crore) and SED (₹ 11.89 crore).

After we pointed out the cases, the SE, Ganjam, Balasore, Cuttack and Bargarh stated (April to June 2012) that the licence of the shops could not be renewed due to high price; SE, Mayurbhanj

and Bolangir stated (May 2012) that the shops could not be settled due to public objection whereas SE, Dhenkanal replied (April 2012) that compliance will be furnished after verification of records.

However, no steps were taken by any DEOs to run the unsettled shops through the OSBC, Co-operative Organisations and Government Undertakings.

<sup>31</sup> Balasore, Bargarh, Bolangir, Cuttack, Dhenkanal, Ganjam and Mayurbhanj.

**(ii) Loss of Revenue due to delayed sanction of Excise shops**

As per the Government notification of October 2003, the Collectors of the districts after inviting objections for settlement of excise shops are to furnish proposals, through the EC, to the Government for sanction. Thereafter, the licence is issued to the sanctioned shops, by inviting applications on fixed monthly consideration money as approved by Government and by drawal of lottery vide Government notification dated 28 April 2005. The whole process of inviting applications and drawal of lottery shall be completed in 10 days. The Acts and Rules do not prescribe any time period by which the shops recommended by the EC would be sanctioned by the Government.

During test check of settlement files of shops and licence fee registers of four<sup>32</sup> SEs, we noticed that the proposals for settlement of 52 IMFL 'OFF' shops, nine CS shops, 10 Bhang shops for the years from 2009-10 and 2010-11 were sent to Government, which were sanctioned after lapse of periods ranging from 51 to 188 days. Due to delay in sanction, revenue of ₹ 4.44 crore was foregone by the Department towards C Money (₹ 0.99 crore and SED (₹ 3.45 crore).

After we pointed out these cases (May and July 2012)

three<sup>33</sup> SEs stated (between May 2012 and July 2012) that the delays were not at their level, but at Government level whereas the SE, Cuttack replied (May 2012) that the delay in sanctioning of the shops by Government is a procedural delay.

**(iii) Delay in abolition of IMFL 'OFF' shops**

As per Rule 31 of OER, 1965, licence for the wholesale or retail vend of intoxicants may be granted for one year from 1 April to 31 March of the following years. The Acts and Rules do not prescribe any procedure for abolition of excise shop.

During scrutiny of settlement files of SE, Balasore, we noticed that four<sup>34</sup> IMFL 'OFF' shops remained unsettled due to stay orders of the Hon'ble High Court of the State. The Collector submitted (June 2010) proposal to the Government through the EC for abolition of these shops and opening of new shops in these

areas, which was accepted (August 2010) by the Government, though the cases were *subjudice* from 2002 onwards. Due to delay in submission of proposals for abolition of the shops, without any reasons on record, Government sustained loss of revenue ₹ 7.24 crore towards C Money (₹ 1.37 crore) and SED (₹ 5.87 crore) for the period 2006-11.

After we pointed out these cases (April 2012) the SE, Balasore did not give any comment (April 2012) as all the writ petitions against the six shops were pending in the Hon'ble Court.

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<sup>32</sup> Cuttack (10 'OFF' shops, 9 CS shops and 10 Bhang shops), Ganjam (27 'OFF shops'), Jajpur (4 'OFF' shops) and Mayurbhanj (11 IMFL 'OFF' shops).

<sup>33</sup> Ganjam, Jajpur and Mayurbhanj.

<sup>34</sup> Angargadia, Nayabazar, Telenga Sahi and Vivekananda Marg.

**(iv) Delay in granting of licence of IMFL ‘ON’ shops**

According to the Government guidelines (October 2002), for processing of the applications for sanction of ‘ON’ shops in the Hotel, Restaurant etc., the Collector shall forward the applications, other documents and inquiry report of the IE to the EC, under intimation to the Government, within two months from the date of receipt of applications in his office. The EC shall transmit the application to Government, with the proposed MGQ of the shop within two months from the date of receipt from the Collector. However, no time limit was prescribed by the Government for sanction of ‘ON’ shops after receipt of proposal from the EC.

During scrutiny of licence fee register, and settlement files of “ON” shops in respect of five DEOs<sup>35</sup>, we noticed that in 19 cases, there were delays, from the application, in processing and sanction of licences to the ‘ON’ shops at the levels of Collectors and EC ranging from 3 to 384 days which could have earned revenue of ₹ 19.39 lakh towards licence fee. However, Government took 12 to 282 days for sanction of the shops in respect of ten cases relating to three districts.

After we pointed out the cases the SEs, Cuttack, Balasore and

Ganjam stated (May and June 2012) that the delay was due to adoption of procedural arrangements. The SE, Mayurbhanj stated (May 2012) that the delay was at the Government level where as the SE, Bolangir stated (May 2012) that the compliance would be furnished after verification of records.

**5.2.9.5 Non-realisation of composite Label Registration Fee (LRF) and User Charges**

As per the AEPs, the retail licensees have to register the labels of different brands of IMFL/Beer at the district level annually on payment of composite Label Registration Fees (LRFs) at the rate of ₹ 5,000 (2006-07 and 2007-08) and ₹ 10,000 (2008-09 to 2010-11) per shop. Each licensee of IMFL/CS/OS shop is also required to pay a non-refundable User Charge of ₹ 5,000 *per annum* in addition to the LRF. As shop is a place where goods were sold, the military canteens selling IMFL/Beer are also licenced shops. Hence, they are liable to pay LRFs and User Charges at the rates prescribed in AEPs.

During scrutiny of the licence fee registers and challan registers of five<sup>36</sup> DEOs, we noticed that 14 military canteens were licensed to sell excisable goods, did not pay the composite LRFs and Users Charges for the years 2006-07 to 2010-11. The DEOs concerned could not detect this to raise and realise a demand of ₹ 8.90 lakh.

After we pointed out the cases, SE, Ganjam and Khurda replied (June and July 2012) that they would obtain clarification from the Competent Authority, whereas SE, Cuttack agreed

<sup>35</sup> Balasore, Bolangir, Cuttack, Ganjam and Mayurbhanj.

<sup>36</sup> Bolangir, Cuttack, Ganjam, Khurda and Rayagada.

(May 2012) to realise the amount. SE, Bolangir and Rayagada did not furnish any specific reply stating that it was a policy of the Government.

**5.2.9.6 Short-realisation of SED due to delay in implementation of Government order**

Government revised (19 October 2009) the rates of SED on Canned Beer up to 5 per cent v/v from ₹ 10 to ₹ 13 per BL and above 5 per cent volume for volume from ₹ 12 to ₹ 15 which was to come into force with immediate effect.

During scrutiny the records of DEO Khurda, we noticed that 78 import passes for procurement of 7,43,000 BL of Canned Beer were issued to OSBC by the SE, Khurda between 19 October 2009 and 7 November 2009 on realisation of SED at the pre-

revised rates despite clear instruction from Government revising the rates. Against realisable SED of ₹ 111.47 lakh, the SE realised ₹ 89.08 lakh only, which resulted in short-levy/realisation of SED of ₹ 22.39 lakh.

After we pointed this out, the SE replied (May 2012) that the OSBC authorities were informed of the audit observation and final compliance would be furnished on receipt of reply from OSBC.

**5.2.9.7 Prescription of different rates of SED on Beer**

As per AEPs for 2007 to 2011, the rates of SED prescribed on Beer made in India and Canned Beer ranged between ₹ 18 to ₹ 22 and ₹ 10 to ₹ 15 respectively basing on the strength of Beer.

During scrutiny of the records of EC we observed (June 2012) that SED for Canned Beer and bottled Beer is different although alcoholic strengths of both are similar. Hence, there was no justification in fixation of SEDs at different rates on Canned Beer and

Beer made in India on the basis of mode of packaging only. Although the EC could not supply the detailed figures of receipt of Canned Beer by OSBC during the financial years 2007 to 2011, from the stock arrival reports of OSBC for the calendar years from 2008 to 2010, we noticed that 205.20 lakh BL of Canned Beer were received by OSBC. We calculated that due to prescription and levy of duty at lower rates on Canned Beer, there was a loss of SED of ₹ 13.88 crore during the above period.

After we pointed out the case, the EC replied (July 2012) that the policy was finally decided by the Government and the EC has nothing to do on the matter. The reply of Government is awaited (January 2013).



### 5.2.9.8 Non-realisation State Excise Duty on short-lifted quantity of IMFL and Beer

As per Rule 6A of the Orissa Excise Exclusive Privilege (FL), Rules, 1989, the licensee shall lift the monthly MGQ of liquor in respect every FL ON/OFF shop, failing which the licensee is liable to make good the loss of SED at the end of the year according to the prescribed rates of AEP with fine of 10 *per cent* on the deficit SED. The Collector may permit the licensee to lift the shortfall quantity of MGQ of previous month in the subsequent month. The EC may accord the permission for lifting the short drawn MGQ in any subsequent month other than the month of March. However, no unlifted quantity of FL shall be lifted beyond the last day of February except on specific permission of EC with reason thereof.

As per the Circular of the EC issued in November 2001, the OIC posted in the OSBC depots is required to furnish the shop-wise details on lifting to the SE for enabling him to keep track on MGQ lifting. The IE and SIE are responsible for shortfall in lifting by the IMFL shops under their jurisdiction.

Scrutiny of MGQ register and monthly statements on lifting of liquor by the licensees under two<sup>37</sup> DEOs, we noticed that five<sup>38</sup> IMFL 'OFF' shops, short-lifted 61.03 thousand LPL of IMFL and 96.16 thousand BL of Beer against the MGQ of 1.41 lakh of IMFL and 1.77 lakh BL of Beer respectively during the years 2007-08 to 2010-11. Thus, the licensees had to pay SED/Fine at the appropriate rates for the short-lifting of MGQ. Neither the licensees deposited the SED of ₹ 1.15 crore including fine of ₹ 10.41 lakh on the short-lifted quantity nor did the Superintendent raise any demand for realisation of the same. We further noticed that there was no system in place for furnishing the list of defaulters, who failed to lift the MGQ, by the SE to the EC. So the EC was unable to watch the non-compliance for short-lifting and act as per the Rules.

After we pointed out the case, the SEs replied (January and May 2012) that demand would be raised after examining the matter.

We recommended the Department for providing a system for monthly submission of a list of licensees who failed to lift the MGQ by the SE to the EC for monitoring such cases at the EC's level.

<sup>37</sup> Balasore and Mayurbhanj.

<sup>38</sup> Badasahi, Badhuri, Bisoi, Motiganj and Palabani.

**5.2.9.9 Non-realisation of State Excise Duty and Transport Fee on Denatured Spirit**

As per the B &OE Act, 1915, no intoxicant shall be removed from any distillery, brewery, warehouse or other place of storage, unless the SED and TF have been paid or bond executed for the payment. As per the AEPs for the years 2006-07 to 2010-11, SED varying between ₹ 2 and ₹ 3 and TF varying between ₹ 3 and ₹ 4 per BL of DS were realisable. Licence for whole sale trading of denatured spirit is issued in Form DS 1 and that for retail sale is issued in Form DS 2.

During scrutiny of DS issue register and copy of DS pass retained by OICs at ACSIL and M/s Shakti Sugar & Distillery Ltd. under two<sup>39</sup> DEOs, we noticed (May and July 2012) that SED of ₹ 17.05 lakh was not realised in respect of 6.05 lakh BL of DS supplied to five DS I licensees of Khurda district through 143 passes.

Further scrutiny of the DS pass register of DEO, Khurda and copy of pass retained by OIC, ACSIL under DEO, Ganjam we noticed that pass for transportation of 8.50 lakh BL of DS was issued through 3,323 passes (one DS I and 3,322 DS 2) without realisation of TF of ₹ 32.09 lakh.

After we pointed out the above cases SE, Khurda replied (July 2012) that the SED was paid by DS 2 licensees at the time of lifting DS from DS 1 licensees. As regards transport fee, the SE, Khurda stated that it would be considered after obtaining clarification from the EC/competent Authority, whereas the SE, Cuttack stated (May 2012) that transport fee was not realisable from DS II licensees as per EC's order of July 2007.

The reply is not acceptable as the SED is realisable before removal of DS from the Distillery or bonded warehouse and TF is leviable in the event of transportation of DS from one place to other place.

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<sup>39</sup> Ganjam and Khurda.

### 5.2.9.10 *Irregularities on inter-district transportation of Mohua Flower (MF)*

As per the B & OE Act, 1915 and Rules made thereunder, MF is an intoxicant and it cannot be transported without a pass. The SE of the exporting district is required to issue passes based on the import permit received from SE of the importing district. The import permit as well as pass is prepared in quadruplicate copies. One copy of the import permit with storage endorsement of the SE of exporting district is required to be presented to the SE of the importing district for his verification. One copy of the pass with storage endorsement of the SE of the importing district is to be returned by the exporter to the SE who issues the pass. As per the AEPs, TF & UF on MF ranged between ₹ 10 to ₹ 15 and ₹ 225 to ₹ 250 respectively during the period 2006-11.

On scrutiny of the MF transport pass registers of five<sup>40</sup> transporting DEOs, we noticed that SEs concerned issued 1,711 passes to the licensees of their districts for transportation of 1.69 lakh quintal of MF without receiving the permits from the SEs of the importing districts. Copies of the passes with storage endorsement of the SEs of the districts receiving MF were also not received by the SEs of the districts transporting MF in respect

of the above quantities of MF. Thus, there is no scope on the part of the pass issuing authority (SE of transporting districts) to verify the actual arrival of the consignments at the desired destination. Under these circumstances, the TF being much less than the UF, possibility of evasion of UF to the extent of ₹ 3.80 crore by utilising the MF within the district and showing the same as transported to other district cannot be ruled out.

After we pointed out these cases, the EC agreed (July 2012) to issue appropriate instruction to the DEOs. Thus, non-observance of the prescribed procedures for inter-district transportation of MF has a risk of adversely affecting the Government revenue.

<sup>40</sup> Angul, Bargarh, Dhenkanal, Rayagada and Sambalpur.

**5.2.9.11 Poor lifting of 'Bhang' by the Bhang shops**

The AEP of 2006-07 provided for renewal of the existing Bhang shops against collection of C Money fixed in the AEP for 2005-06 whereas the AEPs for 2007-08 to 2010-11 provided for renewal of such shops with collection of C Money increased by 10 per cent over and above the existing C Money fixed in the AEPs of previous years. The SED on lifting of Bhang was fixed at ₹ 220 per Kg for the year 2006-07 and ₹ 300 per Kg for the years from 2007-08 to 2010-11; but no MGQ was fixed for the Bhang shops.

The Bhang shops lifted Bhang from the Bhang Golas<sup>41</sup> of the concerned DEOs on payment of SED. The number of Bhang shops sanctioned and functioned during the period of audit, however, could not be made available to audit. From the information made available by EC, we noticed (September 2012) that the quantities of Bhang lifted from the Central Bhang Gola,

Cuttack was very low in comparison to that realised in the form of C Money and SED received from the Bhang shops under eight DEOs during the period covered under the audit as given in the table below:

Year	OB (in Kg)	Receipt (in Kg)	Total (in Kg)	Issue (in Kg)	CB (in Kg)	Revenue collected on Bhang (₹ in lakh)	
						C.Money	Excise duty
2006-07	16.00	0.00	16.00	0.00	16.00	61.73	0.26
2007-08	16.00	300.00	316.00	251.00	65.00	64.03	0.84
2008-09	65.00	2,726.10	2,791.00	610.00	2,181.10	73.73	1.22
2009-10	2,181.10	0.00	2,181.10	250.00	1,931.10	73.23	0.94
2010-11	1,931.10	0.00	1,931.10	550.00	1,381.10	83.73	1.55
<b>TOTAL</b>	<b>4,209.20</b>	<b>3,026.10</b>	<b>7,235.20</b>	<b>1,661.00</b>	<b>5,574.30</b>	<b>356.45</b>	<b>4.81</b>

(Source: Information collected from EC, Odisha)

As seen from the above table, the collection of C Money of ₹ 356.45 lakh was 74 times of the total collection of SED of ₹4.81 lakh; whereas the cost of 1,661 Kg of Bhang issued during 2007 to 2011 was ₹ 2.16 lakh only at the rate of ₹ 130 per Kg. Moreover, the opening stock of 16 Kg of Bhang in the Central Gola as on 01 April 2006 increased to 1,381.10 Kg as on 31 March 2011 due to poor lifting (1,661 Kg) against procurement (3,026.10 Kg) during the period covered in audit. In view of this unusual functioning of Bhang shops with high C money and low turnover, there was scope for illegal business like lifting of Bhang from unauthorised sources. Thus, non-fixation of MGQ, inadequacy of inspection, ineffective enforcement activities and lack of close watch over the shops resulted in low realisation of SED, as well as not ruling out illegal sale.

During the period covered in the audit 23.34 thousand Kg of Bhang valued at ₹ 30.34 lakh at the rate of ₹ 130 per Kg) was seized by the excise authorities. However, it could not be disposed of resulting in non-realisation SED of ₹ 70.02 lakh.

<sup>41</sup> Gola means store.

We brought the matter to notice of EC (September 2012) and his reply is awaited (January 2013).

### 5.2.9.12 *Seized hemp plants with large revenue potential were not disposed off through auction*

Section 66 and 67 of the B and OE Act, 1915 and Rules 136 and 137 of BER, 1965 provide the procedures for confiscation of the intoxicants including Bhang by the Magistrate or Collector. Whenever the offender or person entitled to possession of Bhang is not known or cannot be found, the case shall be inquired into and determined by the Collector who may order confiscation of the same after expiry of one month from the date of seizure and makeover such goods to the SE for disposal. If the cost of transportation of intoxicant exceeds its estimated value, it should be destroyed by the Magistrate under information to concerned SE. Where the confiscated intoxicants are perishable in nature, it may be sold immediately. The confiscated Bhang in any area shall be sold by auction to the highest bidder by the SE subject to a reserve price equal to the amount of SED leviable and cost price payable thereon at the place of sale, if it is not required by the Central Bhang Gola for sale through retail vendors in specified area within a specified period under special orders of EC. The sale value of Bhang was fixed at 130 per kg and the SED was fixed at the rate of ₹ 220 per kg during 2006-07 and ₹ 300 per kg during 2007-11.

Activity Reports of the Department for last five years ending 31 March 2011, revealed that 232.86 lakh hemp plants<sup>42</sup> (*Cannabis Sativa*) valued at ₹ 2,328.60 crore at the average rate of ₹ 1,000 per plant were seized and destroyed by Excise enforcement personnel through raids in the areas of illegal cultivation by unknown cultivators in 17 districts of the State. Details of such raids, steps undertaken for confiscation of the hemp plants and reason for non-sale of the same through Central Bhang Gola or auction to the highest bidder against receipt of sale proceeds thereof and SED etc., could not be furnished by the EC. We observed that there was no shortage of Bhang in the Central Bhang Gola as discussed in the preceding sub paragraph and hence leaves of hemp plants seized should have been collected for manufacture of

116.43 Kg Bhang at a nominal yield of 0.5 Kg per plant valued at ₹ 151.36 crore for sale through auction. Besides, there was possible loss of ₹ 335.19 crore towards SED based on the valuation done by the State Government.

### 5.2.10. Monitoring and control

The aim of the Department is to

- enhance Excise Revenue in the course of regulating the supply of good quality intoxicants into the market without comprising with the social values;

<sup>42</sup> It is a wild plant and its leaves are collected for manufacture of Bhang.

- implement the Excise Laws in force in connection with manufacture, possession, storage, transport along with marketing of intoxicant and
- prevent inflow of illicit liquor into the State.

The authorisation for manufacture, possession and marketing is controlled by way of issuance of licences. The Acts/Rules empower the DEOs to watch this aspect by obtaining monthly returns and conducting periodical inspections of the premises of licensees at regular intervals. For transportation of intoxicant, there is provision to regulate it through issue of pass. There is a system for conducting checks by squads formed at the State / District levels to control the illegal Excise activities. The Excise Commissioner, through quarterly review meeting, monitors the activities of all the districts and submits reports to the Excise Department.

We noticed the following deficiencies in connection with monitoring and control activities of the Department.

**5.2.10.1 Absence of a System of recording complaints**

We observed that there is no system of registering and monitoring the complaints received from general public. Without a system of recording the complaints information on complaint received and action taken thereon at a given point of time was not available to enable the Excise authority for taking timely decision.

**5.2.10.2 Shortfall in inspection of Excise Shops, Sugar Factories and Manufacturing Units**

As per the B and OE Act, 1915 read with the instructions issued from time to time by the EC, the Excise Officers are required to inspect the excise shops and manufacturing units as per the following norms:

Excise officer	Norms for inspection			
	IMFL 'Off' / 'ON' shop	OS shops	CS shops	Bottling units and Distilleries
EDC	As many as possible in every inspection	As many as possible in every inspection	As many as possible in every inspection	Once in a quarter
SE	Once in two months	Once in a month	Once in a quarter	Once in a month
DSE	Once in a quarter	Once in a quarter	Once in a quarter	No provision
IE	Once in a month	Twice in a month	Once in a month	No provision
SIE	Once in a fortnight	Thrice in a month	Once in a fortnight	No provision

We noticed that no specific norm/target was fixed for inspection by the EC and EDC. In absence of this there is no scope to quantify the deficiency. The reports on conducting inspection and enforcements measures taken up are to be incorporated in the monthly work done statements in Form No. GL 49 and 50 for SIE and IE respectively. The EC could not furnish any information regarding details of inspection of Excise shops done during the period covered in the audit.

We noticed that the three EDCs had no information regarding inspection of shops between 2006 and 2011. One<sup>43</sup> out of the three EDCs inspected only

<sup>43</sup> Sambalpur (ND)

one<sup>44</sup> manufacturing unit for the period 2009-10, though they were required to inspect all the 19 units each year. Out of twelve districts selected for the audit, 11 districts did not maintain any records in support of inspection done. In one<sup>45</sup> district, the SE did not conduct any inspection of shops and manufacturing unit whereas the IE and SIE under him conducted inspection of different categories of shops only once in a year. This aspect was also not discussed in the review meetings conducted periodically by the EC. Thus, inspection conducted was inadequate and ineffective.

### 5.2.10.3 Enforcement Activities

With a view to controlling the illegal excise activities in the State, the EC in his circular of March 2001 and May 2006 fixed the monthly norm for raids i.e., 20 for Charge SI, 15 for IE and 30 for each Mobile Unit posted at different stages of enforcement. The Department also instructed (April 2001, September and November 2006) to form Multi-Disciplinary Squad (MDS) in each district to conduct extensive raids on the Illicitly Distilled (ID) units and organisation of night patrolling to check suspected vehicles carrying sprit, illicit and duplicate liquor. As per the AEP for 2006-07 where CS is prevalent, a committee at the district level was to be formed with the Collector of the district as chairman, Superintendent of Police as the Vigilance Officer and SE as the Convener cum Secretary for formulation of strategies to prevent ID liquor and for detection of sources of spurious non duty paid CS.

From the information furnished by the DEOs (April to July 2012), we noticed that all the selected four<sup>46</sup> CS trading districts did not form the district level committees for detection of illicit distillation of CS. No information was also made available on the performance of the district mobile units and night patrolling units. In seven<sup>47</sup> out of 12 districts, MDSs were not formed and the

remaining five<sup>48</sup> districts could not furnish any information on the performance of such squads. Enforcement activities were, thus, not carried out adequately in close association with the experienced personnel of other Departments to control ID liquor and to prohibit excise crimes in the State.

<sup>44</sup> Maikal Breweries, Bolangir

<sup>45</sup> Bolangir

<sup>46</sup> Balasore, Cuttack, Jajpur and Khurda.

<sup>47</sup> Balasore, Bargarh, Ganjam, Jajpur, Khurda, Mayurbhanj and Sambalpur.

<sup>48</sup> Angul, Balasore, Cuttack, Dhenkanal and Rayagada.

**5.2.10.4 Excise Offence Cases, Seizure and Conviction**

Sections 69 and 70 of the B and OE Act, 1915 empower the excise personnel to inspect, search, seize the excise materials, arrest and detain any person for Excise Offences. The DEO is required to maintain the registers like Register of cases (C 7), Register of persons convicted (C 8) and Final Report of cases (C 6) in connection with the excise offence cases.

The information on detection of cases are reported by the DEOs to the EC and discussed in the periodical review meetings. The excisable materials seized in course of enforcement activities are to be retained till

finalisation of the case and later on be disposed of as directed by the Court. However, where the seized materials are susceptible to speedy and natural decay, the same may be disposed of under the direction of the Court at any time. The number of cases detected, value of material seized, persons arrested and persons convicted during the period covered in the PA are given in the table below:

Year	Cases detected	Cases decided	Cases convicted	Percentage of conviction	Cases acquitted	Percentage of acquittal
2006-07	17,367	Not available				NA
2007-08	14,762	Not available				NA
2008-09	13,586	9,055	584	6.45	8,471	93.55
2009-10	13,598	6,469	478	7.39	5,991	92.61
2010-11	14,043	5,268	309	5.87	4,959	94.13
Total						

*(Source: Activity Report of the Department, Minutes of quarterly review meetings of the EC)*

Year-wise data on prosecution cases filed at the Court could not be made available to audit. The Department did not have any information on the quantity and value of disposable materials out of the total quantity of excise materials seized, materials disposed of and the amount realised thereon as per the direction of the Courts. The accumulated value of materials yet to be disposed of as of March 2011 was also not on record. This indicated the casual attitude of the Department to the enforcement related activities.

As seen from the above table, the rate of conviction against the cases decided ranged between 5.87 per cent (2010-11) and 7.39 per cent (2009-10). The reason for such low rate of prosecution and conviction was not on record.

**5.2.10.5 Internal Control Mechanism**

Internal Control Mechanism (ICM) is an in-built mechanism by which an organisation can evaluate its own activities and performances to take corrective measures. For this purpose, the Department has a system of internal audit, periodical review meetings, inspection of subordinate offices and furnishing of periodical reports and returns to the SE/EC/Board/Government. The efficacy of the system of ICM is discussed in the following paragraphs:

**(i) Internal Audit**

The Board of Revenue (Board) is the chief revenue controlling authority of the State, whereas the Collectors are primarily responsible for the excise administration in the respective districts being assisted by the SEs as the Chief Executive Officers (CEOs) under their control. The B and OE Act, 1915



empowers the Board to frame Rules for regulating the establishment, inspection and supervision, management and control of any place of manufacture as well as supply or storage of any intoxicant. The Government have also delegated powers to the Board to function as the highest appellate authority of the State for deciding the disputes in excise matters. The Internal Audit (IA) of various units of the Department was conducted by the composite Internal Audit Wing (IAW) of the Board along with the other units of the Revenue and Disaster Management Department even after the separation of the Excise Wing from the erstwhile Revenue and Excise Department with effect from 1 December 1999. However, an IAW was exclusively created in the Department in September 2010 to undertake the Internal Audit of the units for the financial year 2010-11 onwards.

**(ii) Manpower deployment in Internal Audit**

There were no separate sanctioned posts for conducting audit of the different units of the Department at the level of Board of Revenue. The different posts sanctioned and men-in-position as on 31 March 2011, who were entrusted with the audit of all the units of the Department along with those of the Revenue and Disaster Management Department are given below:

Controlling authority	Name of the post	No. of post sanctioned	Man-in-position	Post vacant	Percentage of vacant post to sanctioned post
Board of Revenue, Odisha	AO	02	01	01	50
	AS	06	05	01	16.67
	Auditor	68	32	36	52.94
Excise Department	AO	1	NIL	1	100
	AS/AAO	2	2	NIL	NIL
	Auditor	10	4	6	60

The percentage of vacancies in the sanctioned posts at the levels of Board and the Department ranged from 16.67 to 52.94 *per cent* and 60 to 100 percent respectively. The shortage of manpower resulted in accumulation of heavy arrear of Internal Audit as discussed in following sub-paragraph.

**(iii) Arrears of Internal Audit**

Scrutiny of records (July 2012) about completion of Internal Audit (IA) and issue of Internal Audit Reports (IARs), revealed that the IA was not conducted by the Board in respect of many units, as detailed under, which resulted in heavy arrears.

Year	No. of Units in arrear as on 1 April	No. of Units to be audited for the year	Total number of Units to be audited	No. of units audited	No. of units yet to be audited
2006-07	85	30	115	--	115
2007-08	115	30	145	--	145
2008-09	145	30	175	--	175
2009-10	175	30	205	--	205
2010-11	205	31	236	04	232

(Source: Information obtained from Government and Board of Revenue)

The Board stated (August 2012) that 249 IARs consisting of 4,221 paras involving ₹ 81.57 crore were outstanding for settlement as of 31 March 2010

without furnishing the unit wise details of the same. The Department, however, stated (March 2012) that after formation of separate IAW in September 2010, the IA of four units only out of 31 for the period 2010-11 were completed by 31 March 2011.

**5.2.10.6 Manpower deployment of the Department**

The Department with regulatory and enforcement activities needs adequate and capable technical manpower to assist the Board/EC in discharging their functions. The posts sanctioned by the Government prior to 2006-07 were not reviewed and revised to reassess the requirement of manpower despite enhancement of revenue from ₹ 430.07 crore to ₹1,094.26 crore and increase in number of IMFL/CS/OS shops from 1,666 to 2,414 (45 per cent) during the period covered under the audit. We also noticed that the number of charge offices functioning at grass-root levels remained stagnant for the last two decades. The number of posts sanctioned and men in position as of March 2011 was as follows:

Group of posts	No. of posts sanctioned		Men-in-position		No. of posts vacant/ (percentage of vacancy)	
	Deptt .	Directorate & field	Deptt.	Directorate & field	Deptt.	Directorate & field
Group 'A'	6	35	3	19	3 (50)	16 (46)
Group 'B'	9	35	4	29	5 (56)	06 (17)
Group 'C'	35	1,734	13	1,377	22 (63)	357 (21)
Group 'D'	11	17	09	16	2 (18)	1 (6)
<b>TOTAL</b>	<b>61</b>	<b>1,821</b>	<b>29</b>	<b>1,441</b>	<b>32 (52)</b>	<b>380 (21)</b>

Source: Information furnished by the Department and EC

We noticed that the sanctioned posts of Principal Secretary (01), Deputy Secretary (01), Audit Superintendents (02), Auditors (10) and Excise Deputy Commissioners (03) were lying vacant as on the date of audit. The vacancy (52.45 per cent) at the Department as well as at the Directorate and field level (20.87 per cent) indicated that the staff in position were not adequate to discharge the duties assigned to them effectively.

**5.2.10.7 Training**

There is provision for imparting training to Sub Inspectors (SIs) only at Biju Patnaik State Police Academy, Bhubaneswar. No facility for training was available to other cadres of Commissionerate and field level units whose number as on 31 March 2011 was 1,276. On scrutiny of records of 12 selected districts, we noticed that only six newly recruited SIs and four in service SIs of three<sup>49</sup> districts were imparted training during the period covered under audit against 165 SIs on roll as on 31 March 2011. Thus, the coverage of training imparted to the personnel entrusted with the Excise Administration of the State was inadequate.

<sup>49</sup> Bargarh, Dhenkanal and Rayagada.

#### **5.2.10.8 Non-collection of pass fee on Country spirit**

The EC instructed (March 1996 and November 2001) that the departmental OIC attached to the OSBC depot should issue the retail transport passes in FL 16 to the retailers against receipt of the pass fee at the prescribed rate and deposit the same to the DEO concerned for deposit appropriate head of account. The OICs of OSBC depots of three<sup>50</sup> DEOs neither issued any pass in the prescribed form nor collected any pass fee from the CS retailers on 50,900 consignments.

The SEs concerned as well as EC did not notice this lapse which indicated weak Internal Control Mechanism of the Department.

#### **5.2.10.9 Liquor Tragedies**

In nine tragic incidents, 231 lives were lost between February 1989 and June 2009 which included three incidents covered in the period of audit with a death toll of 40 lives. The liquor tragedy which occurred in Ganjam district in March and April 2006 was enquired into by a Retired Judge of the High Court, and the tragedies which occurred in Khurda district in May 2009 and in Bolangir district in June 2009 were enquired into by the respective Revenue Divisional Commissioners of the State. The enquiring authorities made 39 recommendations for adoption by the Government. The point wise action taken by the Government on such recommendations were not made available to audit. However, audit observed that based on the recommendations, the Orissa Excise Bill 2006 was passed by the 13<sup>th</sup> Orissa Legislative Assembly in their 14<sup>th</sup> session which is awaiting assent of the Hon'ble President of India for implementation in the State. Disciplinary actions were also initiated against departmental officers found responsible for the above liquor tragedies by commissions of enquiry. Promotional facilities were created for the staff and infrastructure facilities were being improved.

The Government did little to strengthen the enforcement wing for preventing the manufacture and sale of ID and spurious liquors both in CS and OS consuming districts. Another liquor tragedy occurred in Cuttack and Khurda districts during February 2012 with a loss of 38 lives which was under inquiry by a commission headed by a Retired Judge of the High Court.

#### **5.2.11 Conclusion**

Audit noticed that despite increase in revenue collection, performance of the Department and the Annual Excise Policies were inadequate. Efficient supervision of production of intoxicant is a key challenge before the Excise authorities with adequate monitoring. The Molasses manufactured by the sugar factories, their disposal and utilisation were not regulated due to non-framing of Molasses Rules. Wastage norms for breweries were not determined realistically with respect to latest technology in the Breweries. Establishment charges and extra-hour operation charges of Excise Staff posted in the manufacturing units were not realised on time. There is no provision in the AEPs for levy of transport fee on IMFL, Beer and CS though such fees are levied for other intoxicants i.e. RS, DS and ENA, MF and Molasses.

<sup>50</sup> Balasore, Cuttack and Khurda.

Differential SED on closing stock of OSBC in the event of upward revision of SED was not demanded against OSBC. The proposal in the AEP for 2004-05 for formation of zones in order to levy and collect uniform licence fee from the excise shops is yet to be implemented. The existing excise retail outlets were not settled afresh by inviting applications and holding lottery, despite clear cut orders of the Government. Though Bhang shops were settled for high C.Money, the poor lifting of Bhang indicated extraneous (illicit) sources of supply and sale. Hemp plants seized under raids were not disposed off as per Law thereby loosing substantial revenue.

System of inspection and enforcement was poor as the DEOs did not keep any record of such activities for further monitoring to control ID liquor and to prohibit excise crimes in the State.

### **5.2.12 Recommendation**

Government may consider the following to improve the performance of the Department:

- ❖ Sugar factories manufacturing Molasses may be brought under the ambit of State Excise and Molasses Rules may be framed.
- ❖ Wastages allowed during manufacture of Beer, may be worked out on realistic basis to avoid loss of revenue.
- ❖ Government may exercise control over the intoxicants procured, stored and issued by OSBC.
- ❖ The Department may conduct demand surveys to fix zone-wise location of shops and determine Uniform Licence Fee/Consideration Money.
- ❖ Department may fix MGQ for Bhang shops as in the case of other Excise shops.
- ❖ Department may implement pass system for transportation of CS to prevent its illegal transportation.
- ❖ System of enforcement and monitoring may be strengthened to prevent unlawful excise activities.

### **5.3 Audit observations**

We scrutinised the assessment records of excise duty and fees in the District Excise Offices (DEOs) and found several cases of non-observance of the provisions of the Act/Rules/Annual Excise Policies (AEPs) leading to non/short-levy and realisation of excise duty, fees and fine etc., and other cases as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on a test check carried out by us. Such omissions on the part of the Superintends of Excise (SEs) are pointed out by us each year, 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.

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

*The Bihar and Orissa Excise (B&OE) Act, 1915 and Rules made thereunder by the Government as well as the Board of Revenue (BOR) read with the Excise Manual, AEPs and notifications of Government provide for levy and collection of State Excise Duty (SED) and fees like Utilisation Fee (UF), Import Fee (IF), Bottling Fee (BF), Transportation Fee (TF) etc., at the prescribed rates;*

*The SEs while finalising the assessments did not observe the above provisions in some cases as mentioned in subsequent paragraphs which resulted in non/short-levy and non-realisation of SED/fees, fine etc. of ₹ 6.76 crore.*

##### 5.4.1 Short-levy of Bottling Fee

As per Section 38 of B&OE Act, 1915 read with the AEPs for 2008-11 Bottling Fee (BF) at the rate of ₹ 4 per Bulk Litre (BL) is leviable for manufacture of Beer of own brand and ₹ 5 per BL for manufacture of Beer other than own brand.

During test check of records of M/s SKOL Breweries Ltd., Paradeep, Odisha, a licensee for manufacture of Beer, in the office of the SE, Jagatsinghpur, we noticed (between February and October 2011) that the label names of three<sup>51</sup> brands of Beer, under which production was made, were not owned by the unit. However, the unit produced 5.59 crore BL<sup>52</sup> of

these brands of Beer from 2008-09 to 2010-11 and paid bottling fee at the rate of ₹ 4 per BL applicable for 'own brand' instead of ₹ 5 leviable for 'other than own brand'. This resulted in short-levy of BF of ₹ 5.59 crore.

On this being pointed out, the SE, Jagatsinghpur raised demand of ₹ 2.02 crore in June 2011 for the year 2009-10 and additional demand of ₹ 3.57 crore for 2008-09 and 2010-11 in May 2012.

We reported the matter to the EC, Odisha (February 2012) and also to the Government (April 2012). The reply is yet to be received (January 2013).

<sup>51</sup> (1) Hayward 5000, the original super strong Beer, (2) Knock out High Punch Strong Beer, (3) Royal Challenge premium lager Beer.

<sup>52</sup> 1.94 crore BL in 2008-09, 2.02 crore BL in 2009-10 and 1.63 crore BL in 2010-11.

#### 5.4.2 Non-levy of duty on short-lifting of Minimum Guaranteed Quantity of liquor

As per rule 6A of Odisha Excise Exclusive Privilege (Foreign Liquor) Rules, 1989, the licensee of Foreign Liquor (FL) 'On'/'Off' shops shall lift the Minimum Guaranteed Quantity (MGQ) of liquor as fixed by the Excise Commissioner (EC), as per the terms and conditions of the licence issued by the Collector; failing which the licensee is liable to make good the loss of SED at the end of the year as per the rates prescribed in the Annual Excise Policy (AEP) for that year with 10 *per cent* fine on the deficit SED.

During test check of the records of four<sup>53</sup> SEs we noticed (between May and November 2011) that the licensees of twenty<sup>54</sup> 'Off' shops short-lifted 34,413.307 LPL<sup>55</sup> of IMFL and 69,715.987 BL<sup>56</sup> of Beer during 2009-10 and 2010-11. This was not detected by the concerned SEs in time for raising necessary demands resulting in short-realisation of SED of ₹ 62.62 lakh<sup>57</sup> and fine of ₹ 6.26 lakh<sup>57</sup>.

After we pointed this out all the SEs replied (November 2011) that demand would be raised for realisation of the Government dues. Further reply is yet to be received

(January 2013).

We reported the matter to the E C, Odisha in February 2012 and also to the Government in July 2012. The reply is yet to be received (January 2013).

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<sup>53</sup> SE, Jagatsinghpur, SE, Jajpur, SE, Kendrapara, SE, Khordha.

<sup>54</sup> SE, Jagatsinghpur (01 shop), SE, Jajpur (02 shops), SE, Kendrapara (13 shops), SE, Khordha (04 shops).

<sup>55</sup> London Proof Litre.

<sup>56</sup> Bulk Litre.

<sup>57</sup> SE Kendrapara –₹ 12.29 lakh, SE, Jajpur –₹ 9.34 lakh, SE, Jagatsinghpur –₹ 1.01 lakh, SE, Khordha –₹ 46.24 lakh.

### 5.4.3 Short-levy of transportation fee on Mahua Flower

Rule 6 C of the OE (Exclusive Privilege) Rules, 1970 read with Rule 11 of the OE (*Mahua Flower*) Rule, 1976 and the provision of the AEPs for the years 2009-10 and 2010-11, provide for realisation of Transportation Fee (TF) at the rate of ₹ 15 per quintal of MF against the MGQ of MF fixed by the Collector of the District for lifting and utilisation in a financial year in addition to realisation of Utilisation Fee (UF) at prescribed rates. Thus, the licensee has to pay the TF on the entire MGQ irrespective of lifting/utilisation.

During test check of records of the SEs of six<sup>58</sup> districts we noticed (between December 2010 and September 2011) that 189 outstill shops under their jurisdiction lifted and utilised 1.99 lakh quintals of MF against MGQ fixed at 3.89 lakh quintals fixed by the respective Collectors of the districts for the year 2009-10 and 2010-11. Thus, there was short-fall in lifting and utilisation of 1.89 lakh quintals of MF. Though UF at the prescribed rates were realised on the entire MGQ, in case of short-utilisation/lifting, TFs were found to be short realised (16.87 lakh) and not realised (17.33 lakh) which resulted

in non/short realisation of TF of ₹ 34.20 lakh.

On this being pointed out, SEs, Angul, Dhenkanal and Keonjhar replied that ₹ 11.54 lakh was realised out of ₹ 19.80 lakh demanded and SE, Bolangir and Ganjam agreed to issue the demand while SE, Sambalpur replied that the matter was referred to the EC, Odisha.

We reported the matter to the Government in May 2012. The reply is awaited (January 2013).

<sup>58</sup> Angul, Bolangir, Dhenkanal, Ganjam, Keonjhar and Sambalpur.

#### **5.4.4 Non-imposition of fine on destruction of expired Beer**

As per Rule 39A (7b) and (c) read with Rule 135(2a) and (c) of the BER, 1965, when any intoxicant is found unfit for human consumption on chemical examination, its issue shall be held up and the stock destroyed under orders of the Collector up to 250 BL of Beer and of the EC beyond that quantity. Further, if the deterioration in quality is due to long storage or other factors, the licensee shall be held responsible for this and be liable to pay fine equal to five times the prescribed duty payable on the stock so spoiled and destroyed.

During test check of the records of SE, Bolangir we noticed (September 2011) that 9,694.100 BL of Beer manufactured by a licensee viz. M/s Maikal Breweries Private Limited, Sarmuhan, Belpara, Bolangir in July/August 2009 was found to be in stock as on 31 March 2010. The same was, however, destroyed (24 November 2010) as it had already exceeded six months from the dates of manufacturing. SED of ₹ 2.13 lakh (at the rate of ₹ 22 per BL

as per AEP 2010-11) only was realised from the above licensee (with prior approval of the EC, Odisha dated 6 November 2010) and fine of ₹ 10.65 lakh (five times the ED of ₹ 2.13 lakh) realisable on the stock destroyed was not imposed on the licensee as the same was not mentioned in the orders of approval of EC for destruction of the time expired Beer. This was against the interest of revenue of the Department.

We reported the matter to the EC, Odisha in February 2012 and also to the Government in March 2012. The reply is yet to be received (January 2013).

#### **5.4.5 Non-realisation of transport fee on Denatured Spirit**

As per section 2(21) of the B & OE Act, 1915, 'transport' means to remove from one place to another within the State. As per Section 38 of B & OE Act, 1915 every licence, permit or pass shall be granted on payment of such fee as the Board may direct as per the rate prescribed. Accordingly item No.12(I) of the AEP for 2010-11, provides for levy and realisation of TF on DS at the rate of ₹ 4 per BL.

On scrutiny of the DS pass issue register, license files and the copies of passes in the office of the SE, Cuttack, we noticed (July 2011) that during the year 2010-11, 368 passes were issued to 24 licensees for transportation of 89,485 BL of DS. Though the pass fees at the rate of ₹ 50 per pass were realised, the TF of ₹ 3.58 lakh (at the rate of ₹ 4 per BL) were not demanded and realised.

After we pointed this out, the SE, Cuttack replied (July 2011) that since TF was collected from the wholesale dealer of DS, it was not leviable on subsequent issue to retailers. However,

the AEP provides for realisation of TF on transport of DS. Further, TF is leviable and realisable on each occasion of removal of DS from point to point inside the State.

We reported the matter to the EC, Odisha (April 2012) and also to the Government (May 2012). The reply is yet to be received (January 2013).