

## Executive Summary

Increase in tax collection	In 2011-12 the collection of revenue from state excise increased by 23 <i>per cent</i> over the previous year which was attributed by the Department to huge receipts under “vend fee on foreign liquor and spirits”, duty on beer and malt liquor.
Internal audit	No arrears in the conduct of internal audit has been reported
Results of audit conducted by us in 2011-12	<p>In 2011-12 we test checked the records of 29 units and found underassessment of tax, fees and other observations amounting to ₹ 12.35 crore in 27 cases.</p> <p>The Department accepted underassessments and other deficiencies amounting to ₹ 7.07 crore in eight cases, out of which, ₹ 3.56 lakh involved in two cases were pointed out during the year and the rest in earlier years.</p>
What we have highlighted in this Chapter	In this chapter we present a Performance Audit on “ <b>Functioning of Prohibition and Excise Department</b> ”. This Audit brought out absence of a transparent system in granting privilege/license to new manufactories, non-revision of privilege fee/license fee for over 10 years though there was multifold increase in the volume/value of sales, compliance deficiencies involving a money value of ₹ 10.82 crore.
Our conclusion	There was no transparency in granting privilege/license for setting up a new manufactory and revision of privilege fee and license fee for new distilleries, IMFS and beer manufactories. Fixation of privilege fee for expansion units was also not considered. Non-compliance of the provisions of the Acts and Rules and defects in notifications resulted in leakage of revenue. Internal audit and flying squad were not functioning effectively as there was no proper planning and adequate staff strength. We noticed that while objections raised by audit were accepted by the Department, the same was omitted to be detected by the internal audit.

## CHAPTER III STATE EXCISE

### 3.1 Tax administration

The Commissioner (Prohibition & Excise) is the head of the Department who administers the Tamil Nadu Prohibition Act, 1937 and various other Acts/rules. He is under the administrative control of the Principal Secretary, Home, Prohibition and Excise Department. He is assisted by two Joint Commissioners and five Assistant Commissioners at Headquarters level and Distillery Officers, Excise Supervisory Officers at distilleries and breweries (at manufactory level). A Financial Controller, deputed from the Finance Department, helps the Commissioner in controlling the financial matters. The District Collectors supervise the excise administration at district level, assisted by Deputy/Assistant Commissioners of Excise.

### 3.2 Analysis of arrears of revenue

Arrears of revenue as on 31 March 2012 along with the figures for the preceding four years as furnished by the Department are mentioned below:

(₹ in crore)					
Year	Opening balance	Addition	Total	Amount collected during the year	Closing balance
2007-08	39.87	0.00	39.87	1.05	38.82
2008-09	38.82	0.00	38.82	0.15	38.67
2009-10	38.67	0.00	38.67	0.92	37.75
2010-11	37.75	0.00	37.75	0.50	37.25
2011-12	37.25	0.00	37.25	0.52	36.73

The entire arrears as on 31 March 2012 were outstanding for more than five years. Demands of ₹ 17.62 crore were covered under the Revenue Recovery Act. Demands of ₹ 1.25 crore were stayed by the High Court and other judicial authorities. A sum of ₹ 4.82 crore is outstanding as defaulters' whereabouts not known and ₹ 1.71 crore is outstanding due to defaulters having no properties. A sum of ₹ 5.80 crore is likely to be written off while ₹ 5.01 crore was under various stages of collection. An amount of ₹ 0.52 crore has since been collected.

### 3.3 Cost of collection

The gross collection in respect of state excise, expenditure incurred on collection and percentage of such expenditure to gross collection during the years 2009-10, 2010-11 and 2011-12 along with the preceding years' relevant all India average percentage of expenditure on collection to gross collection for preceding years are given in the following table:

(₹ in crore)

Year	Collection	Expenditure on collection of revenue	Percentage of expenditure on collection	All India average percentage for the preceding years
2009-10	6,740.68	NA	NA	----
2010-11	8,115.94	64.07	0.79	3.64
2011-12	9,975.21	72.84	0.73	3.05

The above table indicates that the percentage of expenditure on collection was less than the all India average in all the years.

### 3.4 Impact of Audit Reports

#### 3.4.1 Revenue impact

During the last five years, we had pointed out through our Audit Reports under assessment of duty, fees, penalty, loss of revenue with revenue implication of ₹ 70.73 crore. Of these, the Department/Government accepted audit observations involving ₹ 70.23 crore and since recovered ₹ 55.33 crore. The details are shown in the following table:

(₹ in crore)

Year of Audit Report	Paragraphs included		Accepted money value	Amount recovered
	Number	Money value		
2006-07	4	70.36	69.86	55.32
2007-08	---	---	---	---
2008-09	---	---	---	---
2009-10	1	0.37	0.37	0.01
2010-11	---	---	---	---
<b>Total</b>	<b>5</b>	<b>70.73</b>	<b>70.23</b>	<b>55.33</b>

**The Government may institute a mechanism to monitor the position of recoveries pointed out in the Audit Reports and take necessary steps for early collection.**

### 3.5 Working of internal audit wing

The internal audit in the Department functions under the control of Financial Controller. It consists of one audit party. As per the information furnished by the Department there is no arrears in the conduct of internal audit.

### 3.6 Results of audit

We test checked the records of 29 Departmental offices during the period from April 2011 to March 2012 and pointed out non/short collection of excise duty, licence fees and other observations amounting to ₹ 12.35 crore in 27 cases, which broadly fall under the following categories.

(₹ in lakh)			
Sl. No.	Category	No. of cases	Amount
1	A performance audit on <b>Functioning of Prohibition and Excise Department</b>	1	10.82
2	Non levy/short levy of excise duty	1	0.14
3	Non/short collection of licence fee/privilege fee	9	0.31
4	Non/short collection of Administrative service fee	12	0.08
5	Non/short collection of penalty and interest	4	1.00
<b>Total</b>		<b>27</b>	<b>12.35</b>

During the course of the year 2011-12, the Department accepted under assessments and other deficiencies amounting to ₹ 7.07 crore in eight cases, out of which, ₹ 3.56 lakh involved in two cases were pointed out during the year and the rest in earlier years.

### **3.7 Performance Audit on Functioning of Prohibition and Excise Department**

#### **Highlights**

- **Lack of transparency in granting privilege/license to new distilleries, IMFS and beer manufactories.**  
( Paragraph 3.7.8 )
- **Non-revision of privilege/license fee for manufacture of spirit, IMFS and beer for more than 10 years.**  
(Paragraph 3.7.9 )
- **FL2 and FL3 licensees (star hotels and clubs) were allowed to import IMFS. Though import fee was collected, vend fee amounting to ₹ 1.30 crore was not collected.**  
(Paragraph 3.7.13.1 )
- **There was short collection of enhanced privilege fee, license fee and special additional privilege fee from FL2, FL3 and FL10 licensees amounting to ₹ 6.72 crore.**  
(Paragraph 3.7.13.2 )
- **Non-payment of brand renewal fee and label approval fee in respect of old brands resulted in non-collection of ₹ 94.60 lakh**  
(Paragraph 3.7.14 )

#### **3.7.1 Introduction**

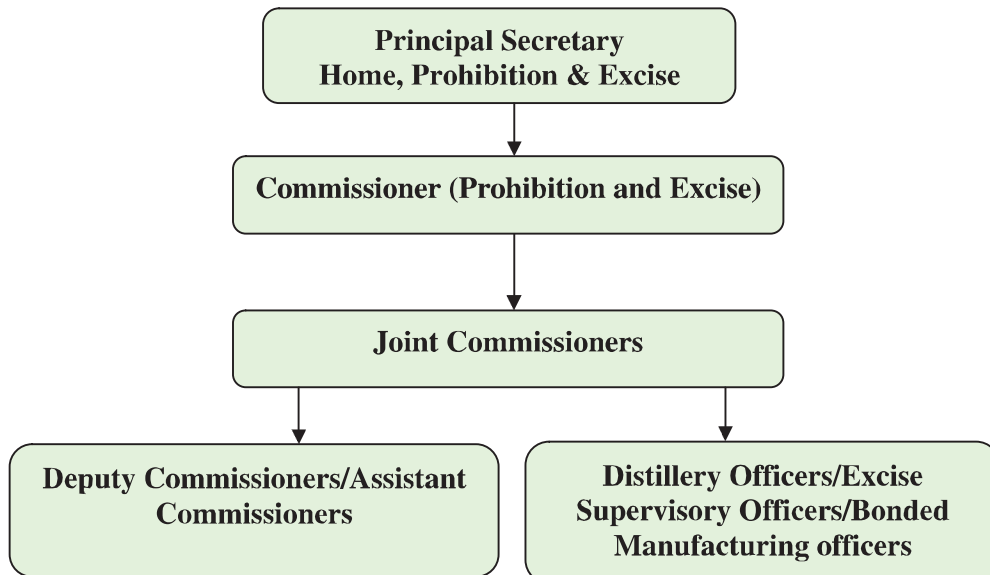
The Tamil Nadu Prohibition Act, 1937 and the rules made thereunder provide for the levy of excise duty, administrative service fee, vend fee, special privilege fee, license fee etc. The State Excise is the second largest source of tax revenue of the State. The Commissioner (Prohibition and Excise) enforces the various Acts/Rules and also regulates the activities of the distilleries and the production, storage, distribution, import, export and sale of IMFL and beer in the State besides collection of revenue. Nearly 98 *per cent* of the total excise revenue is realised through Tamil Nadu State Marketing Corporation (TASMAC).

In Tamil Nadu, TASMAC was given the monopoly in wholesale trading of alcohol from 2001. In order to completely eliminate the sale of contraband, spurious and non-duty paid liquor in licensed premises of retail vending by private persons and wide spread violations of maximum retail price (MRP), TASMAC became the sole retail vendor of alcohol from November 2003. Liquor is also supplied by the Star/non-star hotels and non proprietary clubs to its members after obtaining licenses. The levy and collection of the duties and

fees is monitored by various Acts<sup>27</sup>. The Department plays a dual role of enforcing prohibition of arrack and toddy and regulation of manufacturing and trading of Indian Made Foreign Liquor (IMFL).

### 3.7.2 Organisational set up

The Commissioner (Prohibition & Excise) is the head of the Department under the administrative control of the Principal Secretary, Home, Prohibition and Excise who administers various Acts and Rules relating to state excise. He is assisted by two Joint Commissioners and five Assistant Commissioners at Headquarters level and Distillery Officers, Excise Supervisory Officers at distilleries and breweries. A Financial Controller, deputed from the Finance Department, helps the Commissioner in controlling the financial matters. The District Collectors supervise the excise administration at district level, assisted by Deputy Commissioners of Excise (Chennai and Coimbatore)/Assistant Commissioners of Excise (other districts).



### 3.7.3 Audit objectives

Performance Audit was taken up with the objectives of ascertaining whether:

- Provisions/system for regulating the levy and collection of excise duty, fees etc under various Acts and Rules administered by the Excise Department were being complied with and implemented effectively; and

<sup>27</sup> Tamil Nadu Prohibition Act 1937, Tamil Nadu Indian Made Foreign Liquor (Manufacture) Rules 1981, Tamil Nadu Distillery Rules 1981, Tamil Nadu Brewery Rules 1983, Tamil Nadu Indian Made Foreign Spirits (Supply by Wholesale) Rules 1983, Tamil Nadu Liquor (License and Permit) Rules 1981, etc.

- Internal control mechanism was adequate and effective in preventing leakage of revenue and for ensuring compliance with all rules and regulations.

#### **3.7.4 Audit criteria**

The audit objectives were bench marked against the criteria drawn from the following sources:

- Tamil Nadu Prohibition Act, 1937,
- Tamil Nadu Molasses Control and Regulation Rules, 1958;
- Tamil Nadu Distillery Rules, 1981;
- Tamil Nadu Indian Made Foreign Spirits (Manufacture) Rules, 1981;
- Tamil Nadu Liquor (License & Permit) Rules, 1981;
- Tamil Nadu Brewery Rules, 1983;
- Tamil Nadu Indian Made Foreign Spirits (Supply by Wholesale) Rules, 1983;
- Tamil Nadu Rectified Rules, 2000;
- Tamil Nadu (Retail Vending) Rules, 2003; and
- Tamil Nadu Wine (Manufacture) Rules, 2006.

#### **3.7.5 Scope and methodology**

There are 17 distilleries, 11 IMFL and four beer units and 45 sugar mills in the State. We covered all the IMFL and beer units in the performance audit. We also selected nine distilleries, 12 sugar mills, two Deputy Commissioners and 10 Assistant Commissioners of Excise Offices at the district level using random sampling without replacement method. Besides, the offices of the Commissioner (Prohibition and Excise) and the Principal Secretary, Home, Prohibition and Excise at the Government level were also visited. We scrutinised the records in the units/offices for the period from 2006-07 to 2010-11 between February 2012 and June 2012. The aspects of production, procurement, storage, sale, monitoring and enforcement measures taken by the Department were examined in the performance audit.

#### **3.7.6 Acknowledgement**

An Entry Conference was held with the Principal Secretary to the Government, Home, Prohibition and Excise Department in January 2012, in which we explained the audit objectives, scope and methodology. The statement of facts was forwarded to the Department and the Government in June 2012. The Exit Conference was held with the Principal Secretary to the Government in August 2012. The response of the Government/Department during the Exit Conference and replies received at other times have been appropriately incorporated in the performance audit report.

We acknowledge the co-operation extended by the Home, Prohibition and Excise Department in providing us the necessary records and information.

### 3.7.7 Trend of Revenue

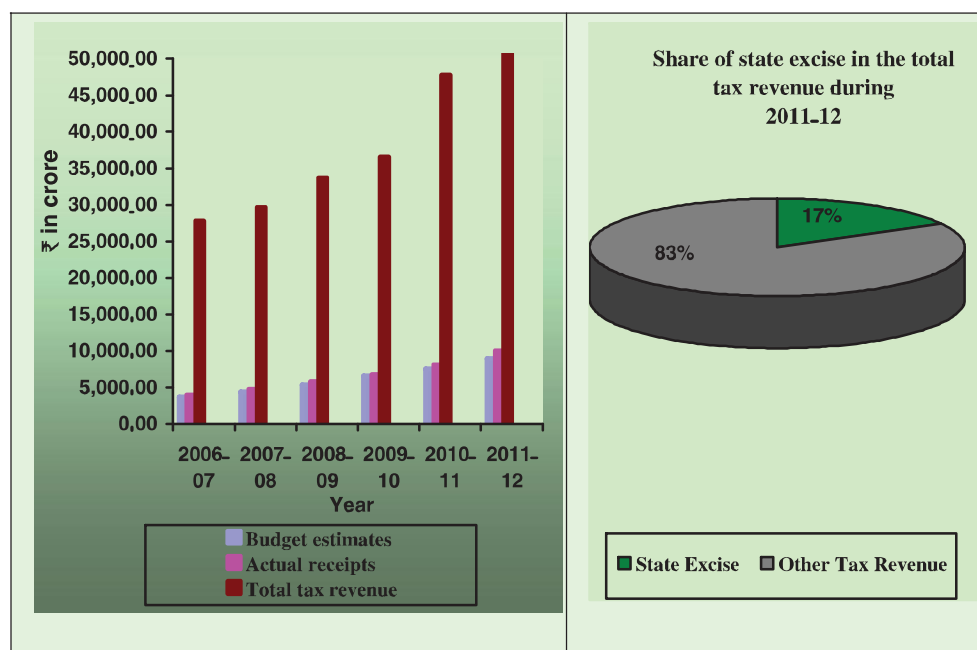
The total tax revenue and state excise revenue of the Government of Tamil Nadu during the period from 2006-07 to 2011-12 are as given in the following table:

(₹ in crore)

Year	Budget estimates	Actuals	Variation excess (+)/ short fall (-)	Percentage of variation	Total tax receipts of the State	Percentage of actual receipts vis-à-vis total tax receipts
2006-07	3,673.26	3,986.42	(+) 313.16	(+) 9	27,771.15	14
2007-08	4,370.12	4,764.06	(+) 393.94	(+) 9	29,619.10	16
2008-09	5,329.60	5,755.52	(+) 425.92	(+) 8	33,684.37	17
2009-10	6,565.55	6,740.68	(+) 175.13	(+) 3	36,546.66	18
2010-11	7,508.18	8,115.94	(+) 607.76	(+) 8	47,782.17	17
2011-12	8,935.03	9,975.21	(+) 1,040.18	(+) 12	59,517.66	17

*Source: Finance accounts and Annual financial statement for the respective years*

A bar diagram depicting the budget estimates, actual receipts and total receipts for six years and a pie chart depicting the share of state excise receipts in the total tax revenue during 2011-12 are shown below:





In 2011-12 the collection of revenue from state excise increased by 23 *per cent* over the previous year which was attributed by the Department to huge receipts under vend fee on foreign liquor and spirits, duty on beer and malt liquor.

### **Audit findings**

#### **3.7.8 Lack of transparency in granting privilege/license to new manufactories**

As per the policy notes for the years between 2008-09 and 2010-11 privilege/distillery licenses were given for setting up of new distillery for six applicants and permission was granted to eight distilleries to expand their production capacity by 207.80 KLPD. Privilege/Letter of Intent (LoI)/license were also given for four new IMFL manufactories, five brewery units and one wine manufactory unit.

We observed that the distilleries, IMFS and beer manufactory licenses were granted based on the applications received from the intended persons/ companies without adopting any other procedure like inviting application through public notice/issue

of notification. The auctioning of these licenses was also not done and there was lack of transparency in granting of licenses. Further there is no provision in the Act/Rules for levy of fee for expansion of the existing production capacity.

In Andhra Pradesh, the Government issues notifications from time to time for grant of LoI for establishment of new manufactory or expansion of existing RS/IMFL manufacturing units and distilleries. Further, for expansion of the existing production capacity of IMFL manufacturing units the licensees have to pay ₹ 12 crore as non refundable deposit and the distilleries have to pay a special fee of ₹ 20 lakh for obtaining LoI.

**We recommend that a transparent system may be evolved for issue of privilege and license for new manufactory and fixation of privilege fee for expansion units.**

### 3.7.9 Non-revision of privilege/license fee for new distilleries, IMFS and beer manufactories

According to Rule 3 of the Tamil Nadu Distillery Rules 1981, every person to get grant of the privilege for manufacture of spirit and licence to establish a distillery shall make an application with an application fee of ₹ 400, a privilege fee of ₹ two lakh and a licence fee of ₹ 4,000.

As per Rule 4 of the Tamil Nadu Indian Made Foreign Spirit (Manufacture) Rules 1981, any person desirous of getting the privilege of manufacturing IMFS and license shall make an application with an application fee of ₹ 2,000, a privilege fee of ₹ four lakh and a licence fee of ₹ 10,000.

As per Rule 4 of the Tamil Nadu Brewery Rules 1983, any person desirous of getting the privilege of manufacturing beer and license for brewery shall make an application to the Commissioner within six months from the date of letter of intent (LoI) given by the Government with an application fee of ₹ 2,000, fee of ₹ four lakh and a licence fee of ₹ 10,000.

The privilege fee for distilleries was fixed in the year 2000 and for IMFS and beer manufactories in the year 1999. Though there was more than four fold increase in the volume of sales and five fold increase in value, the fees fixed in the years 1999/2000 are continued to be collected every year till date without any revision.

Further, there is no provision in the Act/Rules for revision of privilege and license fee.

In the neighbouring State of Andhra Pradesh, LoI is obtained after payment of a (i) special fee of ₹ 20 lakh by distilleries and (ii) non refundable fee ₹ 12 crore by IMFL units alongwith the application.

In Tamil Nadu, the fee structure, however, remains the same from 1999-2000 without any revision.

**We recommend that Government may consider revising the privilege and license fee for distilleries, IMFS and beer manufactory units.**

### 3.7.10 Non-implementation of the policy decision to export liquor to other States

The cabinet decided (August 2010) that considering the potential of export of IMFS to other States by the manufacturers of IMFS in the State with possibilities of additional revenue to Government by way of excise duty/export fee on exports and increasing local requirement, the existing policy may be revised so that privilege and licence for new IMFS units may be considered on merits.

We observed that the decision of the cabinet was not implemented by the Government by issuing notification/order inviting applications for grant of licenses to even existing units for export of IMFL to other States, thereby depriving additional revenue in spite of the fact that the existing units were equipped to produce enhanced quantity. We scrutinised

the production capacity viz.a.viz. the demand made by the TASMAL from six IMFS units in the State for the period from September 2010 to March 2011. The details are given in the following table:

Sl. No.	Name of the distillery	Monthly production capacity (in cases)	Percentage of demand varied between
1	Tvl. Midas Golden Distilleries Pvt. Ltd.	7,42,500	29.65 and 51.06
2	Tvl. Southern Agri Furane Pvt. Ltd.	4,13,100	54.96 and 78.46
3	Tvl. Empee Distrilleries	4,19,400	74.99 and 100
4	Tvl. Mohan Breweries and Distilleries Ltd.	6,55,300	29.07 and 48.24
5	Tvl. Shiva Distilleries	9,25,000	50.22 and 63.45
6	Tvl. United Spirits	9,90,000	71.43 and 100
For remaining five IMFS units the production capacity has not been fixed.			
Source : As per statements given by the licensees			

From the above table, it is clear that the demand made by TASMAL ranged between 29.07 and 78.46 *per cent* of the production capacity (except in two cases where the demand ranged between 71.43 and 100 *per cent*), which is indicative that the remaining capacity can be utilised for export.

As the decision of the cabinet was not implemented, the Government was deprived of additional revenue in spite of the fact that the existing units were equipped to export liquor to other states.

### 3.7.11 Non-production of ethanol for blending with petrol

As per the Government of India notification issued in September 2002, sale of five *per cent* ethanol blended petrol was implemented in nine districts of Tamil Nadu, with effect from May 2004.

The Government granted prior permission (October 2006) to eight<sup>28</sup> units to produce ethanol. 11,000 kilo litres of ethanol were produced and sold to oil companies upto November 2006. The Commissioner (Prohibition and Excise), however, in his letter

(December 2006) addressed to the Ethanol Co-ordinator had stated that as there was shortage of spirit even for IMFS manufacturing units for potable purpose, due to closure of many distilleries, the usage of spirit for other purposes has been stopped from November 2006. The Commissioner further stated that the Department was not in a position to spare spirit for ethanol till March 2007.

We scrutinised the details of stock of molasses furnished by the Commissioner (Prohibition and Excise) and noticed that there was stock of molasses in excess of consumption ranging from 2.95 lakh MT to 4.10 lakh MT for the years 2006-07 to 2010-11 as detailed in the following table:

(in lakh MT)					
Year	Opening balance	Production	Total availability	Consumption for spirit etc	Closing balance
2006-07	2.92	11.45	14.37	10.27	4.10
2007-08	4.10	12.46	16.56	13.61	2.95
2008-09	2.95	9.79	12.74	9.46	3.28
2009-10	3.28	7.93	11.21	7.66	3.55
2010-11	3.55	7.86	11.41	8.08	3.33

Source: As furnished by the Department

#### *Analysis by audit revealed that:*

- As per the formula furnished by the Commissioner one metric tonne of molasses will yield 170 to 260 litres of RS based on the Total Reducing Sugar (TRS) content in molasses. Applying this formula for the minimum closing balance of 2.95 lakh M.T. of molasses, the production of RS would be in the range of 5.02 crore litres and 7.67 crore litres.
- The maximum demand for molasses for the production of spirit during the period from 2006-07 to 2010-11 was 24.73 *per cent* (1.13 lakh M.T.) of the available stock (closing stock of previous month plus production during the month) which could produce spirit ranging between 1.92 crore litres and 2.94 crore litres. As such the balance stock of molasses could have been diverted for production of ethanol.

<sup>28</sup>

Tvl. Thiru Aarooran Sugars and Chemicals Limited, Tvl. Sakthi Sugars Limited, Tvl. Rajshree Sugars and Chemicals Limited, Tvl. Dharani Sugars and Chemicals Limited, Tvl. EID Parry (India) Limited, Tvl. Kothari Sugars and Chemicals limited, Tvl. Salem Cooperative Sugar Mills Limited and Tvl. Amaravathy Cooperative Sugar Mills Limited.

From the above it could be seen that even though there was enough stock of molasses, the position was not reviewed after March 2007. Further, no concurrence was obtained by the Commissioner (Prohibition and Excise) from the State Government/Government of India for stoppage of supply of spirit for production of ethanol.

Though the use of ethanol blended petrol would reduce the pollution level and save foreign exchange, the Government did not review the decision taken by the Commissioner (Prohibition and Excise) and restore the supply of spirit for production of ethanol.

### **3.7.12 Non-adoption of 'per case rate' for levy of special fee**

The Government issued orders in July 2008 fixing the rate of special fee at ₹ 280.16 per proof litre for premium brand wine.

We observed from the files in Commissionerate, Chennai, that the Government proposed to introduce special fee for the import of IMFS, wine and beer in lieu of excise duty and import license fee levied (₹ 705.36 per

case) and called for proposals from TASMAC. TASMAC in September 2007 forwarded the proposals for a special fee of ₹ 706 per case in respect of premium wine. The proposal by TASMAC was based on 28 degree proof strength and the rate for premium brand wine was arrived at as ₹ 280.16

The proposed 'per case' special fee was converted as 'per proof litre' basis in respect of IMFS and wine and 'per bulk litre' basis in respect of beer. Though the above proposal was accepted by the Government, the special fee was simply fixed at ₹ 280.16 per proof litre and the indication that the working was based on 28 degree proof strength as stated by TASMAC was not included in the order (July 2008). TASMAC also imports wine with different proof strengths of 28, 24.5 and 21 degrees. As a result, even though the proposal is for a special fee of ₹ 706 per case, rate on 'proof litre basis' reduced the fee to ₹ 617.76<sup>29</sup> for 24.5 degree and to ₹ 529.50<sup>30</sup> for 21 degree per case containing nine bulk litres.

We observed that during the period from November 2008 to March 2011, 11,270 cases (cases containing 375 & 750 ml bottles) and 98,790 cases (cases containing 180 ml bottles) were imported. Had the rate of special fee been fixed correctly either on bulk litre or at the appropriate rate according to the proof strength, the Government would have earned the same revenue as it was earning before the issue of the order. The adoption of revised rate without proportionate levy for different degree of proof strength in the order issued by the Government resulted in short realisation of special fee of ₹ 98.10 lakh. It is also pertinent to note that the excise duty on the wine manufactured locally was fixed on 'bulk litre' basis only.

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<sup>29</sup> 9 Bulk litres X 24.5/100 = 2.25 proof litres X 280.16 = ₹ 617.76 per case

<sup>30</sup> 9 Bulk litres X 21/100 = 1.89 proof litres X 280.16 = ₹ 529.50 per case

### 3.7.13 Non/short collection of fee

#### 3.7.13.1 Non-collection of vend fee

The IMFS/ beer import permits are issued to FL2, FL3 and FL10 licensees after collecting special fee prescribed under Rule 13 of the Tamil Nadu IMFS (Supply by Wholesale) Rules, 1983 as there is no specific provision in the Tamil Nadu Liquor (License and Permit) Rules, 1981. In addition to special fee, for import the licensee has to pay vend fee at ₹ 142 per case in respect of IMFS and ₹ 36 per case in respect of beer under Rule 15 of the Rule *ibid*.

We observed from the records in Commissionerate, Chennai, that 4,821 import permits were issued during the period from 2006-07 to 2010-11 in which 84,948 cases of IMFS and 26,406 cases of beer were imported. However, no vend fee was collected resulting in non-realisation of revenue to an extent of ₹ 1.30 crore as detailed below:

Year	Import of IMFS (in cases)	Vend fee at ₹ 142 per case (₹ in lakh)	Import of beer (in cases)	Vend fee at ₹ 36 per case (₹ in lakh)
2006-07	9,891	14.05	1,152	0.41
2007-08	17,983	25.54	5,784	2.08
2008-09	15,777 <sup>31</sup>	22.40	5,463	1.97
2009-10	16,866	23.95	7,073	2.55
2010-11	24,431	34.69	6,934	2.50
<b>Total</b>	<b>84,948</b>	<b>120.63</b>	<b>26,406</b>	<b>9.51</b>

Source: As furnished by the Department

After we pointed this out, the Department replied during audit that the vend fee was collected from TASMAL as they were wholesalers as well as retailers; whereas FL licensees were only retailers and hence only the special fee was collected.

The reply is not tenable since the Department collected special fee under Rule 13 of the Tamil Nadu IMFS (Supply by Wholesale) Rules, 1983 in respect of retailers like FL licensees and, therefore, vend fee was also to be collected from those licensees under Rule 15 of the said Rules.

<sup>31</sup> Excluding December 2008 - As the details of import was furnished as 2,76,997 cases appeared to be exorbitant and actual figures not available.

### **3.7.13.2 Short collection of enhanced privilege fee and license fee and special additional privilege fee**

As per Rule 17 of the Tamil Nadu Liquor (License and Permit) Rules, 1981, FL2, FL3, FL3AA and FL10 licensees have to pay privilege fee and license fee annually. As per Rule 17(b) II and III of the rules *ibid*, FL2 and FL3 licensees have to pay special additional privilege fee at 10 *per cent* on the existing privilege fee subject to a minimum of ₹ 10,000 for sale of draught beer.

The Government issued notification in December 2008 increasing the privilege fee (PF) and license fee (LF) in respect of these licensees which was published in the official gazette on 31 December 2008.

We noticed during test check of the records in the Commissionerate, Chennai in January 2010 that only the differential fee for the period from December 2008 to March 2009 was collected from 619 licensees (PF & LF) and 52 licensees (SPF) though the fees were required to be collected for the whole year of 2008-09. This resulted in short collection of fee to the extent of ₹ 6.72 crore.

After we pointed this out, the Department issued instructions in February 2011 to collect the differential privilege fee and license fee as pointed out in audit.

### **3.7.14 Non-payment of brand renewal fee and label approval fee**

As per Rules 13 and 16 of the Tamil Nadu Wine (Manufacture) Rules, 2006, a renewal fee of ₹ two lakh and ₹ 5,000 is payable for brand renewal and label approval respectively. The Government vide order issued in October 2002 extended the levy per annum to old brands also.

We observed from the scrutiny of the license renewal and brand renewal files of three<sup>32</sup> IMFS units that 13 brand names were not renewed for the period ranging from one year to six years. The Department failed to levy the brand renewal fee and label approval fee for the brands upto the year in which deletion proposals were sent and also for

the brands not renewed. This resulted in non-realisation of revenue of ₹ 94.60 lakh.

After we pointed this out, the Department in December 2012 accepted the audit observation in one case and raised a demand of ₹ 8.60 lakh. We are awaiting further report (December 2012).

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<sup>32</sup>

M/s Empee Distilleries (IMFS) unit, M/s. Mohan Breweries Distillery Ltd (IMFS unit) and M/s. Southern Agri Furane Ltd.



### 3.7.15 Internal control mechanism

#### 3.7.15.1 Absence of supervisory mechanism

As per Rule 24 of the Tamil Nadu IMFS (Manufacture) Rules 1981, the manufactory officer shall be responsible for the correct maintenance of stock of bottled IMFS in the finished stores room and for the collection of proper excise duty on such stocks, before their release from the manufactory.

We observed during the check of records of three<sup>33</sup> units (one brewery unit, one wine unit and one distillery unit) that though the units had started their production between February 2011 and April 2011, no regular posting of Excise Supervisory Officer and supporting staff was made till date.

The Commissioner (Prohibition and Excise) in November 2011 stated that in a brewery unit, the consignment meant for a particular place was unloaded at an unauthorized place and also stressed the responsibility of the ESO to verify the stocks and payment of excise duty/vend fee. Liquor manufacturing units without regular ESO/Brewery Officer and supporting staff would give scope for such irregularities not being rectified.

**We recommend that the Government may ensure that the post of officers required in key areas be filled up for effective monitoring and control.**

#### 3.7.15.2 Functioning of internal audit wing

Internal audit wing in the Department functions under the head of Financial Controller. It consists of one audit party. A programme for the internal audit is drawn up by him with the approval of the Commissioner to ensure the upto date completion of Audit and it is his duty to see that the programme is completed in time

We observed on a scrutiny of data files and records of internal audit wing that no annual audit plan was prepared for the year of audit. We also observed that only 38 observations were issued for the period 2009-10 and 2010-11. No money value para was raised by internal audit during our audit period of 2006-07 to 2010-11.

After we pointed this out, the Department stated that no internal audit manual has been prescribed and no training has been given for the staff.

The absence of annual audit plan and non-imparting of training for audit personnel renders the internal audit weak.

<sup>33</sup> M/s. Golden Vats, M/s. Cumbum Valley Wines and M/s. SNJ Brewery



### **3.7.15.3 Computerisation of the functions of the Department**

It was decided by the Government in 1999-2000 to computerise the Department. Scrutiny of the records of the Department revealed that even after a lapse of 11 years, functions like licensing, regulation of alcohol, tax collection, budget, staff details etc., were not maintained in the form of database. Consequently, the Department did not have the previous year's records/data in a complete shape for effective control and future plans.

### **3.7.15.4 Functioning of flying squad**

The functions of the flying squad, which is under the direct control of the Commissioner of Prohibition and Excise, is to inspect the IMFL retail shops, TASMAL godowns, distilleries, FL2 and FL3 licensees and all other licensed premises.

We observed from the records in the Commissionerate, Chennai, that the flying squad is functioning with 50 *per cent* of the staff strength only. For the years 2009-10 and 2010-11, only 42 IMFL retail shops and 14 distilleries were inspected. TASMAL godowns, FL2, FL3 licensees and RL licensees were

not inspected by the flying squad during 2009-10 and 2010-11. In respect of the preceding years, details were not readily traceable by the Department. Though several incidents of selling of liquor at higher prices at the retail shops were noticed at district level, the flying squad, whose primary function is to conduct surprise checks, have reported only three cases. This leads to sale of liquors at a rate more than the MRP besides sale of spurious and adulterated liquor.

### **3.7.15.5 Missing Excise Labels - Loss of revenue**

The Government vide orders issued in (D) No.287 Revenue Ser 2(2) Dept. dated 21 September 2011, determined the loss of revenue for the missing labels as ₹ 6.04 lakh towards excise duty and ₹ 6.25 lakh towards sales tax and also directed that the loss of revenue be collected from the distillery concerned.

We observed from the records of Excise Supervisory Officer, M/s. Mohan Breweries and Distilleries Ltd., that the Department raised a demand for the cost of the labels only instead of the actual loss of ₹ 12.29 lakh. This resulted in non-realisation of revenue of ₹ 12.29 lakh.

After we pointed this out, the Department in December 2012 accepted the audit observation and directed the distillery to remit the amount as stated in the Government order. We are awaiting the collection details (December 2012).

### 3.7.16 Other points of interest

#### 3.7.16.1 Non-levy of penalty for short fall in the yield of spirit

As per Rule 39 of the Tamil Nadu Distillery Rules, 1981, when the yield is lower than the rate specified by the Commissioner, the licensee shall pay penalty at the rate of ₹ 16 per proof litre on the difference.

We noticed (June 2011) during scrutiny of the records of the Salem Cooperative Sugar Mills Limited and statements relating to molasses consumption, production of spirit, yield rate and the reports of Total Reducing Sugar (TRS) content that the rate of yield was lower than

the rate specified by the Commissioner in 10 months by 3.46 lakh proof litre (2.08 lakh bulk litre) between the period from April 2006 and February 2011. However, penalty of ₹ 55.29 lakh for the shortfall was not levied.

#### 3.7.16.2 Non-registration of lease deeds

As per Section 17 (d) of the Registration Act, 1908, lease of immovable property from year to year or for any term exceeding one year or reserving a yearly rent is a compulsorily registrable document with a fee of ₹ 5,000. As per Article 35 of the Indian Stamp Act, where the period of lease is below 30 years, stamp duty is payable at one *per cent* on the amount of rent payable.

We noticed (between February and June 2012) from license renewal file in the Commissionerate, Chennai, that 13 lease deeds executed between February 2003 and January 2010 by licensees were not registered with the Registration Department even though the period of lease was more than one year and the total lease rent was ₹ 18.94 crore. The Prohibition and Excise Department also did not

ensure that the lease deeds are executed on the requisite stamp paper and registered by the licensees. The loss of revenue due to non-registration of the lease deeds in these 13 cases amounted to ₹ 19.60 lakh.

#### 3.7.16.3 Location of retail shops

The Government of India, in October 2007 and December 2011 issued instructions to State Governments for removal of liquor shops along the National Highways (NH) and no fresh licenses should be issued to open shops along the NHs.

We noticed during our audit that 504 retail shops were located along NHs excluding the shops located in important State highways. In May 2012, the TASMAC opened a new premium brand liquor shop on the NH at Villupuram. Thus, instructions of the Central

Government regarding removal of shops and non-issue of fresh license to open shops along the NHs were not followed.

After we pointed this out, the Principal Secretary during Exit Conference accepted the audit observation and informed that a policy would be arrived with regard to relocation of shops in NHs.

### **3.7.17 Conclusion**

There was no transparency in granting privilege/license for setting up a new manufactory. Revision of privilege fee and license fee for new distilleries, IMFS and beer manufactories was not done for more than 10 years and fixation of privilege fee for expansion units was also not considered. Non-compliance of the provisions of the Acts and Rules and defects in notifications resulted in leakage of revenue. Though the use of ethanol blended petrol would reduce pollution level, the Department did not take steps to restore production of ethanol for blending with petrol. Internal audit and flying squad were not functioning effectively as there was no proper planning and adequate staff strength.

### **3.7.18 Recommendations**

The Government may consider

- evolving a transparent system for grant of new licenses;
- revising the privilege/license fee for new distillery and beer manufactory and also fixing of privilege fee for expansion units ;
- restoring the use of ethanol blended petrol as it would reduce the pollution level and
- strengthening the internal audit wing and flying squad by posting adequate staff and imparting necessary training.