

## CHAPTER-II: STATE EXCISE

### 2.1 Tax administration

Various kinds of liquor, such as Country Liquor (CL) and Indian Made Foreign Liquor (IMFL) are manufactured from alcohol. Excise duty on production of alcohol and liquor in distilleries and breweries forms a major part of the State's excise revenue<sup>1</sup>. Apart from excise duty, license fee<sup>2</sup> also forms a part of excise revenue. The United Provinces Excise Act, 1910 and Rules made thereunder govern the levy and collection of excise duty on liquor for human consumption and applicable license fee.

The Principal Secretary (State Excise) is the administrative head of the State Excise Department (Department) at the Government level. The Department is headed by the Excise Commissioner (EC) who is assisted by two Additional Excise Commissioners (AECs). The Department has five zones headed by Joint Excise Commissioners (JECs) who are assisted by 18 Deputy Excise Commissioners (DECs). Assistant Excise Commissioners (AECs) head the districts. They are assisted by Excise Inspectors (EIs) to oversee and regulate levy/collection of excise duties and allied levies. Additional District Magistrate (Finance & Revenue) is in charge of collection and account of excise receipts under the overall administrative control of the District Collector.

### 2.2 Results of audit

During 2018-19, test-check of records in 39 units<sup>3</sup> out of 128 auditable units of the Department revealed non/short realisation of excise duty/license fee/interest and other irregularities involving ₹ 1,839 crore in 2,414 cases which fall under the following categories as mentioned in **Table - 2.1**.

**Table - 2.1**

Sl. No.	Categories	Number of cases	Amount (₹ in crore)
1	Non-realisation of revenue due to concealment of quantity of consumed excise material and interest thereon	1	1,646.04
2	Short realisation of excise duty	106	16.10
3	License fee/interest not realised	1,391	151.93
4	Other irregularities <sup>4</sup>	916	24.93
<b>Total</b>		<b>2,414</b>	<b>1,839.00</b>

The Department accepted three cases pointed out in the year 2018-19 and reported recovery of ₹ 2.70 lakh between April 2019 and August 2020. Further, in respect of audit observations prior to the year 2018-19, the

<sup>1</sup> CL formed 50 per cent, IMFL 34 per cent, beer 12 per cent and others 4 per cent of total excise revenue of 2017-18.

<sup>2</sup> License fee is applicable on licensees of CL, IMFL, beer, bars, distilleries, breweries, pharmacies, etc. and on other manufacturing units using alcohol as raw material.

<sup>3</sup> This consists of Excise Commissioner (HOD), 15 District Excise Officers and 23 distilleries.

<sup>4</sup> Non-imposition of penalty for non-compliance of provisions of Acts/Rules, short imposition of compounding money for failure to achieve minimum production of alcohol, proper action not taken in cases of sale of liquor above MRP, non-imposition of penalty to get minimum distillation efficiency etc.

Department accepted (between October 2019 and March 2020) 53 cases amounting to ₹ 55.29 crore and reported recovery of ₹ 4.76 crore in 51 cases.

This Chapter discusses 548 cases worth ₹ 1,665.34 crore. The Department accepted 40 cases amounting to ₹ 71.62 lakh. Out of these cases, some irregularities have been repeatedly reported during the last five years as detailed in **Table-2.2**. The errors/omissions pointed out are on the basis of a test audit. **The Government/Department may, therefore, undertake a thorough review of all units to check whether similar errors/omissions have taken place elsewhere and if so, to rectify them and put in place a system that would prevent such errors/omissions.**

**Table - 2.2**

Nature of observation	₹ in crore)											
	2013-14		2014-15		2015-16		2016-17		2017-18		Total	
	Cases	Amount	Cases	Amount	Cases	Amount	Cases	Amount	Cases	Amount	Cases	Amount
Failure to cancel the settlement of shops and forfeiture of basic license fee and security deposit	-	-	32	3.66	1,007	37.43	14,334	1,297.07	714	58.85	16,087	1,397.01
Loss of additional excise duty due to wrong computation of EDP of small bottles of IMFL	-	-	-	-	-	-	-	-	-	227.98	-	227.98

### **2.3 Non-realisation of revenue due to concealment of quantity of consumed excise material and interest thereon**

**The Excise Department failed to effectively monitor the quantity of inputs utilised by the assessee and the resultant products manufactured during the period 2013-14 to 2016-17 resulting in non-realisation of revenue of ₹ 1,646.04 crore.**

Section 28 of United Provinces Excise Act, 1910 provides that excise duty at such rate or rates as the State Government shall direct may be imposed on any excisable article manufactured in any distillery established or any distillery or brewery licensed under Section 18 of the Act *ibid*.

Under the provisions of Section 38A of the United Provinces Excise Act, 1910, where any excise revenue is not paid within three months from the date on which it becomes payable, interest at the rate of 18 *per cent* per annum is recoverable from the date on which such excise revenue becomes due.

Molasses, grains and malt used as input products are fermented and distilled to obtain spirit/wash as an intermediate product, which is redistilled, compounded, blended, processed and diluted to produce final products like liquors and other intoxicants. Under Rule 813 of the Uttar Pradesh Excise Manual, a maximum monthly storage wastage up to 0.4 *per cent* is allowed during the process of production.

During audit of the office of the Assistant Excise Commissioner, Wave Distilleries and Breweries Limited, Aligarh (August 2019), audit examined the records<sup>5</sup> being maintained in respect of Wave Distilleries & Breweries Ltd. Aligarh for the period from 2013-14 to 2016-17 pertaining to various materials

<sup>5</sup> Monthly stock register for molasses (MF-6 Register) and all types of spirit (BWL-5 register), returns submitted to the office of the Excise Commissioner and information provided by the audited entity.

such as molasses, malt, Extra Neutral Alcohol (ENA), grain spirit, rectified spirit, malt spirit etc., used for manufacture of liquor.

Audit compared the consumption figures of molasses/rectified spirit/ENA/ grain spirit/malt spirit submitted by the assessee through statutory returns to the Income Tax Department (ITD) with the respective quantities depicted in the records of the Assistant Excise Commissioner, Wave Distilleries and Breweries Ltd., Aligarh and noticed large variations in the quantities disclosed in the records/returns submitted to these two Departments. The discrepancies found in the consumed material indicate that the assessee had understated the consumption of inputs/intermediates which resulted in evasion of excise revenue of ₹ 816.58 crore on which interest of ₹ 829.46 crore was leviable as detailed in the following **Table-2.3**.

Table-2.3

Type of material	Financial Year <sup>6</sup>	Consumption as per ITR <sup>7</sup>	Consumption as per Excise Department	Difference	Excise revenue involved	Period of delay in months <sup>8</sup>	₹ in lakh)	
							Interest due up to 30 June 2020	Total
Molasses (in quintal)	2014-15	9,70,382	9,55,960	14,422	1,821.95	63	1,721.74	3,543.69
	2015-16	11,70,100	11,54,520	15,580	2,352.36	51	1,799.55	4,151.91
	2016-17	12,48,841	11,76,292	72,549	12,760.63	39	7,464.97	20,225.61
Malt (in quintal)	2014-15	25,720	24,762	958	170.88	63	161.48	332.36
	2016-17	96,760	96,758	2	0.45	39	0.26	0.71
ENA/ Grain Spirit (in Bulk Litre)	2013-14	3,96,62,275	2,82,80,745	1,13,81,530	62,242.08	75	70,022.34	1,32,264.42
	2014-15	3,55,42,661	3,54,25,165	1,17,496	740.22	63	699.5	1,439.72
RS (in BL)	2014-15	1,65,591	1,64,543	1,048	6.53	75	7.35	13.88
ENA/Grain Spirit/RS (in BL)	2015-16	3,35,77,543	3,34,59,382	1,18,161	858.14	51	656.47	1,514.61
	2016-17	3,63,99,843	3,63,19,442	80,401	703.5	39	411.55	1,115.04
Malt Spirit (in BL)	2014-15	37,352	37,187	165	0.68	63	0.64	1.31
	2015-16	21,998	21,861	137	0.69	51	0.53	1.21
<b>Total</b>		<b>14,89,19,066</b>	<b>13,71,16,617</b>	<b>1,18,02,449</b>	<b>81,658.11</b>		<b>82,946.38</b>	<b>1,64,604.47</b>

The above **Table 2.3** indicates that the Excise Department failed to effectively monitor the quantity of inputs utilised by the assessee and the resultant products manufactured by it over an extended period from 2013-14 to 2016-17. This resulted in non-realisation of revenue amounting to ₹ 1,646.04 crore to the Government even after allowing for the maximum admissible wastage of 0.4 per cent per month, details of which are shown in **Appendix-I**.

It may be further mentioned that during the course of audit (August 2019), the office of the Assistant Excise Commissioner, Wave Distilleries and Breweries Ltd. Aligarh, based on specific request of audit, provided information relating to items used in production of liquor. It however did not furnish information regarding consumption of malt which is the main input material in production of beer. Subsequently (November 2019), the Department furnished information with regard to malt indicating consumption of 1,666.50 quintals

<sup>6</sup> In the following cases, the quantities depicted in Form 3CD were lower than those depicted in the records of the AEC:

Type of material	Year	Consumption as per Form 3CD	Consumption as per AEC records
Molasses (in quintal)	2013-14	9,94,280	9,98,360
Malt (in quintal)	2013-14	19,160	19,161.70
	2015-16	17,610	18,570.40
Malt Spirit (in BL)	2013-14	26,688	26,702
	2016-17	86,269	1,02,550
Rectified Spirit (in BL)	2013-14	Nil	3,06,807

<sup>7</sup> Information contained in Form 3CD of the Income Tax Department.

<sup>8</sup> Delay is on account of non-payment of excise revenue and has been worked out from the last day of the financial year concerned upto 30 June 2020.

for two years i.e. 2014-15 and 2016-17. Audit observed that the figures provided were in respect of malt consumption in the distillery only although the assessee's distillery and brewery were located in the same premises. Subsequently (February 2020), Assistant Excise Commissioner, Wave Distilleries and Breweries Ltd. Aligarh furnished a revised set of data indicating malt consumption of 1,21,520.10 quintals for the aforementioned years for both the distillery and brewery. The different sets of consumption figures furnished to Audit with respect to malt, a key input in production of beer, appear to be doubtful as the Assistant Excise Commissioner did not provide supporting documents i.e., copies of Monthly Stock Taking and returns furnished to Excise Commissioner in respect of malt consumption despite request by the Audit. The revenue impact of the revised information provided by the Assistant Excise Commissioner, Wave Distilleries and Breweries Ltd. Aligarh works out to ₹ 466.98 crore (excise revenue ₹ 284.78 crore plus interest of ₹ 182.20 crore).

From the facts brought out by the Audit, in addition to providing varying sets of data for a key input, viz. malt, which has substantial implication for revenue, there was a clear case of suppression/concealment of particulars by the assessee over a four-year period. The amount of non-realisation of revenue to the Government on account of this is extremely large. The Finance Department, Government of Uttar Pradesh in its instructions dated 11 June 2020 had also specifically advised the Excise Department that in all cases where it is established that the assessee has suppressed/concealed particulars in its returns, demand should be raised to protect the interest of revenue.

The matter was brought to the notice of the Department and the Government in December 2019, however, till date no action with respect to raising demand from the assessee has been intimated to the Audit (September 2020).

**Recommendations:**

**The Government may:**

- 1. Take immediate action to raise the demand from the assessee and recover the same.**
- 2. Consider issue of appropriate instructions to its field offices for cross-verification of the information submitted by the assesseees with those submitted to the other taxation authorities.**
- 3. Consider undertaking an investigation on how the assessing officer, including those located in the premises of the assessee, failed in the discharge of their duties, which led to concealment of large amounts of revenue by the assessee. Responsibility may be suitably fixed.**

## 2.4 Failure to cancel the settlement of shops and forfeiture of basic license fee (BLF)/license fee (LF) and security deposit

**The Department failed to act on the recommendation made by the Public Accounts Committee for timely deposit of basic license fee and license fee on settlement of shops. It did not initiate any action for cancellation of settlement and forfeiture of license fee/basic license fee (₹ 8.41 crore) and security (₹ 6.88 crore) totalling ₹ 15.29 crore, in contravention of the rules.**

Excise Policy of Uttar Pradesh for the years 2017-18 and 2018-19 stipulate that the amount of License Fee<sup>9</sup> (LF)/Basic License Fee<sup>10</sup> (BLF) shall be deposited in full within three working days, half of the security amount<sup>11</sup> within 10 working days and rest of the amount within 20 working days of receipt of intimation of the selection of shop. The Excise Policy for 2017-18, also stipulates that in case of renewal of shops, half of the LF/BLF shall be deposited at the time of application, half of the security amount within 10 days of renewal of shop and the remaining amount of LF/BLF and security deposit shall be deposited before 15 March 2018. In case of default, the renewal/selection of shop would be cancelled and the amount of LF/BLF and security deposits are required to be forfeited, and these shops need to be resettled.

In a similar issue highlighted in the Para 3.8.8.1 of the Audit Report (Revenue Sector) 2012-13, the Public Accounts Committee had recommended (May 2015) to the Government to take action against the defaulting licensees and ensure that similar irregularity is not repeated in future.

Audit test-checked the records of 10 District Excise Offices (DEOs) and noticed (between October 2018 and March 2019) that licensees of 540 out of 5,367 liquor shops (10.06 *per cent*) in 10 districts, which were settled or renewed during the years 2017-18 and 2018-19, did not deposit the entire amount of security deposit and LF/BLF within the prescribed time frame. During examination of the Departmental records (G-12 Register prescribed for settlement of shops) audit specifically checked therein the due date of deposit, actual date of deposit, delayed deposit of LF/BLF and security deposit etc. and noted that only partial amount of LF/BLF and security deposit was deposited within the prescribed timelines by the licensees at the time of issue of license. The delay<sup>12</sup> ranged from one to 275 days. No action was however initiated by the concerned DEOs as envisaged under the Rules according to which no relaxation is allowed. Inaction on delays in deposit of due amounts resulted in non-forfeiture of an amount of ₹ 15.29 crore (LF/BLF ₹ 8.41 crore and security deposit ₹ 6.88 crore) as shown in **Appendix-II**.

Audit reported the matter to the Department (between October 2018 and April 2019). In reply (June 2020), the Department accepted the audit observation in case of 40 shops amounting to ₹ 71.62 lakh and for the remaining 500 shops the Department stated that the settlement of the shops was a very time

<sup>9</sup> LF - ₹ 226 per BL (2017-18) and ₹ 222 per BL (2018-19).

<sup>10</sup> BLF - ₹ 25 per BL (2017-18) and ₹ 28 per BL (2018-19).

<sup>11</sup> 10 *per cent* of the license fees fixed for the shop.

<sup>12</sup> Delay up to 15 days, shops - 225, amount - ₹ 3.37 crore; delay between 16 to 30 days, shops - 118, amount - ₹ 1.58 crore; and delay more than 30 days, shops - 197, amount - ₹ 10.34 crore.

consuming process due to delay in clearance of demand drafts by the banks, challans being issued late by the banks etc., the LF/BLF were deposited with delays. Regarding delay in deposit of security deposits, the Department stated that security deposit is not revenue for the Department but is an instrument to secure the State revenue in case of any possible loss of revenue on the part of the licensee. The reply of the Department is not acceptable since the due date and actual date of deposit of LF/BLF and security deposit as recorded in the G-12 Register maintained by the Department, and checked in the audit, clearly indicated that there was delay in payment of LF/BLF and security deposit. Further, in support of their contention, no supporting documents were made available to the audit. Therefore, audit is unable to comment on whether the delay was on the part of the licensee or the Department itself. In the Excise Policy of the State, it is clearly mentioned that the LF/BLF and security deposit is to be forfeited if it is not deposited within the timelines prescribed and the Public Accounts Committee had made similar recommendations (May 2015) to the Government.

**Recommendation:**

**The Department should ensure adherence to the provisions of the Act/Rules and the recommendation made by the Public Accounts Committee, to safeguard the financial interest of the State.**

**2.5 Loss of additional consideration fee due to anomaly in the Excise Policy 2018-19**

**There was loss of additional consideration fee of ₹ 4.01 crore on 3.58 crore small bottles of Indian Made Foreign Liquor (IMFL) due to anomaly in the Excise Policy 2018-19.**

Maximum Retail Prices (MRP) of IMFL are determined as per the formulae provided in the excise policies issued by the Government from year to year. Excise Policy 2018-19 prescribed that if the MRP calculated as per the formula was not a multiple of ten, MRP would be rounded off to the next higher ten rupees and the differential amount would be payable as additional consideration fee. Irregularity at any stage of computation/adding of different components of MRP (Ex-distillery price (EDP), consideration fee, wholesalers'/retailers' margins) affects additional consideration fee which may accrue to the state exchequer from rounding off the MRP to the next higher ten rupees.

Excise Policy 2018-19 prescribed that the consideration fee for 750 ml bottles of IMFL would be calculated first and thereafter consideration fee for smaller bottles would be calculated on proportionate basis. However, for calculation of EDP of smaller bottles, it was prescribed that EDP of 750 ml bottles would be calculated first and thereafter EDP for small bottles would be calculated on proportionate basis (as per complete number of smaller bottles being made from 750 ml bottle) by adding ₹ 2/₹ 3 (375 ml/180 ml) to the EDP of 750 ml.

As per the above provisions of the Excise Policy, the consideration fee for 180 ml bottles of IMFL was collected on the actual quantity of liquor in the bottle (i.e. consideration fee for 750 ml bottle\*180/750) whereas at the time of calculation of EDP of 180 ml bottles, the EDP was fixed by adding ₹ 3 to EDP of 750 ml bottle and then dividing it by four. Thus, for 180 ml bottles,

distillers got EDP for 187.5 ml (750 ml divided by 4) but paid the consideration fee for 180 ml only.

This anomaly in the Excise Policy had the effect of unduly increasing the profits of the private distillers and depriving the state exchequer of commensurate additional consideration fee.

Audit examined the records of all the seven brand approval files in 2018-19, in the office of the Assistant Excise Commissioner, United Spirit Limited, Meerut and found (March 2019) that by allowing additional amount of EDP<sup>13</sup> in favour of the distiller instead of levying additional consideration fee on 180 ml bottles, the Department permitted short levy of additional consideration fee resulting in undue benefit of ₹ 4.01 crore on the sale of 3.58 crore small bottles of IMFL to the distillery, as detailed in **Appendix-III**.

Audit reported the matter to the Department (April 2019). In reply (June 2020), the Department stated that EDP for 180 ml bottles was calculated as per the Excise Policy 2018-19. The fact remains that the anomaly in the Excise Policy resulted in loss of ₹ 4.01 crore in the form of additional consideration fee. Earlier, in a similar audit observation reported in the Para 4.2.1 of the CAG's Audit Report on 'Pricing of Production and Sale of Liquor' for the year ended 31 March, 2018 for the State of Uttar Pradesh, the Department had accepted and assured (July 2018), that the anomaly would be removed through an amendment in the Excise Policy. Audit noticed that this discrepancy has been rectified in the Excise Policy 2019-20.

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<sup>13</sup> Calculating EDP of 187.5 ml instead of 180 ml.