

CHAPTER-III

***STATE EXCISE
DUTIES***

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3.1 Tax administration

The Prohibition and Excise Department (P&E) is governed by the Andhra Pradesh Excise Act, 1968 (AP Excise Act), the Narcotic Drugs and Psychotropic Substances Act, 1985, the Andhra Pradesh Prohibition Act, 1995 etc. The Principal Secretary to Government, Revenue Department is the controlling authority at Government level. The Commissioner, Prohibition and Excise Department is the head of the Department in all matters connected with administration of these Acts. He is assisted by Director of Enforcement for implementation of the Acts. The 13 districts of the State, each headed by a Deputy Commissioner (DC), are classified under 29 excise districts. Each of the excise districts is under the charge of a Prohibition and Excise Superintendent (P&ES) who is assisted by the Assistant Excise Superintendent and other staff. Prohibition and Excise Inspectors are in charge of excise stations and check posts, while DCs and Assistant Commissioners (AC) supervise the overall functioning of the offices of Excise Superintendents.

3.2 Internal audit

Internal Audit is an important mechanism for ensuring proper and effective functioning of a system for detection and prevention of control weaknesses. The orders issued by the Government of Andhra Pradesh from time to time stipulate that it is the responsibility of the Accounts Branch of the Head of the Department to conduct internal audit of the Regional Offices, District Offices, Unit Offices etc., periodically (at least once in a year) and furnish reports to the Commissioner. It was communicated by the Department (January 2016) that no internal audit was conducted during the year 2014-15.

3.3 Results of audit

Test check of records of 32 offices of Prohibition and Excise Department conducted during the year 2014-15 revealed non-levy/short realisation of fees and other irregularities involving ₹ 5.76 crore in 88 cases, which broadly fall under the categories as given in Table 3.1.

Table 3.1: Results of audit

(₹ in crore)			
Sl.No.	Category	No. of cases	Amount
1.	Non/short levy of annual licence fee	06	2.16
2.	Non-levy of additional licence fee	12	1.69
3.	Non/short levy of permit room licence fee	26	1.33
4.	Short levy of licence transfer fee	06	0.29
5.	Non-levy of interest on belated payments of licence fee	18	0.14
6.	Short levy of toddy rentals	08	0.11
7.	Other irregularities	12	0.04
Total		88	5.76

During the year 2014-15, the Department accepted under-assessment and other deficiencies of ₹ 3.40 crore in 105 cases, of which 38 cases involving ₹ 2.40 crore were pointed out during the year 2014-15 and the rest in earlier years. An amount of ₹ 91.09 lakh was realised in 96 cases during the year 2014-15. A few illustrative cases, involving ₹ 3.33 crore, are mentioned in the succeeding paragraphs.

3.4 Short levy of annual licence fee on Bar licences

As per Section 28 of the AP Excise Act read with Rule 10 of the A.P. Excise (Grant of licence of selling by Bar and conditions of licence) Rules, 2005, the annual licence fee for the Bar shall be at rates notified¹²³ by the Government from time to time and are collected at the time of issue of Bar licence (2-B) to consumption enclosure. The mode of levying licence fee is on the basis of population.

As per the Government orders mentioned earlier, the licence fee of a Bar situated in a Tourism Centre notified by the Tourism Department of the Central or State Government shall be at the rate of licence fee of a Bar situated within the limits of the nearest municipality or municipal corporation. Annual licence fee for a Bar situated within the limits of a municipality with population above 50,000 but not exceeding five lakh had been notified as ₹ 35 lakh.

Audit noticed (between November 2014 and February 2015) from the Bar licence files of three offices¹²⁴ of the Prohibition and Excise Superintendents (P&ES), that annual licence fee for the Bar licences for the licence period 2011-12 to 2013-14 was short levied in 13 restaurant and bars.

Of these, one restaurant and bar under P&ES, Machilipatnam was located at Avanigadda village, a notified tourism centre. As this village is located at a distance of 10 km to 12 km to Repalle Municipality which had a population above 50,000, the annual licence fee of ₹ 35 lakh was to be levied. However, only ₹ 25 lakh was levied for the years 2012-13 and 2013-14 towards the annual licence fee.

In the remaining restaurant and bars, ₹ 35 lakh was to be levied towards annual licence fee in each case as the population in municipal areas where these establishments were located, was above 50,000 but not exceeding five lakh as per the Census 2011. However, the Department had adopted the population figures as per Census 2001 and collected ₹ 25 lakh only in each case.

This resulted in short levy of annual licence fee of ₹ 1.40 crore for the licence period 2011-12 to 2013-14 in 13 restaurant and bars.

¹²³ G.O.Ms.No.655, Revenue (Excise-II) Department, dated 18 June 2011.
G.O.Ms.No.403, Revenue (Excise-II) Department, dated 25 June 2012.
G.O.Ms.No.406, Revenue (Excise-II) Department, dated 08 July 2013.

¹²⁴ Chittoor, Machilipatnam, Narasaraopet.

After Audit pointed out these cases, P&ES, Chittoor (February 2015) replied that matter would be examined and detailed reply furnished to Audit in due course. P&ES, Narasaraopet replied that show cause notices were issued (January 2015) to the licencees for payment of differential licence fee.

P&ES, Machilipatnam replied (August 2015) that action was taken to collect differential licence fee from the licencee.

The matter was referred to the Department in May 2015 and to the Government in July 2015. Their replies have not been received (January 2016).

3.5 Non-levy of additional licence fee on non-contiguous additional enclosures

As per Section 28 of the AP Excise Act read with Rule 10 of AP Excise (Grant of licence of selling by Bar and conditions of licence) Rules, 2005, any additional enclosure for consumption of liquor, which is not contiguous, shall attract additional licence fee at 10 *per cent* of the annual licence fee.

In terms of explanation given under Rule 10, the word 'enclosure' means an area of consumption of liquor which is contiguous in utility for consumption. If one consumption enclosure is separated from another enclosure by non-contiguity and interposition of areas of different utilities other than consumption of liquor, it attracts additional licence fee.

Audit noticed (between July 2014 and May 2015) during test check of the records relating to Bar licences, payment details etc. of five offices¹²⁵ of the P&ESs, that the respective P&ES did not levy 10 *per cent* additional licence fee amounting to ₹ 50.80 lakh for the years from 2011-12 to 2013-14 on six restaurant and bars with non-contiguous consumption enclosures like consumption areas situated in different halls, different floors having separate access etc.

After Audit pointed out the cases, P&ES, Kakinada replied (October 2014) that in one of the two restaurants pointed out by Audit, there was contiguity between consumption enclosures as they were separated only by passage and toilet rooms and toilet is a mandatory requirement under Rule 6 of Bar rules. For other restaurant, it was stated that consumption enclosures in the ground floor and first floor were separated by kitchen and staircase and the kitchen, as well as staircase are part and parcel of the Bar. Hence, additional licence fee was not payable in both the cases. The reply is not tenable as separate access was provided to enter the enclosures and those were separated by areas utilised for purposes other than liquor consumption.

P&ES, Chittoor replied (November 2015) that there was no non-contiguity according to the structure of the building and hence there was no short levy. The reply is not tenable as the access to the consumption enclosures situated at first floor was through the staircase situated outside the consumption

¹²⁵ Amalapuram, Chittoor, Guntur, Kakinada, Visakhapatnam.

enclosures at ground floor enabling the consumers to enter the consumption enclosures at first floor without entering the area at the ground floor.

P&ES, Guntur accepted the audit observation and intimated that show cause notice was issued (January 2015) to the licensee. Remaining P&ESs replied that matter would be examined and reply furnished in due course.

The matter was referred to the Department between October 2014 and May 2015 and to the Government in July 2015. Their replies have not been received (January 2016).

3.6 Short levy of annual licence fee on retail liquor shops

As per Section 28 of the AP Excise Act, 1968 read with Rule 16 of the AP Excise (Grant of licence of selling by shop and conditions of licence) Rules 2012, the annual licence fee for the shop licence shall be levied on the basis of population and at the rates notified¹²⁶ by the Government from time to time. The annual licence fee of a shop situated in a village/town, any part of which is within a belt of two km from the periphery of municipalities or five km from the periphery of municipal corporations, measured in a straight line on the horizontal plane, shall also be at the rate of annual licence fee of a shop situated within the limits of such municipality or municipal corporation.

During scrutiny of shop policy and licence files of three P&ESs offices¹²⁷, it was noticed (between August 2014 and February 2015) in respect of three shops under the jurisdiction of P&ESs Narasaraopet and Gudur situated within two kilometres from municipalities with population exceeding 10,000, annual licence fee was collected at ₹ 32.50 lakh each instead of ₹ 34 lakh for the years 2012-13 and 2013-14, resulting in short levy of licence fee of ₹ nine lakh.

In P&ES, Chittoor, Audit observed that due to merger of 14 villages with Chittoor Municipality and upgradation of municipality to municipal corporation, licence fee at ₹ 42 lakh for each had to be collected from the seven shops situated in municipal area. Licence fee of ₹ 32.50 lakh for each was collected for the year 2013-14, leading to short levy of ₹ 66.50 lakh. In all, there was a short levy of licence fee of ₹ 75.50 lakh from 10 shops for the years 2012-13 and 2013-14.

After Audit pointed out these cases, P&ES, Chittoor replied that notices would be issued to the licensees for payment of differential licence fee and progress intimated to Audit. Remaining P&ESs replied that matter would be examined and detailed reply furnished to Audit in due course.

¹²⁶ G.O.Ms.No.392, Revenue (Excise-II) Department, dated 18 June 2012.
G.O.Ms.No.357, Revenue (Excise-II) Department, dated 22 June 2012.
G.O.Ms.No.358, Revenue (Excise-II) Department, dated 22 June 2013.
G.O.Ms.No.265, Revenue (Excise-II) Department, dated 22 June 2014.

¹²⁷ Chittoor, Gudur, Narasaraopet.

The matter was referred to the Department in May 2015 and to the Government in July 2015. Their replies have not been received (January 2016).

3.7 Permit room¹²⁸ licence fee

3.7.1 Non/short levy of permit room licence fee

As per Section 28 of the AP Excise Act, 1968, read with Rule 25 of AP Excise (Grant of licence of selling by shop and conditions of licence) Rules 2012, the holder of licence in Form A-4 (for retail liquor shop) in places with population of 5000 and above, shall be licensed in Form A-4(B) to have a permit room. Provided that no such permit room will be granted in municipal corporation and municipalities and within a belt area of five km from the periphery of such municipal corporation and within a belt area of two km from the periphery of such municipalities and in Tourism Centres. Further, as per Rule 26, the licence fee for a permit room shall be ₹ one lakh for the licence period 2012-13 and ₹ two lakh for the licence period 2013-14¹²⁹ or part thereof and is payable in lumpsum.

During scrutiny of shop licence files of 11 offices¹³⁰ of P&ESs for 2012-13 and 2013-14, it was noticed (between July 2014 and February 2015) that in respect of 26 shops, Department did not levy and collect permit room licence fee for the years 2012-13 and 2013-14 although the population exceeded 5,000. This resulted in non-levy of permit room licence fee amounting to ₹ 37 lakh.

In offices of P&ES, Amalapuram and Chittoor, it was noticed that seven shops were disposed of belatedly during 2012-13 and 2013-14 and proportionate licence fee of ₹ 8.58 lakh had been collected instead of lumpsum and full fee of ₹ 13 lakh despite there being no provision in shop rules for levy and collection of proportionate licence fee. Collection of proportionate permit room licence fee was irregular; hence, there was short collection of permit room licence fee of ₹ 4.42 lakh.

In all, there was non-levy and short realisation of permit room licence fee of ₹ 41.42 lakh from 33 shops during the years 2012-13 and 2013-14.

After Audit pointed out these cases, P&ESs, Parvathipuram, Rajahmundry and Tenali accepted the audit observation and replied that action would be taken to collect permit room licence fees from licencees for the relevant years. P&ESs Amalapuram, Ananthapur and Narasaraopet replied that the matter would be examined and reply furnished to Audit in due course.

¹²⁸ Consumption area adjacent to the liquor shop.

¹²⁹ G.O.Ms.No.357, Revenue (Excise-II) Department, dated 22 June 2013.

¹³⁰ Amalapuram, Ananthapur, Chittoor, Gudur, Guntur, Markapur, Narasaraopet, Parvathipuram, Proddatur, Rajahmundry, Tenali.

In respect of the remaining cases¹³¹, P&ESs (between July 2014 and February 2015) stated that as the population was below 5000, permit room licence fee was not insisted upon; and shops were disposed of belatedly, hence, proportionate licence fee had been collected. The replies are not tenable as the population of places pointed out by Audit exceeded 5000 as per 2011 Census; and full licence fee should have been levied in accordance with provisions.

The matter was referred to the Department in October 2014 and May 2015 and to the Government in July 2015. Their replies have not been received (January 2016).

3.7.2 Short levy of proportionate permit room licence fee

As per Rule 27-A of AP Excise (Lease of right of selling by shop and conditions of licence) Rules, 2005¹³², the holder of the license in Form A-4 may be granted a permit room licence in Form A-4 (B) after payment of licence fee of ₹ two lakh for the lease year 2010-12. As per proviso to Rule 27-A, the licence fee for permit room may be calculated proportionately to the whole months of the licence period and a part of the month shall be reckoned as a whole month.

During test check of the records relating to licences to retail liquor shops and payment of licence fee etc. of the office of the P&ES, Amalapuram, Audit noticed (July 2014) that in two cases the permit room licence fee amounting to ₹ 1.50 lakh was collected as against ₹ 3.42 lakh for the year 2010-12 by incorrectly calculating the proportionate licence fee. This resulted in short levy of permit room licence fee by ₹ 1.92 lakh.

After Audit pointed out the case, the P&ES replied that matter would be examined and reply furnished to Audit in due course.

The matter was referred to the Department in October 2014 and to the Government in July 2015. Their replies have not been received (January 2016).

3.8 Non-levy of interest on belated payment of permit room licence fee

As per Section 28 of the AP Excise Act read with Rule 26 of AP Excise (Grant of licence of selling by shop and conditions of licence) Rules, 2012, the licence fee for a permit room shall be ₹ one lakh for the licence period or part thereof and shall be payable in lumpsum at the time of completion of formalities prescribed under Rule-16 (mode of levy, method of payment of licence fee, etc.). Government through an order¹³³ enhanced the amount of licence fee to ₹ two lakh in June 2013.

¹³¹ Chittoor, Gudur, Guntur, Markapur, Proddatur.

¹³² Applicable till 17 June 2012 vide GOMs no. 391 Rev.(Ex II) Department, dated 18 June 2012.

¹³³ G.O.Ms.No.357, Revenue (Excise-II) Department, dated 22 June 2013.

As per Rule 3 of AP Excise (Levy of Interest on Government Dues) Rules, 1982, the arrears of money recoverable shall bear interest at the rate of 18 per cent per annum.

Audit noticed (between August 2014 and February 2015) during the scrutiny of A4 shops files for the years 2012-13 and 2013-14 in four offices¹³⁴ of the P&ESs, that in 364 cases, licencees had paid permit room licence fee belatedly with delay ranging from two to 122 days. However, no penal interest was levied by the Department. Interest to be levied on belated payments amounted to ₹ 7.63 lakh.

After Audit pointed out these cases, Government replied (December 2015) that ₹ 1.82 lakh was realised towards interest on belated payment of licence fee in three P&ESs¹³⁵. In respect of P&ES, Gudur, Station House Officers (SHOs) were instructed to realise penal interest.

3.9 Short levy of toddy rentals

Rule 5(5) of the AP Excise (Grant of Licence to sell Toddy, conditions of licence and Tapping of Excise trees) Rules, 2007 read with Government orders dated 13 November 2007¹³⁶, the rate of rent per tree was ₹ 25 in rural areas and ₹ 50 in urban areas with effect from 01 October 2007.

Any change in the status is notified by the Government, whenever Gram Panchayats are upgraded as Nagar Panchayat or are merged with municipalities/municipal corporations. As per 2011 Census, certain villages were classified as Census Towns (CT) and Out Growths (OG) under urban category. Accordingly, toddy rentals in these areas were to be collected as per rates applicable to urban areas.

During test check of toddy rental collection registers, files and records of toddy shops etc. in four offices¹³⁷ of the P&ESs, Audit noticed (between November 2014 and March 2015) that the rentals in 23 TCSs¹³⁸ and TFTs¹³⁹ were levied at rates applicable in rural areas, instead of urban areas, though some villages were classified as urban areas as per 2011 Census and some Gram Panchayats were upgraded and notified as Nagar Panchayats/Municipalities as Municipal Corporations. This resulted in short levy of toddy rentals amounting to ₹ 8.36 lakh for the years 2011-12 to 2013-14.

After these cases were pointed out by Audit, P&ES, Kurnool replied (May 2015) that ₹ 0.93 lakh was remitted to Government account in respect of seven TCS/TFTs and the remaining amount would be collected shortly. It was further stated that in the remaining four cases, villages were not merged with Kurnool Municipal Corporation and hence the amount was not payable. The

¹³⁴ Chittoor, Eluru, Gudur, Proddatur.

¹³⁵ Chittoor, Eluru, Proddatur.

¹³⁶ G.O.Ms.No.1433, Revenue (Ex-III), dated 13 November 2007.

¹³⁷ Chittoor, Eluru, Kurnool and Vizianagaram.

¹³⁸ Toddy Co-operative Societies.

¹³⁹ Tree for Tappers Scheme.

reply is not tenable as these villages were categorised as OGs which are urban agglomerations as per Census 2011 and hence the urban area rate was to be applied. P&ES, Eluru replied (June 2015) that steps were initiated to collect the difference of the enhanced toddy rentals as pointed out by Audit. Remaining P&ESs stated that action would be taken to collect differential amount by issuing notices to the concerned.

The matter was referred to the Department in May 2015 and to the Government in July 2015. Their reply has not been received (January 2016).

3.10 Non-levy and non-collection of licence transfer fees

As per Section 28 of AP Excise Act, 1968 read with Rule 17 (1) & (2) of AP Excise (Grant of licence of selling by Bar and conditions of licence) Rules, 2005, no licensee shall, except with the sanction of the Commissioner of Prohibition & Excise, transfer his licence to any other person. The Commissioner may allow such transfer after collecting 10 *per cent* of the licence fee. As per Rule 17(4) of these Rules, when there are only two partners in the firm holding the licence and one of them withdraws or expires, the entity of the firm changes from partnership to proprietary concern. It amounts to transfer of licence. As per Rule 17(5), conversion of a proprietary concern into a firm or a company or a firm into a company and vice versa shall amount to transfer of licence.

Audit noticed (July and August 2014) during scrutiny of Bar licence files in two offices¹⁴⁰ of the P&ESs that the status of two entities holding Bar licences changed from partnership firm to proprietary concern due to retirement of partners. Though there was change in status of the entities, P&ESs did not levy transfer licence fee amounting to ₹ 7.30 lakh.

After Audit pointed out the cases, P&ES, Anakapalli replied in respect of one case that as per their records the restaurant and bar was running as partnership firm since 2010-11 and none of the partners had represented for change in status of the entity. The reply is not tenable as the Income Tax statement (Form 3D) and the PAN number indicate that status of entity was a person not a firm. P&ES, Parvathipuram replied that the matter would be examined and detailed reply furnished to Audit in due course.

The matter was referred to the Department in October 2014 and to the Government in July 2015. Their replies have not been received (January 2016).

¹⁴⁰ Anakapalli, Parvathipuram.