

CHAPTER III

***STATE EXCISE
DUTIES***

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3.1 Tax Administration

Functioning of the Prohibition and Excise (P&E) Department is governed by the Andhra Pradesh Excise Act, 1968 (AP Excise Act), the Narcotic Drugs and Psychotropic Substances Act, 1985, the AP Prohibition Act, 1995 etc. The Principal Secretary to Government, Revenue Department is the controlling authority at Government level. The Commissioner, Prohibition and Excise is the head of the Department in all matters connected with administration of these Acts. Commissioner is assisted by Director of Enforcement for implementation of these 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) supervised the overall functioning of the offices of P&ESs.

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.

As regards existence of internal audit wing in the Department, Commissioner intimated (October 2017) that there was no Internal Audit wing in the Department.

3.3 Results of Audit

Test check of records of 16 offices of Prohibition and Excise Department conducted during the year 2016-17 revealed under-assessment and other observations. These irregularities involved monetary impact of ₹ 83.46 crore in 32 cases. These Audit observations 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.	Reduction in production capacity of a distillery	01	60.00
2.	Non-levy of interest on arrears	01	15.11
3.	Short levy of licence fee	01	2.19
4.	Non-levy of additional licence fee	08	5.56
5.	Non-levy of interest on belated payment of licence fee	08	0.08
6.	Non-levy of permit room licence fee	02	0.06
7.	Short levy of toddy rentals	02	0.02
8.	Other irregularities	09	0.44
Total		32	83.46

During the year 2016-17, the Department accepted under-assessment and other deficiencies of ₹ 37.97 lakh in 22 cases. Of these, ₹ 29.79 lakh involving 11 cases were pointed out during the year 2016-17 and the rest in earlier years. An amount of ₹ 21.18 lakh was realised in 19 cases during the year 2016-17. A few illustrative cases, involving ₹ 62.27 crore, are discussed in the succeeding paragraphs.

3.4 Revenue foregone due to reduction in production capacity of a distillery

As per Section 16 of AP Excise Act, 1968 read with Rule 4 of A.P. Distillery (Manufacture of Indian Made Foreign Liquor (IMFL) other than Beer and Wine) Rules, 2006, no Letter of Intent (LOI) shall be issued for establishment of any new manufactory or expansion of the production capacity of any existing machinery without previous notification by the Government expressing the intention to grant the same from time to time.

As per Rule 8 of AP Distillery Rules, Government shall fix the production capacity of the manufactory and licence fee shall be fixed by the Commissioner based on production capacity. The production capacity fixed shall not be reduced under any circumstances.

As per Rule 5(2)(b), no licence for manufactory shall be granted unless a non-refundable and non-adjustable fee as well as special fee was paid within the validity period of LOI. This LOI was valid for a period of three years from

the date of issue and subsequently extended¹³⁹ for a period of four years. Government in its order¹⁴⁰ dated 25 January 2011 enhanced the fee rates with effect from 27 January 2011.

Scrutiny of records (April 2017) in office of the Commissioner of Prohibition & Excise disclosed that two applicants were issued LOI for establishment of new manufactories. This was in response to Government Notification¹⁴¹ dated 10 June 2008 for which 18 applications were received (seven for establishing manufactory and eleven for expansion of production capacity).

One of these applicants was granted LOI in October 2008 with production capacity of 2,000 lakh Proof Litres (PLs). Accordingly, LOI holder was liable to pay the enhanced fees amounting to ₹ 129 crore.

In June 2012, the LOI holder applied for reducing the production capacity by 50 per cent of LOI.

Based on the application, Government issued¹⁴² memo for reduction of production capacity of LOI holder from 2,000 lakh PLs to 1,000 lakh PLs. Commissioner, in turn, issued (April 2014) demand notice for ₹ 51 crore (taking into account ₹ 18 crore which was already paid) for the reduced production capacity.

The reduction in production capacity was in violation of the provisions and that too after rejection of all other applications. Consequently, Government had lost LOI fee of ₹ 60 crore (₹ 129 crore less ₹ 69 crore) from the LOI holder.

In response, the Government replied (January 2018) that the production capacity (2,768.99 lakh PLs of IMFL) of the combined State and single LOI (2,000 lakh PLs) was very high and accordingly it had reduced the production capacity of LOI holder from 2,000 lakh PLs to 1,000 lakh PLs. The reply was not tenable, as the Commissioner issued the LOI for production capacity of 2,000 lakh PLs by considering the requirement of the State. Further, provisions of Distillery Rules stipulated that production capacity once fixed should not be reduced under any circumstances.

3.5 Short levy of club licence fee

As per Section 28 of AP Excise Act, 1968 read with Rule 7 (2)(a)(i) of AP Excise (Grant of licence of selling by in-house and conditions of licence) Rules, 2005, club licence shall not be granted unless the applicant is a registered club under the Societies Registration Act, 1860 with a bona fide membership of not less than 500 members and functioned as a club for not less than three years. However, as per the proviso to this Rule, the clubs which are not registered under Societies Registration Act, 1860 and which are proprietary in nature i.e., owned by individuals, partnership firm or companies

¹³⁹ G.O.Ms.No.881, Revenue (Excise-III) Department, dated 23 August 2010.

¹⁴⁰ G.O.Ms.No.67, Revenue (Excise-III) Department, dated 25 January 2011.

¹⁴¹ G.O.Ms.No.728, Revenue (Excise-III) Department, dated 10 June 2008.

¹⁴² Memo No. 20132/Excise III(1)/2011-8, dated 17 April 2013.

shall be considered for grant of licence on payment of licence fee on par with Bar licence.

Under Rule 10 of AP Excise (Grant of licence of selling by Bar and conditions of licence) Rules 2005, the annual licence fee for the Bar licence shall be levied on the basis of population and at the rates notified by Government from time to time.

Scrutiny (April 2017) of Club licence files in office of the Commissioner, disclosed that Club licence was granted¹⁴³ to a Club by charging licence fee of ₹ six lakh per annum. As the Club was registered under Companies Act, 1913 and not under the Societies Registration Act, 1860, licence should have been granted on payment of fee on par with Bar licence. Thus, Club licence was issued without payment of licence fee applicable to Bar licence. This had resulted in short levy of licence fee of ₹ 2.15 crore for the licence period from 2011-12 to 2016-17.

After Audit pointed out the case, the Government replied (January 2018) that the club was registered under Indian Companies Act, 1913 and was not a proprietary concern. Therefore, it was contended that annual licence fee as applicable to bar licence was not payable by the club. The reply was not tenable, as the proviso to Excise Rules specify that clubs not registered under Societies Registration Act, 1860 and owned by companies should be considered for grant of bar licence. Hence, licence fee on par with bar licence was payable by the club.

3.6 Non-levy of additional licence fee

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.

Scrutiny (January 2017) of Bar licences in office of the P&ES, Visakhapatnam disclosed that 10 *per cent* additional licence fee¹⁴⁴ of ₹ 12.30 lakh was not levied on six restaurants and bars with non-contiguous consumption enclosures. These include cases where consumption areas were situated in different floors having separate access.

After Audit pointed out the cases, the Government replied (January 2018) that notices were issued to licencees and concerned authority had been directed to collect additional licence fee.

¹⁴³ For the licence period from 2011-12 to 2016-17.

¹⁴⁴ For the licence period from July to December 2015.