

## CHAPTER III

### STATE EXCISE

#### 3.1 Tax Administration

The Principal Secretary, Excise Department is the administrative head at Government level. The Department is headed by the Excise Commissioner (EC). The Department has been divided into three Divisions<sup>1</sup> namely Central, Northern and Southern which are headed by Deputy Commissioners of Excise. Besides, 69 Inspectors of Excise, 211 Sub-inspectors and 137 Assistant Sub-inspectors of Excise under the control of 31 Superintendents of Excise are deployed in respective districts to oversee and regulate levy / collection of excise duties and allied levies.

#### 3.2 Internal Audit

Internal Audit System in Excise Department is functioning since June 2010 consequent upon introduction of Internal Audit Wing (IAW) in accordance with the decision of Government for regular internal audit check of field offices as well as entire organisation, to ensure correct assessment, prompt collection of excise revenue and timely deposit of revenue to Government Account. During 2014-15, out of 16 units planned for audit, the IAW covered 10 units. The shortfall was attributed by the Department to shortage of manpower. Audit noticed that 427 paragraphs of Internal Audit Reports having money value of ₹ 81.44 crore issued during 2011-12 to 2014-15 were pending for disposal as on 31 March 2015.

#### 3.3 Results of Audit

##### A. REVENUE RECEIPTS

In 2014-15, test check of the records of 20 units relating to excise duty, licence fee receipts etc., showed non-realisation / short realisation of excise duty / licence fee / interest / penalty and other irregularities involving ₹ 35.63 crore in 1,863 cases, which fall under the categories as given in the **Table 3.1** below.

**Table 3.1**

Sl. No.	Category	(₹ in crore)	
		No. of cases	Amount
1.	Non / short realisation of excise duty and Non / short recovery of licence fee / interest / penalty	446	15.26
2.	Other irregularities	1,417	20.37
<b>Total</b>		<b>1,863</b>	<b>35.63</b>

During the course of the year, the Department accepted underassessment and other deficiencies of ₹ 22.96 crore pointed out in 1,379 cases. During the year,

<sup>1</sup> Central Division (Balasore, Bhadrak, Cuttack, Jagatsinghpur, Jajpur, Kendrapara, Khurda, Mayurbhanj, Nayagarh and Puri), Northern Division (Angul, Bargarh, Balangir, Deogarh, Dhenkanal, Jharsuguda, Keonjhar, Sambalpur, Subarnapur and Sundargarh) and Southern Division (Berhampur, Boudh, Gajapati, Ganjam, Kalahandi, Kandhamal, Koraput, Malkangiri, Nabarangpur, Nuapada and Rayagada).

the Department recovered an amount of ₹ 132.16 lakh in 40 cases pointed out in earlier years. A few illustrative cases involving ₹ 3.63 crore are discussed in paragraphs 3.5.1 to 3.5.7.

**B. EXPENDITURE**

During the year, test check of records showed irregular expenditure involving ₹ 1,073 in 24 cases, which fall under the categories as given in the **Table 3.2** below.

**Table 3.2**

<b>Sl. No.</b>	<b>Category</b>	<b>No. of Cases</b>	<b>Amount (in ₹)</b>
1.	Cash book and management of cash	22	Nil
2.	Other Miscellaneous expenditure	2	1,073
<b>Total</b>		<b>24</b>	<b>1,073</b>

The Department accepted all the cases which were pointed out during 2014-15.

### **3.4 Audit Observations**

Audit scrutinised the assessment records of State Excise Duty and associated 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-levy / short levy and realisation of excise duty, fees and fines etc. as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on a test check carried out by Audit. Such omissions on the part of the Superintendent of Excise (SE) are pointed out by Audit each year, but not only do the irregularities persist, these remain undetected until the next audit is conducted. There is need for the Department to improve the internal control system including strengthening of internal audit to avoid recurrence of such irregularities.

### **3.5 Non-observance of provisions of the Act / Rules / Annual Excise Policies and instructions of Government**

*The Bihar and Odisha Excise (B&OE) Act, 1915 and Rules made thereunder by the Government as well as by 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), fees like utilisation fee (UF), import fee (IF), bottling fee (BF), transportation fee (TF), excise adhesive label (EAL) fee and charges like establishment cost and extra hour operation charge etc. at the prescribed rates.*

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

### **3.5.1 Non-realisation of differential State Excise Duty on closing stock of India Made Foreign Liquor / Beer sold during 2013-14**

As per Government Notification dated 30 January 2001, Odisha State Beverage Corporation Limited (OSBC) has the exclusive right and privilege of importing, exporting and carrying on wholesale trade of foreign liquor in the State and sale of liquor to the retailer at the issue price inclusive of State Excise Duty (SED). The SED is collected by OSBC at the time of issue of foreign liquor to retailers. In the Annual Excise Policy (AEP) for the year 2013-14, SED was increased by ₹ 1 to ₹ 30 per bulk litre (BL) of beer / London proof litre (LPL) of India Made Foreign Liquor (IMFL) based on the brands.

During test check of Pass Issue (FL-16) records and stock taking reports in the office of the SE, Khurda, Audit noticed (July and August 2014) that OSBC issued IMFL / Beer to retailers during 2013-14 at the revised sales prices including therein the enhanced SED as per AEP 2013-14. The stock of IMFL / Beer sold during 2013-14 included closing stock of 23,36,951.60 LPL of IMFL and 22,71,872.58 BL of Beer relating to the year 2012-13 on which SED had been paid at the rates applicable during 2012-13. Though OSBC collected the differential SED amounting to ₹ 2.52 crore at enhanced rate during 2013-14 on sale of the above closing stock of 2012-13, it did not deposit the same. Despite this, SE, Khurda had not raised demand for realisation of the amount from OSBC.

After Audit pointed this out (August 2014), SE, Khurda raised demand for ₹ 2.52 crore in August 2014.

Audit reported the matter to the Excise Commissioner (EC), Odisha in March 2015 and the Government in June 2015. Their replies are awaited (December 2015).

### **3.5.2 Non-levy of fine on expired IMFL**

As per Rule 39 (1) of the Board's Excise Rules (BER), 1965, the licensee shall remove all bottled liquor from an approved storeroom within three months after it is bottled. As per Rule 39A (7), the SE shall be careful while issuing import and transport permits with a view to voiding unnecessary piling up of huge stock which may lead to sedimentation and deterioration in quality if not disposed of in time and if any stock of IMFL becomes unfit for human consumption owing to long storage or other factors, the licensee shall be squarely responsible and shall be liable to pay a fine equal to five times the duty payable to the Government on the stock so spoiled. Further, the stock so found unfit for human consumption is required to be destroyed by the SE as per Rule 135 of the Rules *ibid*.

During test check of records of SE, Berhampur relating to stock taking accounts and batch-wise figures of closing stock of one distillery, Audit noticed (December 2014) that four<sup>2</sup> brands of IMFL involving 509.25 cases

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<sup>2</sup> Officer's Choice XXX Rum, Chancellor FB Whisky, Xing Mango Tropicana Vodka and Ultra Smooth Vodka.

(3,339.97 LPL) were shown in closing stock as on 31 March 2014. From the report of the Officer-in-Charge (OIC) of the Unit, it was noticed that these stocks were lying in warehouse for a period ranging from more than 3 to 12 years. OSBC Ltd is the sole authority to sell IMFL / Beer in the State of Odisha since 2001 and as per the above rules, the IMFL stock was required to be sent to the OSBC depot within three months of its manufacture. Although more than 3 to 12 years had elapsed from the respective dates of manufacturing, the SE neither took any action for destruction of the above stock of expired IMFL nor did impose the requisite fine amounting to ₹ 34.07 lakh as per the provisions of BER.

After Audit pointed this out (December 2014), the SE, Berhampur stated (December 2014) that action would be taken for destruction of the old stock and realisation of fine after verification of the stock.

The matter was reported to the EC, Odisha in January 2015 and the Government in June 2015. Their replies are awaited (December 2015).

### **3.5.3 Non-realisation of extra hour operation charges and overtime fees**

As per Rule 20 of BER, 1965, all operations in a distillery, bottling unit and brewery which require the presence of an Excise officer shall be stopped on Sundays, other public holidays and specially declared holidays. 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 licensee shall pay, in addition to the cost of establishment of additional staff, ₹ 1,000 per each extra hour of operation of his bottling unit / warehouse beyond the scheduled hours. Further, overtime fees at the rate of one-seventh of a day's pay of the Officer concerned for each hour of overtime work shall be paid by the unit.

During scrutiny of records relating to extra hour operations in two District Excise Offices (DEOs), Audit noticed (August 2014 and January 2015) that one sugar factory under DEO, Ganjam had not paid extra hour operation charges of ₹ 20.02 lakh for carrying out 2,002 extra hours operations beyond the scheduled hours during April to June 2013. Similarly, overtime fee amounting to ₹ 3.42 lakh in respect of Excise staff engaged for 2,013 extra hours in five Distillery / Bottling / Brewery units under DEO, Khurda during 2013-14 had also not been paid by those units till the date of audit. The DEOs also did not raise demand for realisation of the above dues. Thus, Government revenue of ₹ 23.44 lakh remained unrealised.

After Audit pointed this out, while SE, Khurda issued demand notice in August 2014, SE, Ganjam stated (January 2015) that demand would be raised after verification of records.

Audit reported the matter to the EC, Odisha, Cuttack in March 2015 and the Government in June 2015. Their replies are awaited (December 2015).

### **3.5.4 Non-realisation of establishment cost**

As per Rule 33 (3) of BER, 1965, potable foreign liquor shall not be stored either in shape of bottles or in bulk or compounded, blended, reduced, bottled in a warehouse or storeroom in bond and issued or sold therefrom otherwise than in the presence of an Excise Officer. Further, as per Rules 34 (1) and 34 (2) of the Rules *ibid*, the EC shall appoint the Excise Officers (EOs) for proper supervision of the operations carried out in each warehouse or storeroom mentioned in Rule 33 (3). The licensee shall pay to the State Government, at the end of each calendar month, such fees which shall not exceed the whole of the cost of the excise staff employed for the purpose.

During test check of records of breweries and distilleries in three<sup>3</sup> DEOs, Audit noticed (between September and December 2014) that EOs and staff were posted at different times during 2013-14 in one brewery and two distilleries for supervising the operations such as warehousing, compounding, blending of potable foreign liquor and sale of the same to different liquor manufacturing units, wholesale traders as well as retailers of the State. As per the provisions of BER, the units were liable to deposit the gross salary paid to the EOs and staff towards cost of establishment at the end of each calendar month. It was, however, noticed that neither the DEOs claimed the establishment cost for the year 2013-14 nor did the units deposit the same in Government Account. Thus, establishment cost of ₹ 11.91 lakh remained unrealised.

After Audit pointed out (between September and December 2014) these cases, SE, Balangir stated (November 2014) that steps would be taken to realise the establishment cost. The SEs of Sundargarh and Dhenkanal stated (between September and December 2014) that demand notices would be issued after verification of records.

Audit reported the matter to the EC, Odisha in March 2015 and the Government in June 2015. Their replies are awaited (December 2015).

### **3.5.5 Non-realisation of revenue due to trading of molasses without licence**

Molasses is an intoxicant<sup>4</sup> as per Section 2(12-a) of Bihar and Odisha Excise (B&OE) Act, 1915. As per Section 20 of the Act *ibid*, no intoxicant shall be manufactured or produced or stored or sold except under the authority and subject to the terms and conditions of a licence granted by the Collector of the District. Further, as per Section 18 of the Act, no person shall have in his possession any intoxicant which has not been obtained from a licensed vendor. AEP of Government for the year 2013-14 prescribed licence fee for trading of molasses at ₹ 3.00 lakh and application fee at ₹ 20,000.

Audit noticed that despite the above provisions in the Act regarding production, storing and sale of intoxicants only under the terms and conditions of a licence, the AEP did not have specific provision for issue of licences to

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<sup>3</sup> District Excise Offices: Balangir, Dhenkanal and Sundargarh.

<sup>4</sup> "Intoxicant" means any liquor or intoxicating drug and includes *Mohua* flower and molasses –Section 2(12-a) of B&OE Act.

sugar industries producing and trading molasses. During scrutiny (July 2014) of records of EC, Odisha relating to issue of No Objection Certificates (NOCs) and further verification (November and December 2014) of records of three SEs<sup>5</sup>, Audit noticed that although five sugar factories had not obtained licences for production and trading of molasses, the EC however issued NOCs to molasses traders and users to procure molasses from these factories during 2013-14. Since the above sugar factories sold molasses, each of them was required to obtain licence for such trading on payment of application fee of ₹ 20,000 and licence fee of ₹ 3.00 lakh. Thus, due to issue of NOCs to traders for procurement of molasses from these five sugar factories not having licences, there was non-realisation of revenue of ₹ 16 lakh towards licence fee (₹ 15 lakh) and application fee (₹ 1 lakh). Although a similar observation was made in paragraph 3.5.8 of the Report of the Comptroller and Auditor General of India on Revenue Sector for the year ended March 2014, such irregularity still persisted.

In reply, the EC stated (July 2014) that the compliance would be submitted later on. However, compliance was not received till date (December 2015).

Audit reported the matter to EC, Odisha in March 2015 and the Government in June 2015. Their replies are awaited (December 2015).

### 3.5.6 Non-realisation of differential Excise Adhesive Label fee

As per Rule 115-B of BER, 1965, Excise Adhesive Label (EAL) shall be affixed on each bottle / can of IMFL / Beer and on each pouch / container of country spirit (CS). In the AEP for the year 2013-14, Government increased the fee of polyester based hologram EAL from 35 to 50 paise for each bottle of IMFL, Beer and CS pouch / bottles.

During test check of EAL Fee Registers of the bottling unit of a sugar factory under the DEO, Ganjam for the year 2013-14, Audit noticed (December 2014) that the unit had 1,05,74,548 numbers of EAL in its closing stock at the end of the year 2012-13 which was purchased at the rate of 35 paise per EAL. Though the unit utilised the said stock of EAL during 2013-14, it however paid EAL fee at the old rate (35 paise) instead of 50 paise per EAL. The SE, Ganjam also did not raise demand for the differential EAL fee. This resulted in short realisation of EAL fee of ₹ 15.86 lakh.

After Audit pointed out (January 2015), the SE, Ganjam stated (January 2015) that demand would be raised after verification of records.

Audit reported the matter to the EC, Odisha, Cuttack in April 2015 and the Government in June 2015. Their replies are awaited (December 2015).

<sup>5</sup> SEs: Bargarh, Balangir and Ganjam.

### **3.5.7 Non-realisation of State Excise Duty on less production of spirit**

As per Rule 13 of the BER, 1965, samples of raw materials used in distilleries for manufacture of spirit and spirit manufactured therefrom shall be sent to the Chemical Examiner for examination once in July and again in December each year and at other times, if required. In the absence of any norm, Chemical Examiner's report is the only basis provided in the rules on which the production of spirit can be ascertained. As per AEPs of 2009-10 and 2011-12, minimum SED on CS for those years was ₹ 18 and ₹ 20 per LPL respectively.

During test check of stock taking reports of a distillery for the years 2009-10 to 2013-14 in the office of the SE, Koraput, Audit noticed (June 2014) that samples of molasses used by the distillery as raw materials were sent to the State Drug Testing and Research Laboratory (SDTRL), Odisha for chemical examination twice a year during the above period. As per the test reports of SDTRL, the average out-turn of alcohol per MT of molasses was shown as 201.97 BL and 214.16 BL for 2009-10 and 2011-12 respectively based on which, production of alcohol from 5,470.89 MT of molasses utilised by the distillery during the above two years should have been 19.18 lakh LPL (at 166.6 degree strength). However, the Unit disclosed production of only 18.65 lakh LPL of spirit. Although the SE was aware of the test report, he failed to detect the shortfall in production of 53,006.15 LPL of spirit and realise the differential SED of ₹ 10.04 lakh at the minimum rate of ₹ 18 and ₹ 20 per LPL applicable on CS during 2009-10 and 2011-12 respectively.

After Audit pointed this out (June 2014), the SE stated (June 2014) that clarification would be sought for from the Distillery Officer concerned and compliance would be furnished later.

Audit reported the matter to the EC, Odisha and the Government in June 2015. Their replies are awaited (December 2015).