PART-A

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 Additional Chief Secretary, Home, Prohibition and Excise Department. He is assisted by Joint Commissioners and 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 Results of audit

Test check of records revealed non/short collection of excise duty, licence fees and other irregularities amounting to ₹ 441.91 crore, which broadly fall under the following categories given in **Table No. 3.1.**

Table No. 3.1: Results of Audit

(₹ in crore)

Sl. No.	Category	No. of cases	Amount
1	Performance Audit on ' Receipts under State Excise'	1	441.88
2	Others	2	0.03
	Total	**3**	**441.91**

During the course of the year 2018-19 and 2019-20, after Audit pointed out, the department accepted the audit observations in 26 cases and recovered a sum of ₹ 129.36 crore. Out of these cases, money value of ₹ 127.85 crore was pointed out in the Performance Audit conducted during the year and the rest in earlier years.

The observations included in the Performance Audit on 'Receipts under State Excise' involving ₹ 441.88 crore are discussed in the following paragraphs.

3.3 Performance Audit on 'Receipts under State Excise'

3.3.1 Introduction

The Constitution of India, by virtue of Entries 8 and 51 of the State List in the Seventh Schedule, empowers the Legislature of any State to make laws with respect to production, manufacture, possession, transport, purchase and sale of intoxicating liquors and for levying excise duty on alcoholic liquors for human consumption manufactured in the State. The levy of Excise duty, fee etc., is governed by the provisions contained in the Tamil Nadu Prohibition Act, 1937 and Rules made thereunder. Excise revenue comprises Excise duty, Privilege fee, Licence fee, Import fee, Brand registration and renewal fee etc. Excise revenue is the third largest revenue of the State next to Goods and Services Tax / Value Added Tax (VAT) and Stamp Duty & Registration Fee (Refer Paragraph Number 1.1.2). M/s Tamil Nadu State Marketing Corporation Ltd (TASMAC), a wholly owned Government Company functioning under the direct control of the Government, regulates the wholesale and retail vending of Indian Made Foreign Spirits (IMFS) and Beer.

3.3.2 Organisational Structure

The Commissioner (Prohibition & Excise) is the head of Home (Prohibition & Excise) Department (Department), functioning under the administrative control of the Additional Chief Secretary (Home). The Commissioner is empowered to administer and monitor various provisions of Tamil Nadu Prohibition Act, 1937 and Rules made thereunder. He is assisted by Joint Commissioners / Deputy Commissioners / Assistant Commissioners and Excise Supervisory officers (ESOs). A Financial Controller deputed from Finance Department assists the Commissioner in controlling the financial matters. The major functions of the department involve issue of various categories of licences, collection of duties and fees and implementation of the provisions of various Acts and Rules.

3.3.3 Audit Objectives

The Performance Audit was taken up to derive assurance on the following objectives:

- ascertain the level of compliance with the Departmental terms and conditions for issue and renewal of various licences;
- whether the provisions relating to prohibition, levy, payment and collection of excise duty, fees etc., are complied with; and
- whether the Department is effectively preventing revenue leakages through better enforcement and internal control.

3.3.4 Audit Criteria

The following Acts and Rules are the sources of criteria for the conduct of this Performance Audit:

- Tamil Nadu Prohibition Act, 1937.
- Tamil Nadu Molasses Control and Regulation Rules, 1958.
- Tamil Nadu Distilleries Rules, 1981.
- Tamil Nadu Indian made Foreign Spirits (Manufacture) Rules, 1981.
- Tamil Nadu Liquor (Licence & Permit) Rules, 1981.
- Tamil Nadu Brewery Rules, 1983.

- Tamil Nadu Indian made Foreign Spirit (Supply by Wholesale) Rules, 1983.
- Tamil Nadu Mass Wine Rules, 1984.
- Tamil Nadu Rectified Spirit Rules, 2000.
- Tamil Nadu Liquor Retail Vending (In Shops and Bars) Rules 2003.
- Tamil Nadu Wine (Manufacture) Rules, 2006.

3.3.5 Audit Scope and Methodology

A Performance Audit of Excise Department was conducted in 2012 covering the transactions during the period from 2006-07 to 2010-11 and four recommendations were given for consideration of the Government. The Explanatory Notes are yet to be furnished. The present Performance Audit was conducted from April 2019 to March 2020 to cover the transactions for the period 2014-15 to 2018-19. The issues covered in the previous performance audit (2012) were followed up and remarks thereon have been incorporated suitably.

3.3.6 Audit Sampling

Audit selected all 36 operational field offices (ESOs in the manufacturing units) and 16[1] out of 32 offices (*50 per cent*) of the Deputy Commissioners / Assistant Commissioners (District Offices) based on stratified sampling for the purpose of this performance audit, as listed in the table below:

Table No.3.2: Audit Sampling

Nature of office	Offices supervised by	Total No. of Units	No. of Units covered
Operational Field offices	ESO, IMFS	11	10*
	ESO, Breweries	7	7
	ESO, Winery	1	1
	ESO, Distilleries	19	18*
	Total	**38**	**36**
District Offices	Deputy Commissioners / Assistant Commissioners	32	16
Overall Coverage		**70**	**52**

***One IMFS unit and one Distillery Unit were not functioning[2].**

Besides, the Office of the Commissioner, Office of the Prohibition Enforcement Wing (PEW) and the Head Office of the TASMAC were also visited for verification of records.

[1] Chennai, Coimbatore, Cuddalore, Dindigul, Erode, Kancheepuram, Nagercoil, Madurai, Nilgiris, Salem, Tanjavur, Theni, Thiruchirapalli, Thiruppur, Thiruvallur and Virudhunagar

[2] M/s Empee Distilleries Ltd., Kancheepuram and M/s. Trichy Distilleries and Chemicals Ltd., Trichy

3.3.7 Acknowledgement

An entry conference was held with the Additional Chief Secretary to Government, Home (Prohibition & Excise) Department on 05 July 2019 in which audit objectives, criteria, scope and methodology were explained in detail. Audit acknowledges the co-operation extended by the department, the PEW and TASMAC for providing necessary records and information. The Exit conference was held on 27 May 2020. The views expressed during the Exit Conference have been suitably incorporated in the report. During the course of this performance audit, observations involving a money value of ₹ 441.88 crore were raised, out of which the Department collected a sum of ₹ 127.85 crore.

3.3.8 Trend of Revenue

The budget estimates and actual realisation of excise revenue for the period from 2014-15 to 2018-19 is given in **Table No. 3.3** below.

Table No. 3.3: Trend of Revenue

(₹ in crore)

Year	Excise duty and allied revenues*				
	Budget Estimate	Revenue realised	Short fall over estimate	Percentage of variation	Reasons furnished by Department for shortfall in actual revenue when compared to estimates
2014-15	6,483.04	5,731.18	751.86	11.60	Abolition of Special Privilege fee from 1 April 2014.
2015-16	7,296.67	5,836.02	1,460.65	20.02	
2016-17	6,636.08	6,248.16	387.92	5.85	Reduction in working hours of TASMAC
2017-18	6,902.91	5,815.30	1,087.61	15.76	Closure of shops situated at National and State Highways due to Supreme Court's orders
2018-19	6,997.83	6,863.12	134.71	1.93	-

(Source: *Finance Accounts of Government of Tamil Nadu)

As seen from the table, excise duty and allied revenues[3] showed an increase in trend during the period of audit except in 2017-18 when the Honourable Supreme Court ordered closure of shops situated in highways. The average cost of collection during the five years was 1.65 *per cent* of the excise revenue collected.

[3] Application Fee, Licence Fee, Privilege Fee, Additional Privilege Fee, Spirit Import Fee, Molasses Administrative Service Fee, Administrative Service Fee, Export Licence Fee, Import Permit Fee, Brand Registration Fee and Label Approval Fee.

Audit Findings

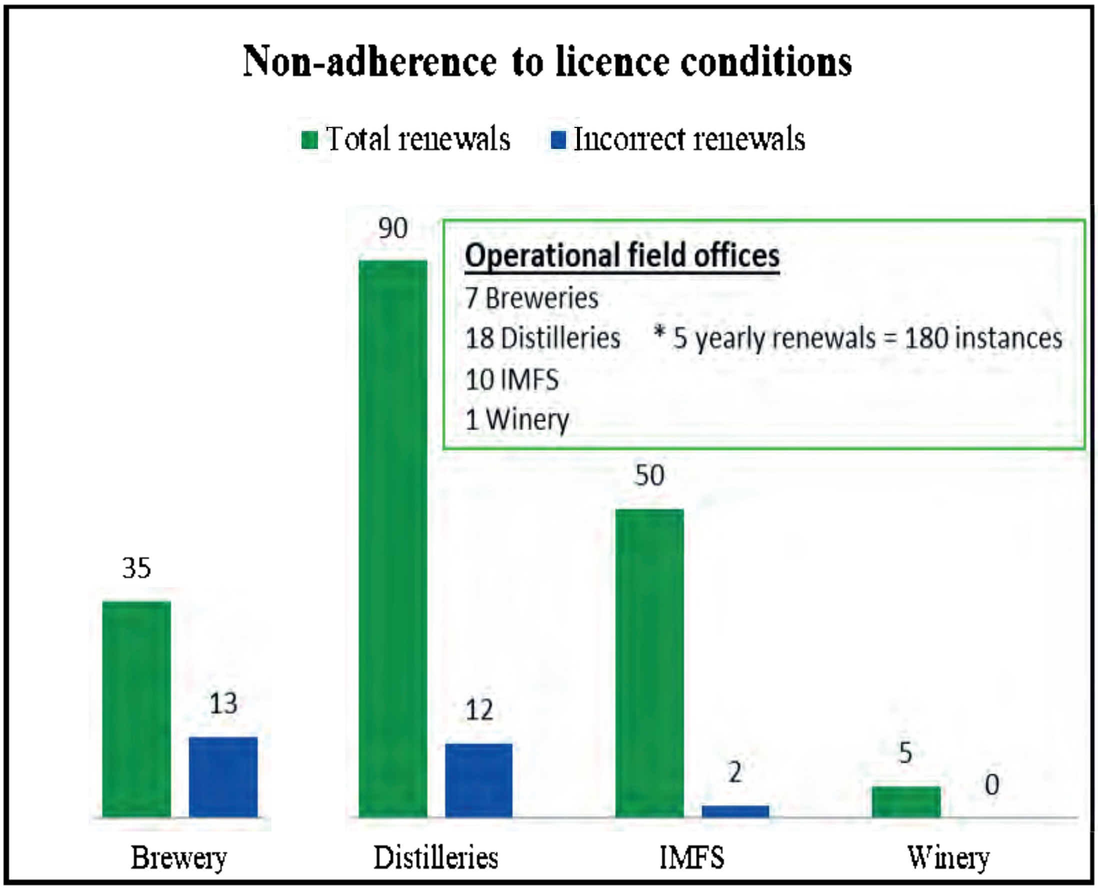
3.3.9 Adherence to Licence Conditions

3.3.9.1 Violations by manufactories

As per Section 17 B of the Tamil Nadu Prohibition Act, 1937, the Commissioner, subject to such conditions as may be prescribed, issue licence to any person or any institution. The licence is valid for one year (April to March). As per Section 23 (1) (a) and (b), the Commissioner is empowered to suspend or cancel the licences if fee is not paid or the conditions of licences are violated. The application for renewal of licence is submitted to ESO, who recommends the renewal of the application and forwards it to the Joint Commissioner. The Joint Commissioner, after physical verification of the unit recommends the renewal, based on which it is granted by the Commissioner.

Audit checked the records in 36 operational field offices and identified irregularities in respect of collection of brand renewal fee and production of pollution certificates in 27 out of a total of 180 instances of issuance of licences as represented in the chart and following paragraphs.

Chart 3.1 : Non-adherence to licence conditions



However, no penal action of suspension or cancellation was initiated. Instead, the ESO recommended renewal of the licences in subsequent years. The Commissioner renewed the licences based on the inspection report submitted by the Joint Commissioner. The irregularities are discussed below:

➢ **Incorrect renewal without collecting the Brand renewal fees**

As per Rule 13 and 16 of the Tamil Nadu Wine (Manufacture) Rules, 2006, a fee of ₹ 2 lakh and ₹ 5,000 are payable for renewal of brand and brand label respectively. Further, vide Order[4] issued in November 1998, a registration fee of ₹ 2 lakh and renewal fee of ₹ 2 lakh was leviable for each brand of other forms of liquor, *i.e.* beer and Indian made foreign spirits. Audit noticed the following shortcomings in collection of brand renewal fee.

- **Non-collection of Brand Renewal Fees**

  It was seen that in respect of two (ESO, M/s. United Breweries Ltd., and ESO, M/s. Mohan Breweries and Distilleries Ltd., (IMFL)) out of 36 operational field offices the Department renewed the licences in three cases without collecting applicable Brand Renewal fee. This worked out to ₹ 21.11 lakh including GST on the brand renewal fee. On this being pointed out, the Department replied (May 2020) that based on the audit observation, the amount of ₹ 21.11 lakh was collected.

- **Non-collection of Brand registration fee and Brand renewal fee for the brands allowed for export**

  In respect of three[5] operational field offices, in nine cases of renewal, beer brands were permitted to be exported without payment of brand registration / renewal fee of ₹ 28 lakh. On this being pointed out (March 2020), the Department replied (May 2020) that a proposal was sent (September 2017) to the Government to issue orders for fixing the registration/renewal fee and label approval fee for all the beer brands permitted to be exported to other states and other countries. However, the response from the Government is yet to be received.

➢ **Incorrect renewal of licences without production of Pollution Control clearance certificates**

The conditions governing issue of licences for manufactories require production of the Pollution Control Board (PCB) clearance certificates within 60 days from the date of renewal proceedings. Audit noticed that in 15 cases

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[4] G.O.Ms.No.248, Prohibition and Excise (III) Department dated 25 November 1998.

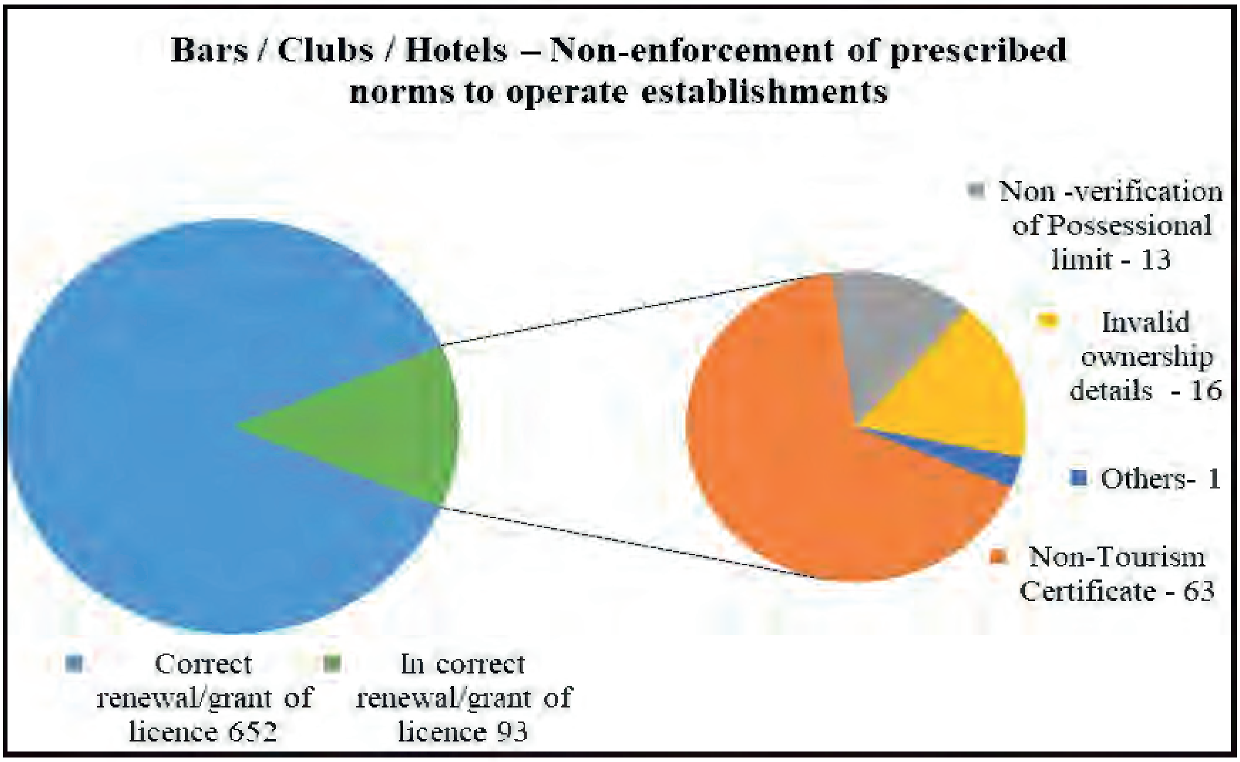
[5] ESO, SNJ Breweries (P) Ltd., ESO, M/s. Accord Distillers & Brewers PVT Ltd., and ESO., KALS Breweries (P) Ltd.

noticed in respect of eight[6] operational field offices, the Department accorded further renewals of licence without PCB clearance. It is pertinent to mention that this is one of the requirements of granting licences, especially in cases of polluting industries which release effluents into air and water. The casual attitude of the Department in ensuring mandatory PCB clearance before renewal of licences has the potential to put the environment at risk.

On this being pointed out (March 2020), the Department replied (May 2020) that PCB consent was obtained in respect of three operational field offices and certificates for the remaining five operational field offices would be obtained and furnished to audit.

3.3.9.2 Violation of licence conditions by Clubs and Hotels

The Commissioner is empowered to issue / renew FL2 (licence for possession of liquor by Clubs) and FL3 (licence for possession of liquor by the Star Hotels) licences on fulfillment of prescribed conditions.



Audit scrutinised 745 licences (673 renewed licences and 72 new licences) issued during 2014-15 to 2018-19 and identified irregularities in 93 cases as detailed below:

[6] ESO, Appollo Distilleries & Breweries (P) Ltd., Thiruvallur District, ESO, Mohan Breweries & Distilleries Ltd (Brewery), Thiruvallur District, ESO, Thiru Arooran Sugars Ltd, ESO, Salem Co-operative Sugar Mills Ltd, ESO, Amaravathi Co-operative Sugar Mills Ltd.; ESO, Bhavani Distilleries and Chemicals Ltd, ESO, Southern Agrifurane Industries Ltd, ESO, Mohan Breweries and Distilleries Ltd (IMFS).

- **Incorrect issue of licences without Tourism Certificates**

As per Rule 17 (a) (A) of The Tamil Nadu Liquor (Licence & Permit) Rules, 1981, FL 3 licences are issued for possession of liquor by the Star Hotels. According to Rule 2 (xvi), a Star Hotel includes a beach resort hotel, and also satisfies the criteria, stipulated by the Directorate of Tourism (DOT), that the entity should be certified as having an exclusive dining room.

It was seen that FL 3 licence was issued to 63 out of 72 new licencees without certification from DOT. Further, in one case, the licence was issued despite clear mention in the DOT certificate that the licencee did not have a separate dining room.

During the Exit Conference, it was replied that FL3 licences were issued only after receipt of certificate issued by Director of Tourism and the same would be furnished to audit. Out of 63 cases, the Department (May 2020) forwarded copies of certificates for five cases only. In addition, the reply in respect of one case mentioned above relating to non-availability of separate dining room was not furnished.

- **Incorrect renewal of licences without valid ownership documents**

The conditions governing issue of licence require ownership of premises - either absolute or lease ownership. In this regard, it may be noted that only a registered document is a valid evidence for ownership and only based on this evidence licence can be issued / renewed.

According to Section 17 of Registration Act 1908, lease documents involving a period of more than one year are compulsorily required to be registered. Further, as per Section 49, in order to be treated as evidence, the lease document should be registered.

It was seen that licences were issued / renewed in 195 cases based on lease documents which are valid for a period of more than a year and 16 of them were not registered under the Registration Act. Prior to issue / renewal of licences, the Department should have called for registered lease documents to ensure the ownership of the premises in favour of the licencee. The non-registration also resulted in non-realisation of ₹ 67.22 lakh by way of Stamp duty and Registration fee to the Government.

During the Exit Conference, Government replied that the district officers were instructed to issue notices to the licencees for non-registration of lease documents and a compliance report with respect to the above would be submitted to audit. However, no such response was received.

- **Non-enforcement of licence condition in respect of possessional limit of FL2 and FL3 licences**

As per Rule 17 (a) Under Chapter IV of The Tamil Nadu Liquor (Licence & Permit) Rules, 1981, Licences issued under FL2 and FL3 are for the possession of liquor by non-proprietary clubs and star hotels respectively. The department prescribes the quantity of liquor required to be possessed at a time (in units) as one of the conditions of the licences under checklist documents for FL2 and FL3 Licences. The quantity stipulated is indicated in Form F.A.1.2 and F.A.1.3 and this limit shall not be exceeded at any point of time.

Audit noticed in five[7] district offices, that 13 licencees had exceeded the possessional limits[8] sanctioned. However, the licences were renewed for the subsequent years.

On this being pointed out, the Department replied (May 2020) that Tamil Nadu Liquor (Licences and Permit) Rules 1981 does not prescribe any guidelines for possessional limits and these limits are fixed based on the purchase and sale figures collected from the District Offices. It was further stated that show cause notices would be issued in the cases specified by Audit.

The reply is not acceptable as the Department itself is prescribing the quantity of liquor required to be possessed at a time as a condition of the licences and Audit highlighted those instances where the licencees exceeded their possessional limit approved by the Excise Department. Government may take appropriate action on errant licencees having quantity of liquor in excess of the possessional limit approved by the Excise Department.

➢ **Incorrect Clearance of Draught Beer**

As per proviso to Rule 29 (7) of Tamil Nadu Brewery Rules, 1983, the manufacturers are permitted to supply Draught Beer[9] to five star hotels which are holding FL3 licence issued under the Tamil Nadu Liquor (Licence and Permit) Rules 1981, on an indent issued by TASMAC.

Audit noticed in the Office of the Commissioner that the Department permitted the breweries to supply draught beer to four star and even to three star hotels, contrary to the above Rule provisions.

On this being pointed out, the Department replied (May 2020) that action would be taken to amend the Rule by sending proposals to the Government. However, the current permissions are in violation of the existing law and suitable action should be taken against the concerned for violation of the same. Until amendment is effected, Department may adhere to the extant rule provisions and permit supply of draught beer only to five star hotels.

The instances mentioned under Para 3.3.9.2 were found in the test check by Audit. These indicate poor level of compliance to the rules and regulations laid down for renewal and consequent loss of revenue. The Department may verify all such instances of renewal of licences to rectify the non-adherence to the rules and plug revenue leakages.

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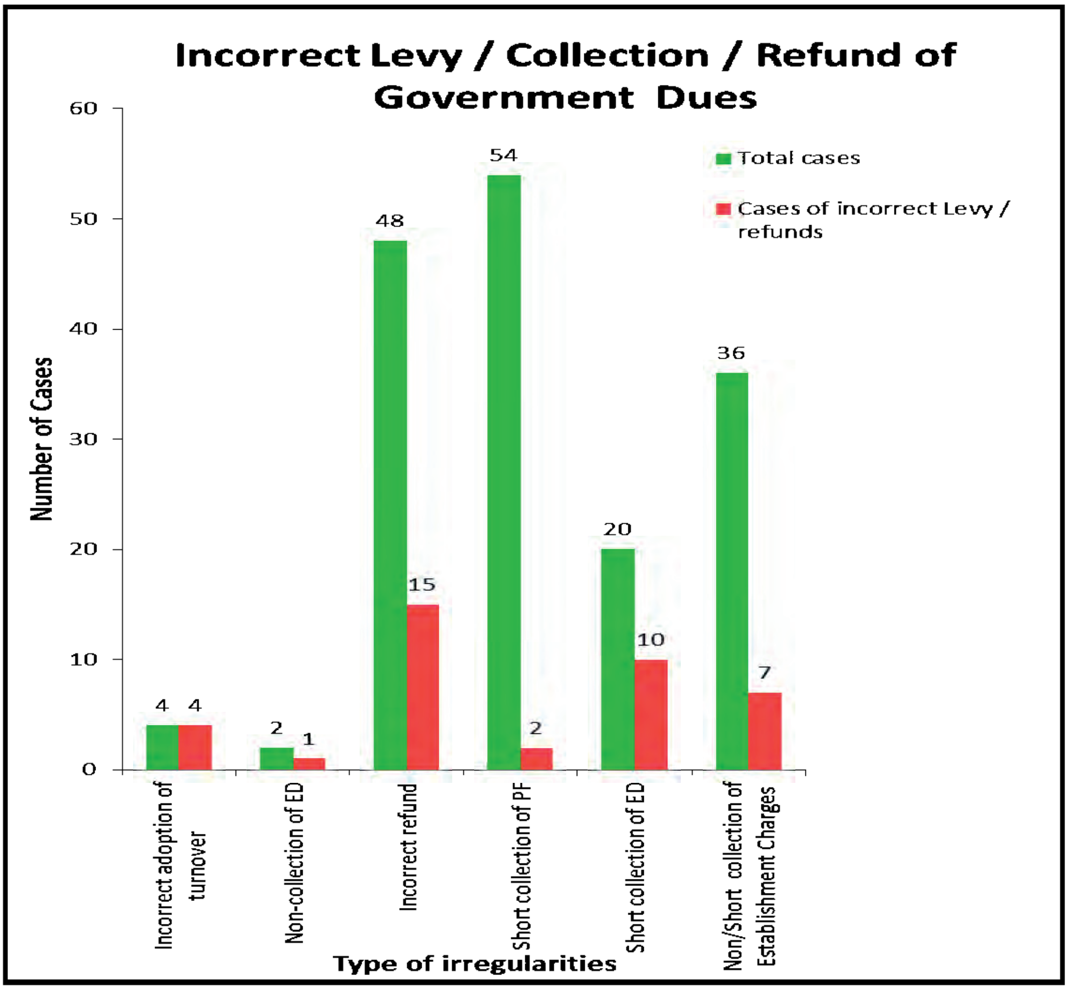
7 Chennai, Cuddalore, Dindigul, Thanjavur and Nagercoil.
8 Quantity of liquor required to be possessed at a time by the licencees.
9 Beer unpasteurised and filled in kegs or container for sale.

3.3.10 Levy and collection of duty and fees, etc.

The excise revenue consists of Excise duty, Privilege fee, Licence fee, Import fee, Brand registration, renewal fee etc. Audit identified non/short collection of duty and fees amounting to ₹ 440.72 crore in 39 out of 164 cases as represented in the graph and following paragraphs. (Paragraph Numbers 3.3.10.1 to 3.3.10.8).



3.3.10.1 Short payment of VAT due to incorrect adoption of turnover by TASMAC

In Tamil Nadu, the liquor manufacturers pay VAT at the first point of sale. TASMAC, as the sole wholesale vendor, pays VAT at the second point of sale. The rate of VAT at the first point of sale is 58 *per cent* and at the second point of sale, it is 220/250/260 *per cent* depending on the nature of the liquor. The Commissioner approves the price at which TASMAC buys liquor from the manufacturing units and also the price at which it sells liquor to the public.

As per the Explanation I to Schedule II of TNVAT Act, for the purpose of levy of tax at the second point of sale for alcoholic beverages, the turnover of the goods liable to tax at second point of sale shall be arrived at by deducting the turnover of such goods on which tax has been levied at the first point of sale.

During the scrutiny of VAT accounts for the period from 2014-15 to 2018-19, audit noticed that the manufacturers of liquor offered discounts, on the price approved by the Commissioner, to TASMAC. As VAT has to be paid on the sale price, these manufacturers computed their turnover after deducting the discount amount and paid VAT on the discounted turnover at the first point of sale. However, TASMAC while paying tax at second point of sale, computed its deductible turnover (i.e. turnover at the first point of sale that has to be deducted for VAT calculation at the second point of sale) based on the price list approved by the Commissioner, instead of the turnover on which VAT was actually paid by the manufacturers at the first point of sale. Due to this wrong procedure adopted by TASMAC, the deductible turnover computed by it was higher than the actual turnover on which tax was paid at the first point of sale. Consequently, there was short payment of VAT by TASMAC to the tune of ₹ 424.02 crore.

During the Exit Conference, it was replied that based on the audit observation notices were issued by CTD. Subsequently, the assessment orders were passed and the TASMAC paid ₹ 126.25 crore (March 2020).

Audit noticed from the assessment orders that while arriving at the differential tax payable, the Assessing Authority of the CTD had reduced the sale price of liquor (at the first point of sale) for calculation of VAT payable. Since the Commissioner had approved the sale price and the same was already collected from the customers, this price cannot be altered. The incorrect computation by CTD resulted in short collection of VAT to the tune of ₹ 297.77 crore.

3.3.10.2 Non-payment of differential Excise Duty on the closing stock of liquor

As per the proviso to Section 18 C of the Tamil Nadu Prohibition Act, 1937, where there was a difference of duty between two licence periods, such difference may be collected in respect of all stocks of liquor other than foreign liquor held by the licencees at the close of the former period.

During 2014-15 to 2018-19, Excise Duty rates were increased twice on 20 August 2014 and 13 October 2017. Details of closing stock as on 19 August 2014 for all 38 TASMAC district offices and 43 TASMAC depots were not made available to Audit. Further, details in respect of the closing stock as on 12 October 2017 were not furnished in respect of 26 TASMAC depots. During the scrutiny of records of 17 TASMAC depots and 38 TASMAC district offices wherein closing stock details were furnished, it was noticed that differential amount due to revised rates of excise duty was not paid by TASMAC on these closing stocks. The total differential duty payable worked out to ₹ 13.99 crore.

During Exit Conference, TASMAC replied that excise duty was leviable only at the manufacturing point and TASMAC as a wholesaler and retailer need not pay differential duty. It was further stated that MRP revision is done at the level of TASMAC and that incidence of Excise Duty is only while clearing the goods from the Bonded Warehouse of the bottling unit. The reply is not acceptable since as per the provisions of Section 18A (1) of the Tamil Nadu

Prohibition Act, 1937 read with Section 18(C)(a) excise duty is leviable on the quantity sold from licensed warehouse and hence TASMAC is liable to pay the differential excise duty on the closing stock. Moreover, TASMAC increased the MRP of the closing stocks solely based on the revision of excise duty and collected enhanced MRP from the consumers although the differential tax remained unpaid.

3.3.10.3 Incorrect Refund of Privilege Fee

According to Rule 17(a) (A) of TN Liquor (Licence and Permit) Rules, 1981, a licence fee and a privilege fee shall be collected for issue of FL2 and FL3 licences. FL2 licences are issued to clubs and FL3 licences to Star Hotels for possession of liquor. As per Rule 24 A, proportionate refund of licence fee and privilege fee may be granted to a licencee for the period during which the licencee has not transacted any business. The licencee should apply for refund by surrendering the licence granted to him.

Audit observed that the Department granted refund to 26 FL2 and 22 FL3 licencees stating that they did not transact any business during the period from 01 April 2017 to 31 August 2017 as they were closed based on the directions of the Honorable Apex Court[10]. The said refund was granted under Rule 24 A.

The Commissioner issued (27 April 2017) instructions to all the District Collectors that the Deputy Commissioners / Assistant Commissioners concerned were directed to ensure that the liquor stock supplied by the TASMAC and available with the licencees whose bar had been closed due to the Hon'ble Supreme Court orders, should be handed over to the concerned TASMAC godown under proper acknowledgement. However, 15 licencees did not hand over the closing stock as directed and therefore the stock was retained by the licencees. Since these licencees were in possession of stock, they were not eligible to claim refund during the period of closure. Hence, refunds amounting to ₹ 71.73 lakh granted to these 15 licencees were not in order.

On this being pointed out, the Department replied (May 2020) that the refund was provided based on Rule 24A of Tamil Nadu (Licence and Permit Rules, 1981) as the licencees did not transact any business during the period of refund applied and there was no incorrect refund. The reply is not tenable as Rule 24A permits refund to a licencee who has not transacted any business under the licence for refund of the licence fee along with the licence granted to him. In the cases pointed out in Audit, the licencees neither surrendered their licences nor the closing stock. As they continued to possess stock, they cannot be said to have not transacted the business. Hence, the refund granted is not in order.

[10] In the case of The State of Tamil Nadu and Shri K. Balu & Another dated 15 December 2016 and 31 March 2017 (Civil Appeal Nos. 12164-12166 of 2016).

3.3.10.4 Short collection of privilege fee

According to Rule 17(a) (A) of TN Liquor (Licence and Permit) Rules, 1981, the privilege fee in respect of FL3 licencees are collected based on the star category of the hotels. The Indian Tourism Development Corporation (ITDC) periodically publishes the star category-wise list in respect of the hotels which got accreditation. Audit cross-verified the ITDC records of approved star category of hotels and identified that in Coimbatore and Tiruchirapalli District Offices, two five-star category hotels paid privilege fee applicable for four-star category hotels. This resulted in short payment of privilege fee of ₹ 9.57 Lakh.

The Department replied (May 2020) that the entire amount was since collected, at the instance of audit.

3.3.10.5 Non/Short collection of Excise Duty due to variation in proof strength

As per Section 18 A of the Tamil Nadu Prohibition Act 1937, Excise Duty is to be levied on all liquor and intoxicating drugs permitted to be imported, exported, transported, manufactured, issued from any manufactory or institution or sold in the State.

The Excise Duty (ED) on the clearance of liquor was to be paid at the rates prescribed under Section 18B by the Government, which are periodically revised. The ED was to be paid on the proof strength of the liquor (contents of alcohol) and the rates prescribed are as follows:

Table No. 3.4: Details of proof strength

Type of case	No. of bottles per case	Total content (1x2)	Proof litre (75 *per cent* alcohol content) based on which excise duty is levied 75% of (3)
1	2	3	4
1000 ml	9	9 Bulk litre	6.75 Proof Litre
750 ml	12	9 Bulk Litre	6.75 Proof Litre
375 ml	24	9 Bulk Litre	6.75 Proof Litre
180 ml	48	8.64 Bulk Litre	6.48 Proof Litre

Government amended the Act w.e.f. 19.08.2014, enabling levy of excise duty on 180 ml cases as applicable to 6.75 proof litre. However, audit noticed that the revised rates of duty were collected by the Department only from 20.08.2014 in respect of 10[11] operational field offices. This resulted in short collection of duty of ₹ 102.70 lakh. The Department replied that an amount of ₹ 95.89 lakh as pointed out in Audit was since collected and the remaining ₹ 6.81 lakh would be collected under intimation to audit.

[11] ESO, Golden Vats (P) Ltd, ESO Southern Agrifurane Ltd., ESO Shiva Distilleries Ltd., ESO SNJ Distilleries (P) Ltd., ESO KALS Distilleries (P) Ltd., ESO Enrica Enterprises (P) Ltd., ESO Midas Golden Distilleries (P) Ltd., ESO Mohan Breweries & Distilleries Ltd., ESO Accord Distillers & Brewers Pvt Ltd., and ESO KALS Beverages (P) Ltd.

3.3.10.6 Non-reconciliation of Bar Tender amount remittances

The Government (vide G O (Ms) No 20 dated 29 March 2013) inserted Rule 9A in Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003, stipulating that tender amount may be collected from the successful bidders and remit the same to the Government after retaining one *per cent* agency commission. The privilege of running bars was granted to private parties through tender. The auction is conducted by TASMAC by fixing an upset price[12] based on the quantum of sales of the attached TASMAC retail shops. TASMAC was permitted to decide the upset price and other terms and conditions of tender, from time to time, with prior approval of the Commissioner.

A comparative study of the amounts of one *per cent* bar agency commission retained by the TASMAC as per the Annual Report and the 99 *per cent* bar tender amount remitted to Government account, revealed short remittance of Bar Tender amount in respect of 2013-14 and the same was in excess in respect of all other years. As the district offices were not having any details of the collection and remittances of the bar tender amount, the reasons for the variation could not be verified.

On this being pointed out, the Department forwarded the reply of TASMAC (May 2020) wherein it was stated that wherever the bar contractors have not remitted the bar tender amount to Government, same was adjusted from their security deposit and remittances made to Government Account. An amount of ₹ 10.50 crores has to be adjusted against security deposit for 2013-14. These adjustment and payment will be done shortly after getting it audited by internal auditors.

Reply of the Department is not acceptable as the Department has no control over TASMAC and not monitoring the bar tender amount remittances made by the TASMAC. Even, after a lapse of 6 years the issue of remittance relating to the year 2013-14 still exists. This points to a lapse of internal control system for regular reconciliation of remittances. It is recommended to strengthen the system of reconciliation as non-reconciliation of amounts over long periods entails a risk of non-recovery of actual outstanding dues.

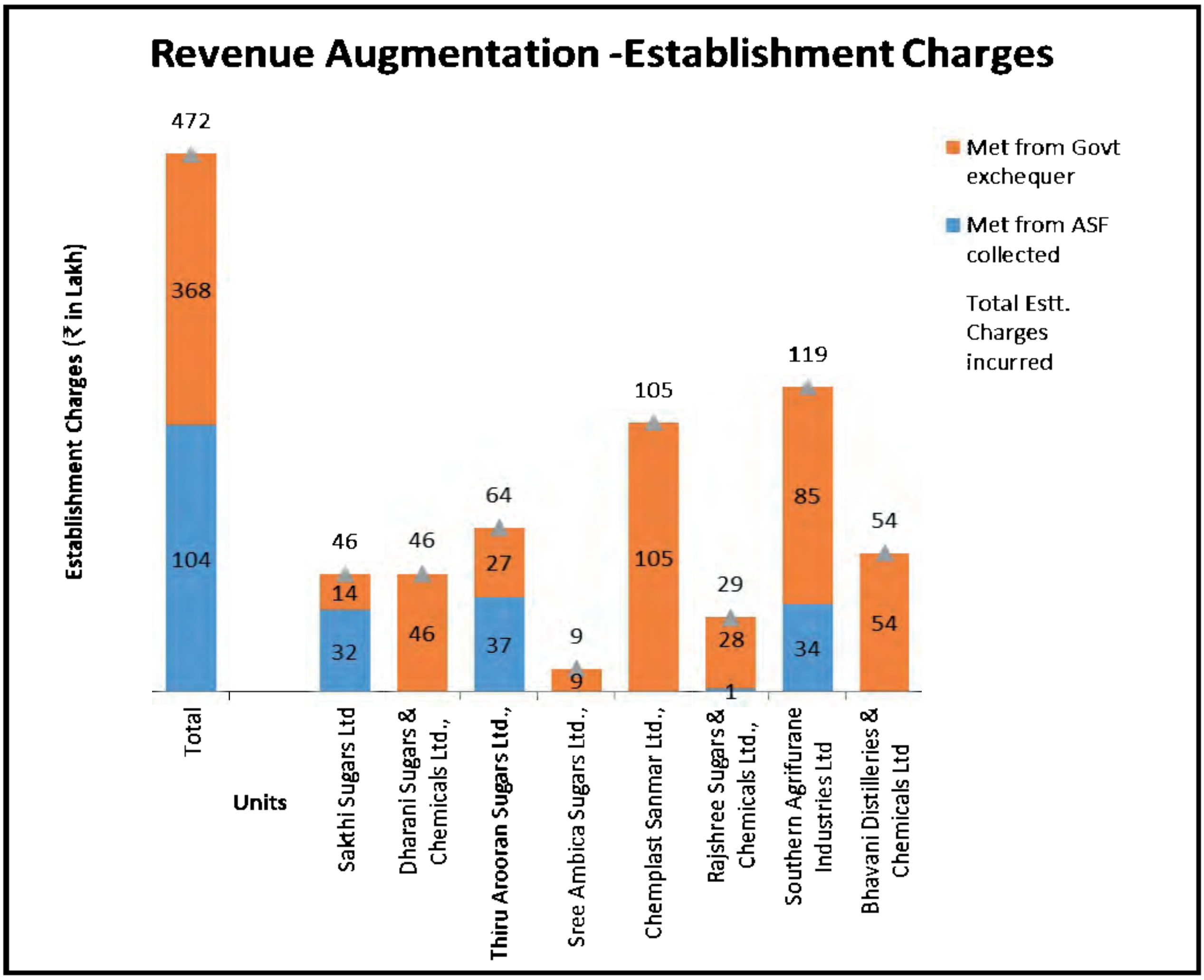
3.3.10.7 Short collection of Administrative Service Fee due to non-amending of provisions of statute

According to Rule 5A of the Tamil Nadu Distillery Rules, 1981, an Administrative Service Fee (ASF) of ₹ 1 shall be collected per bulk litre of IMFS produced in a distillery to meet the charges incurred by Government towards running an establishment within the premises of distillery.

It was noticed that in eight operational field offices, the ASF collected was lesser than actual establishment charges incurred by the Government due to

[12] Upset price is the minimum price fixed based on the sale of the TASMAC shops in which the bar is attached. The auction price of the bars should be more than the upset price fixed from time to time.

non-production of spirit or lesser production, even though Government posted supervisory staff. Due to the possibility of resumption of production at any point of time, the Government did not reduce the supervisory staff in these Distilleries. Since the Rule mandates collection based on production of spirit, collection of ASF could not meet the actual establishment charges incurred by the Government. While the actual expenses were at ₹ 4.72 crore, the ASF collected in these cases were only ₹ 1.04 crore resulting in excess expenditure of ₹ 3.68 crore having been incurred by the Government in the five years covered by Audit.



Therefore, it is recommended to amend the Rules in order to levy ASF or actual establishment charges, whichever is higher. On this being pointed out, the Department replied (May 2020) that necessary proposal would be sent to the Government after thorough study as suggested by audit for necessary Rule amendment to this effect.

3.3.10.8 Non-Collection of establishment charges

As per Rule 22 (3) of the Tamil Nadu Brewery Rules, 1983 and Rule 16 (3) of the Tamil Nadu Indian Made Foreign Spirits (Manufacture) Rules, 1981, every licencee shall pay the cost of the establishment including the allowances, leave salary and pension contribution to Government for every month in advance.

Audit analysis revealed non-collection of establishment charges / pension contribution in seven operational field offices, even as the licences were continued to be renewed. The details are as below:

- The ESO, Appollo Distilleries and Breweries (P) Ltd., and ESO, Mohan Breweries and Distilleries (IMFS) Ltd., did not collect establishment charges amounting to ₹ 41.89 lakh. On this being pointed out, the Department replied (May 2020) that ₹ 15.77 lakh was since collected in the case of ESO, Appollo Distilleries and Breweries (P) Ltd and demand notice was issued in the remaining case. Further report is awaited.

- The ESO, Mohan Breweries and Distilleries (Brewery Division), did not collect pension contribution for the months of September 2016 and October 2018 amounting to ₹ 27.72 lakh even after the issue of demand notices. Further, for the period from November 2018 to January 2019, demand notice was not issued. On this being pointed out, the Department replied (May 2020) that demand notice has since been issued. Further reply on recovery is awaited.

- As per G.O. Ms, No.177 dated 06 October 1999 of Personnel and Administrative Reforms (FR II) Department, the pension contribution for the employees shall be recovered at the rate of 10 per cent of the maximum of scale of pay plus the appropriate Dearness allowance thereon. Audit observed in three[13] operational field offices that there was short payment of pension contribution due to incorrect calculation of pension contribution on the actual pay drawn instead of maximum of the time scale, which worked out to ₹ 10.55 lakh. On this being pointed out, the department replied (May 2020) that the entire amount of ₹ 10.55 lakh has since been collected.

- As per Fundamental Rules 116 of Tamil Nadu Government, leave salary contribution had to be levied at 11 *per cent* in respect of officials coming under the purview of Tamil Nadu Leave Rules, 1933. Audit observed in the office of ESO, Southern Agrifurane Ltd, that the leave salary contribution was short paid to the extent of ₹ 6.25 Lakh. On this being pointed out, the Department replied (May 2020) that the amount had since been collected.

The instances given above point to lack of compliance to provisions relating to levy, payment and collection of excise duty, fee, VAT, etc. The Department needs to strengthen its enforcement system to ensure that the dues to the Government are collected and rules complied with.

[13] ESO, KALS Beverages (P) Ltd, ESO, KALS Distilleries (P) Ltd., and ESO, Shiva Distilleries Ltd.

3.3.11 Effectiveness of prevention of revenue leakages

The observations on leakage of revenue noticed during the audit is detailed in the following paragraphs:

3.3.11.1 Flouting of norms by TASMAC outlets

- TASMAC operates outlets for sale of liquor and also permits private bars to be run adjacent to these outlets. Both the Department and TASMAC prescribe norms for conduct of business at these outlets and bar. As per Rule 16 of the Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003, the retail vending shops should issue cash bills in Form-III. In the Policy Notes of the Department for the year 2019-20, it was stated that billing machines were issued to all the shops in 15 districts for this purpose.

  Audit physically verified, by making purchases at two different outlets, that cash bills were not being issued., and amount in excess of MRP was being charged. Neither the Department nor the TASMAC had conducted any periodical inspection to detect such issues. On this being pointed out, the Department forwarded the reply of TASMAC (May 2020) stating that the billing machines were installed in all the shops and they are being monitored and the bills were issued to those customers on their insistence. It was also stated that the TASMAC is in the process of implementing a system by which sale would be effected only after the generation of bills.

- Audit also found that TASMAC outlets were charging more than the prescribed MRP.

  During Exit Conference, TASMAC replied that instructions were issued prescribing penalty/transfer for those shop personnel indulging in MRP violation and this is being reviewed every month. Further, it was stated that 7,117 violation cases were booked during 2019-20. It is not known if any penalty has been levied in such violations and any licences cancelled in case of continued violations. It is recommended to strengthen the enforcement system to minimise such violations and time bound action must be taken on the errant licencees and employees and hefty penalty be levied on continuing offenders.

3.3.11.2 Poor implementation of Enforcement Activities

According to Section 32 of the TN Prohibition Act, 1937, any officer from the Police or Land Revenue Department can act as a Prohibition Officer. Section 32A contemplates establishment of check posts to prevent or check the import, export, transport or transit of liquor without obtaining a licence or permit. The Prohibition Enforcement Wing (PEW) of the Department, headed by the Additional Director General of Police, operates in the State to check and eradicate illicit distillation, transportation, possession and sale of illicit liquor and prevent smuggling of sale of spurious liquor and illicit IMFS from other states. The PEW operates in 45 checkposts. The following observations are made on the functioning of the Wing.

- Audit noticed from the records relating to seizures that during the period from 2014-15 to 2018-19 most of the seizures were done only on being tipped off by informers. Further, in eight cases, the liquor manufactured in Puducherry and Karnataka States were seized in interior parts of the State. Had the border checkposts been effective, these cases ideally ought to have been caught at the border itself.

- Audit physically visited two checkposts at Kottakuppam and Killianur in Villupuram district and found that these checkposts were functioning under thatched roof.

- Cameras and communication devices were not available in these check posts.

- There were no speed breakers constructed in front of these check posts to enable officials to stop and check vehicles.

When this was pointed out, the Department replied that (October 2019) a detailed report would be obtained from Prohibition and Enforcement Wing and submitted to Audit.

3.3.11.3 Lack of transparency in placement of indent on manufacturers by TASMAC

The Honourable Madras High Court, in the case of M/s Golden Vats Private Limited Vs. TASMAC (W.P.Nos.1937 & 1938 of 2014) in respect of non-issuing of indents held that, in the interest of all the manufacturers of IMFL, Stakeholders and Consumers and to avoid further controversies, the TASMAC is directed to frame necessary guidelines as to the issuance of orders and indents to the manufacturers to maintain equality. The manufacturers are clearing their manufactured IMFS to various TASMAC depots based on the indents issued by TASMAC on day-to-day basis.

During Audit, it was noticed that in respect of three IMFS units, there was variation in the production as detailed below:

Table 3.5 – Details of production capacity and actual production

(No. in Cases)

Sl No	Name of the Unit	Production Capacity as per Hand book	Actual Production 2014-15 (Percentage to total Capacity)	Actual Production 2015-16 (Percentage to total Capacity)	Actual Production 2016-17 (Percentage to total Capacity)	Actual Production 2017-18 (Percentage to total Capacity)	Actual Production 2018-19 (Percentage to total Capacity)
1	M/s. Midas Golden Distilleries	16250000	24225694 (149.08)	11191315 (68.87)	11192800 (68.88)	16569455 (101.97)	1910000 (11.75)
2	M/s. Shiva distilleries	11100000	4688705 (42.24)	4333970 (39.04)	4955180 (44.64)	1809850 (16.30)	1863125 (16.78)
3	M/s. Enrica Enterprises	11880000	7359502 (61.95)	5852547 (49.26)	3192685 (26.87)	6422250 (54.06)	8464710 (71.25)

A further scrutiny of the records revealed that the variation was due to the non/short receipt of indents from TASMAC based on which the IMFS units could supply the liquor to various depots.

On this being pointed out, the Department replied (May 2020) that TASMAC places the indents by taking all scientific measures which includes weighted average sale per day and the indents placed by the retail vending shop depending upon the demand for a particular brand. The reply of the Department is not tenable as test check of indents received from the TASMAC retail vending shops, it was noticed that the brands of these units were requested by the bar owners but the same was not supplied by TASMAC citing 'non availability' of stocks. However, in reply to audit query, M/s. Enrica Enterprises Pvt Ltd., stated that the production was stopped due to non-receipt of indents and have appealed to the Government in this regard. Therefore, the reply of TASMAC that indents are placed based on demand is not acceptable. This shows a lack of internal control in having a transparent indenting process.

It is therefore reiterated that the Department should ensure that TASMAC enforces a transparent procurement policy to ensure equality and equitable placement of indents on all licence holders.

3.3.11.4 Effectiveness of E-Governance activities in ensuring transparency

E-Governance plays an important role in ensuring transparency and make services user friendly. Audit appreciates the e-governance initiatives taken so far by the Department in bringing transparency and efficiency to the departmental operations. During 2018-19 (Policy note), the following processes had been made online with web-enabled applications:

- Issue of import permit for import of foreign liquor by FL2, FL3 etc.

- Issue of export permit for export of beer to other states and countries.
- Renewal of licence for FL2, FL3 etc.

Audit noticed that the details of purchase and sales, possessional limits and details of refunds issued for all licencees were updated in the Online Licence Renewal System (OLRS) till the year 2018-19. However, from the year 2019-20, these details were not updated. Since this information is essential for monitoring the licencees, updation of OLRS portal is essential.

On this being pointed out, the Department replied (May 2020) that the online renewal portal shall be redesigned to include the updation of purchase and sales figure, particularly in units to ascertain vital facts by the Department. Further action taken in this regard may be communicated to Audit.

3.3.11.5 Functioning of Internal Audit

Internal Audit is an integral part of an effective internal control as it ensures proper and effective functioning of a system and also for detection and prevention of control weaknesses.

A comment regarding non-preparation of annual audit plan and poor outcome of the internal audit conducted was made in the Para Number 3.7.15.2 in the Audit Report of the Comptroller and Auditor General of India for the year ending 31 March 2012. During the present audit, it was noticed that no internal audit was conducted during the period from 2014-15 to 2018-19. The Department replied that (November 2019) there is an internal audit wing in the Department with a sanctioned strength of one Superintendent and two assistants, however one Superintendent was in position. Therefore, internal audit from the year 2012-13 was not taken up due to non-filling up of posts. The Department replied (May 2020) that the internal audit would be conducted after the lifting of the lockdown.

3.3.12 Other issues

3.3.12.1 Short production of Ethanol

India is the third[14] largest emitter of carbon di-oxide in the world. Blending of ethanol with petrol plays an important role in reducing vehicular pollution. Further, blending of ethanol also saves substantial foreign exchange that is being spent on import of crude oil.

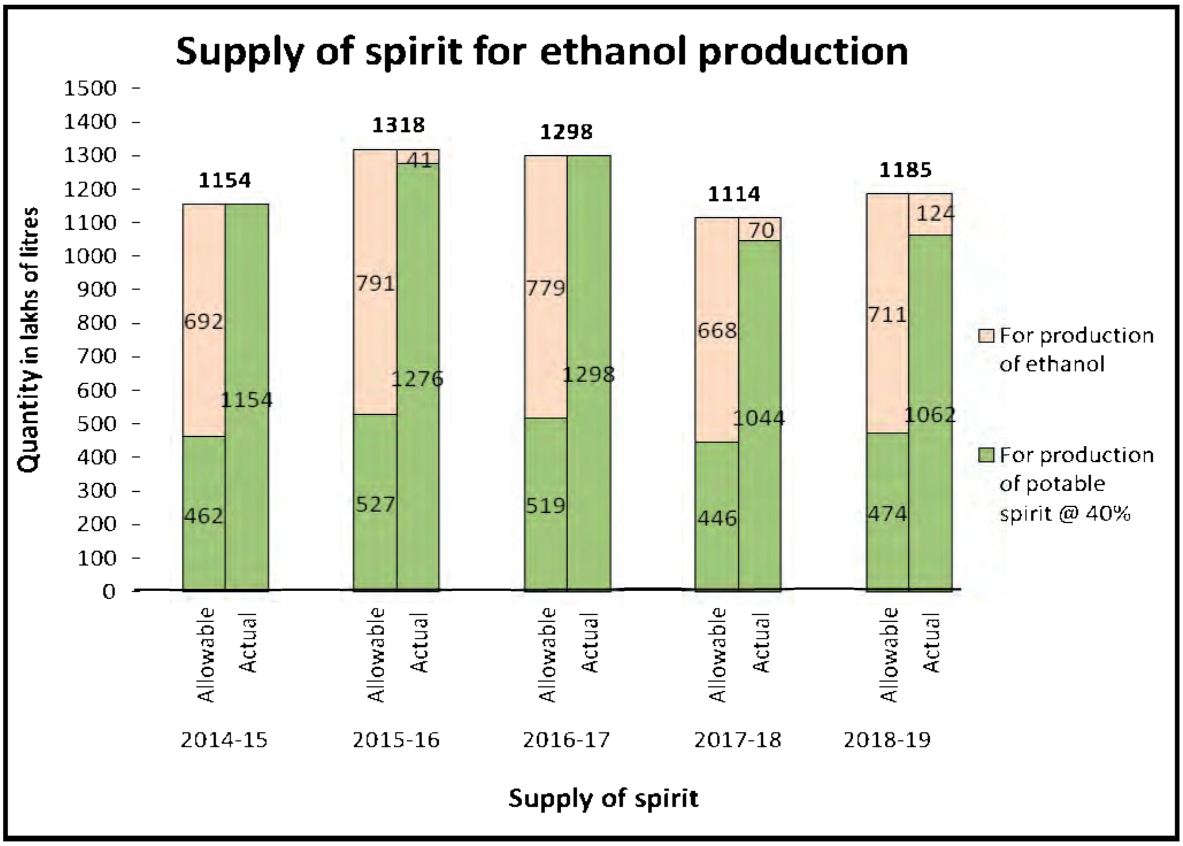
To reduce air pollution due to emission from vehicles and to save foreign exchange by reducing crude oil import, the GOI resolved to blend ethanol with petrol for the use of oil companies from 1 January 2003. Initially GOI recommended the blending 5 *per cent* ethanol with petrol, which was increased to 10 *per cent* from 2013 to improve the environment and eco-system and reduce oil import bill. A comment was made on the 'Non-production of ethanol for blending with petrol" vide Para Number 3.7.11 in the Audit Report of the Comptroller and Auditor General of India for the year ending 31 March 2012. Government has not furnished explanatory notes so

[14] After China and the USA

far. The Government of Tamil Nadu in G.O. Ms No 12, Home, Prohibition and Excise Department dated 26 March 2012 permitted 8 distilleries to produce ethanol.

Audit ascertained from the details obtained from the three Oil companies *viz.,* BPCL, HPCL and IOCL, that the total ethanol requirement from Tamil Nadu during 2014-15 to 2018-19 was 11,387 lakh litres. Further scrutiny revealed that as against this ethanol requirement only 210 lakh litres (two *per cent*) were supplied for blending with petrol.

The Government of Tamil Nadu issued an order[15] in 1993, stipulating that the overall consumption of alcohol for potable purposes should not exceed 40 *per cent* of the alcohol production of the State. The quarterly statements of production of ethanol maintained in the Department revealed that the total production of spirit from 2014-15 to 2018-19 stood at 6,069 lakh litres. Out of this total production, 5,834 lakh litres (96 *per cent)* were supplied for potable alcohol as against the stipulated 40 *per cent.*



Thus, the Department failed to monitor distribution of spirit as per Government's order issued in 1993 and allowed substantial portion of production of alcohol for supply for potable purpose (96 *per cent*) as against the permissible limit of 40 *per cent.*

On this being pointed out, the Department replied (May 2020) that the production of alcohol was hit by severe draught and distilleries were permitted to import molasses to run the units. Besides, willing distilleries were allotted

15 G.O.Ms No 176- Prohibition and Excise (VIII), Department dated 05 August 1993.

molasses for supply of ethanol to Oil Manufacturing Companies. During the period of audit, the supply for potable liquor was less than 40 per cent of the total production capacity of the distilleries in the State.

According to the Tamil Nadu Government Order cited above, the supply for potable liquor shall be restricted to 40 per cent of actual production and not on total production capacity. Therefore, the Department may take action to ensure manufacture of Ethanol.

3.3.12.2 Rehabilitation and Awareness activities

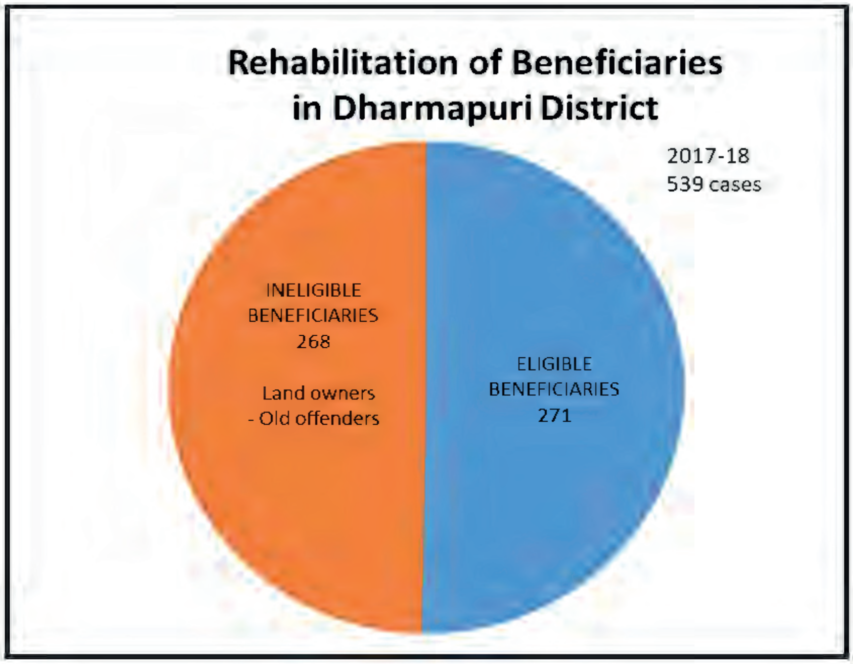
One of the objectives of the policy note (2018-19) of the Prohibition and Excise Department was to take concerted efforts to provide financial assistance to convicted prohibition offenders who are not having any livelihood, and to conduct awareness campaign on the evils of liquor etc.

Audit noticed deficiencies in rehabilitation of affected persons and running of awareness campaigns as follows:

Distribution of Rehabilitation Fund to ineligible beneficiaries

The Government constituted Rehabilitation Fund in 2003-04 to financially assist, through loan, the erstwhile prohibition offenders who were convicted for illicit transportation/sale of imported foreign liquor, illicit sale of spurious/un-excised Indian made foreign liquor, illicit transportation/sale of rectified spirit and distillation, transportation and sale of illicit arrack. The maximum amount of assistance was fixed as ₹ 30,000/-.

During a scrutiny of the grant of rehabilitation fund disbursed for the period from 2014-15 to 2018-19, Audit noticed that a total of ₹ 25 crore was allocated for rehabilitation in 32 districts and a sum of ₹ 23.67 crore was incurred. Out of this, the amount spent by Dharmapuri district was ₹ 7.93 crore, being 34 *per cent* of the total assistance. Further scrutiny of ₹ 1.62 crore disbursed during 2017-18 to 539 beneficiaries in Dharmapuri district revealed that (i) 268 persons had their own land and (ii) out of these 268 persons, 88 were convicted before 20 years. In the absence of specific and transparent guidelines issued for identifying beneficiaries, there is a risk that the amounts may have been distributed to ineligible persons, depriving the beneficiaries of the intended relief.



On this being pointed out, the Department replied (May 2020) that the grant was being given to erstwhile prohibition offenders who were economically weak and there were no specific criteria regarding land holding and time limit for conviction under prohibition offences for the beneficiaries. It was also stated that the land owned were rocky and unfit for agricultural purposes. However, the suggestions of audit would be considered and suitable criteria would be fixed in future.

Awareness Campaign Fund

The campaign was aimed to create awareness on the evils of consuming liquor through activities such as rallies, camps, seminars, street plays, advertisement at public places etc., These activities are organised by the district administration with the help of students, Self Help Groups and Non-Governmental Organisations taking into consideration the socio-economic and geographic needs of every district.

Verification of records revealed that out of ₹ 13 crore totally granted during the five years from 2014-15 to 2018-19, the Department spent ₹ 10.70 crore. Moreover, as per the statistical details published by Government of India in July 2019, Tamil Nadu stood fourth in the number of accidents (2015 to 2017) due to drunken driving.

The Department replied (May 2020) that, during 2015-16 and 2016-17, the funds could not be utilised due to unprecedented rainfall, Vartha cyclone and due to assembly elections. Though explanation was sought from the District office, Madurai for non-utilisation of funds for the year 2018-19, further reply was still awaited.

3.3.13 Conclusion

The Performance Audit revealed that conditions governing the issue of licences were not enforced and renewal of licences was being done without proper verification. The Department failed to exercise appropriate control over TASMAC relating to collection of VAT and issue of indents. There were instances of flouting of norms by shops leading to leakage of revenue. The Department did not exercise effective control over the activities of TASMAC in placement of indents to the IMFS units. There was short collection of fees, non-monitoring of limits of possession and shortcomings in enforcement activities besides ineffective implementation of rehabilitation schemes.

3.3.14 Recommendations

The instances mentioned in the report were found in the test check by Audit in selected offices. The observations are of a nature that may reflect similar deficiencies in other offices, not test checked by Audit. The Department may, therefore, carry out checks in these offices to ensure that such irregularities and deficiencies, if any, stand rectified and recoveries are made at the earliest. It is recommended that the Government may

- Strengthen the system of issue/ renewal of licences, by ensuring that the same takes place only on fulfilling the requisite stipulations and suspend or cancel them in case conditions governing their grant are not followed. Action may be taken against Departmental employees for lapses in issue/renewal of licences. Penalty may be levied on offenders/violators.
- Strengthen internal control mechanism to monitor payment of VAT, excise duties, brand renewal fees, and collection of other dues. May explore the option of amending for collecting ASF on actual expenditure incurred on establishment and issue of licences for draught beer.
- Plug revenue leakages by enforcing control and reconciliation. Vigilance at the border checkposts may be increased to avoid transportation of illicit liquor.
- Ensure an equitable policy of placement of indents by TASMAC to ensure transparency.
- Ensure sufficient supply of ethanol for blending with petrol to reduce air pollution. The requirements as mandated by the government, from time to time, may also be factored in.
- Formulate suitable guidelines and fix appropriate criteria for distributing the amount from the rehabilitation fund to the affected persons and their families.