

# **Chapter - III**

## **State Excise Duty**

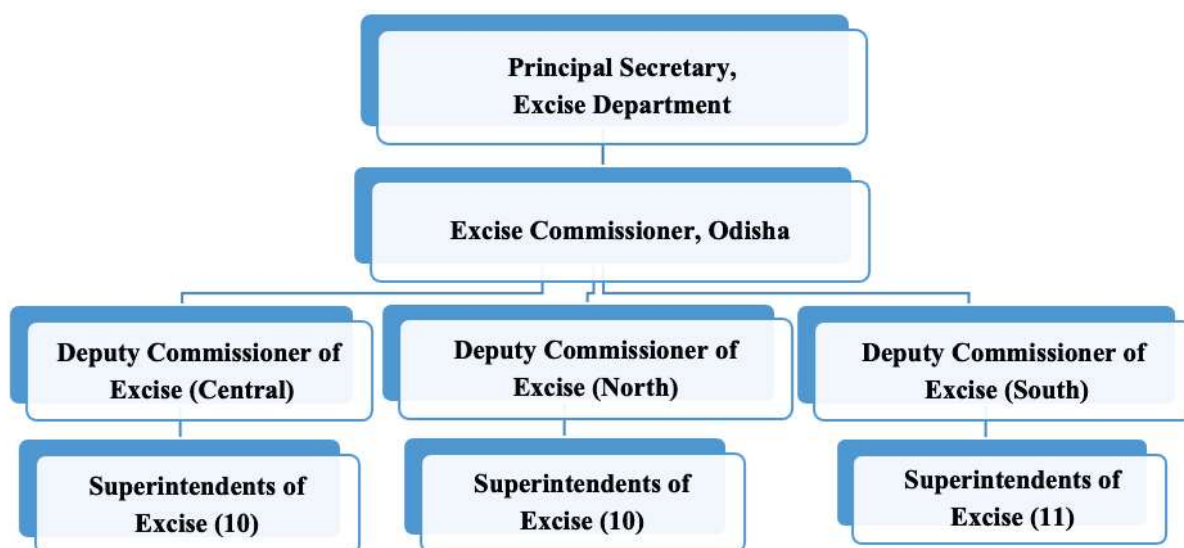


## CHAPTER III

### STATE EXCISE DUTY

#### 3.1 Tax Administration

Levy and collection of Excise Duty (ED) is regulated under the Odisha Excise Act, 2008 and Rules made thereunder by the Government. The organisational setup for administration of excise revenue is as under:



#### 3.2 Internal Audit

Internal Audit Wing (IAW), responsible for evaluating the Internal Control measures in the department and its field offices, was functioning since 2010. During 2019-20, the IAW covered nine out of 14 units planned for audit. The shortfall in conducting audit was attributed to shortage of manpower by the Department. It was observed that 477 paragraphs of Internal Audit Reports having money value of ₹151.34 crore issued during 2008-09 to 2019-20 were pending for want of disposal as on 31 March 2020.

#### 3.3 Results of Audit

Audit was conducted in 19 out of 36 units (52.77 per cent) during 2019-20. Revenue Receipts collected in the test checked 19 units was ₹3,704.24 crore, which is 94.36 per cent of revenue receipts worth ₹3,925.12 crore collected in 36 units during the year 2018-19. Audit scrutiny showed non-realisation/ short realisation of excise duty and non/ short recovery of licence fee/ interest penalty and other irregularities involving ₹14.77 crore in 245 cases as indicated in the **Table 3.1**.

**Table 3.1: Details of category wise audit observations on State Excise revenue receipts**

Sl. No.	Categories	(₹ in crore)	
		Number of cases	Amount
1.	Non/ Short realisation of excise duty	34	10.19
2.	Non/ Short recovery of licence fee/ interest/ penalty	54	0.93
3.	Other irregularities <sup>55</sup>	157	3.65
<b>Total</b>		<b>245</b>	<b>14.77</b>

Department accepted the under assessments and other deficiencies worth ₹12.81 crore in 171 cases pointed out during the year and realised ₹30 lakh in 73 cases pointed out in 2019-20. There are two broad categories of audit observations and most of them are of a nature that may reflect similar errors/ omissions in other Excise units under the department but not covered in the test audit. Department may, therefore, like to internally examine all the other units with a view to ensure that excise duty/ fees are levied as per provisions of the Act and rules.

### 3.4 Audit observations

Audit scrutinised the assessment records on State Excise Duty and associated fees in the District Excise Offices (DEOs). Audit found several cases of non-observance of the provisions of the Act/ Rules/ Annual Excise Policies (AEPs). This led 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 were illustrative and were based on a test check carried out by Audit. Such omissions on the part of the Superintendents of Excise (SEs) were pointed out by Audit each year. However, the irregularities persisted and remained undetected until the next audit was conducted. There was need for the Department to improve the internal control system including strengthening of internal audit to avoid recurrence of such irregularities.

### 3.5 Provisions of the Acts/ Rules/ Annual Excise Policies and instructions of Government not observed

*The Odisha Excise (OE) Act, 2008 and Odisha Excise (OE) Rules, 2017 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 Excise Duty (ED) 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 ED/ fees, fines and penalty etc.*

<sup>55</sup> Non realisation of establishment cost, delay in settlement of shops, extra hour operation *etc.*

### 3.5.1 Excise duty along with fine on short lifting of country liquor, Indian Made Foreign Liquor and Beer

**Failure on the part of District Excise Offices to raise demand against the licensees who did not lift entire Minimum Guaranteed Quantity of Country Liquor, Indian Made Foreign Liquor and Beer, the Excise Duty with fine of ₹8.31 crore remained unrealised.**

As per Rule 34 of the Odisha Excise Rules, 2017, Minimum Guaranteed Quantity (MGQ) of Country Liquor (CL), Indian Made Foreign Liquor (IMFL) and Beer as determined by the Government for the year, should be guaranteed by the successful tenderer or bidder to be lifted and transported by him from the distillery, warehouse or depot as the case may be for retail sale in the shop. The licensee shall lift the entire MGQ of CL for the complete year before the expiry of the term of licence *i.e.*, last day of March. The excess quantity over MGQ drawn in previous month shall be adjusted against short drawn MGQ in subsequent months. The Collector may, for any special reasons, permit the licensees to lift the short drawn MGQ of the previous month in the succeeding months except for the month of March. In case of default, the Excise Duty (ED) on the deficit quantity of annual MGQ shall be collected at the end of the year with a fine at the rate of ten *per centum* on the deficit amount. As per the Annual Excise Policy (AEP) 2018-19, the ED on CL, IMFL and Beer was ₹126<sup>56</sup> per LPL<sup>57</sup>, ₹384<sup>58</sup> per LPL and ₹50<sup>59</sup> per BL<sup>60</sup> respectively.

**Case I:** Audit test checked (May 2019 to February 2020) the records in 16 out of 31 District Excise Offices (DEOs) and noticed that, during the year 2018-19, two licensees in two DEOs lifted 53,008.500 LPL of CL against the MGQ of 1,80,000 LPL. As such, the licensees were liable to pay ED and fine worth ₹1.76 crore<sup>61</sup> on short lifted quantity of 1,26,991.500 LPL as detailed in the **Table 3.2**.

**Table 3.2: Excise duty and fine not realised on short lifted quantity of country liquor**

Name of the SE	Name of the CL Shop	Monthly MGQ fixed	MGQ for the year	MGQ lifted during the year	MGQ Short lifted	ED due (₹126 per LPL)	Fine	Total of ED and fine due	ED realised	Total ED and fine payable
(In LPL)						(In ₹)				
SE, Cuttack	Mangalabagh	12000	144000	17415.0	126585.0	15949710	1594971	17544681	0	17544681
SE, Kendrapada	Aul CL Shop	3000	36000	35593.5	406.5	51219	5122	56341	0	56341
<b>Total</b>		<b>15000</b>	<b>180000</b>	<b>53008.5</b>	<b>126991.5</b>	<b>16000929</b>	<b>1600093</b>	<b>17601022</b>	<b>0</b>	<b>17601022</b>

<sup>56</sup> Excise duty is equal to Specific component + *Ad-valorem* component (20 *per cent* of landing cost). Specific component is ₹100. The landing cost of three LPL of CL is ₹390. As such, the landing cost of one LPL is ₹130. *Ad valorem* component of landing cost on one LPL of CL is calculated at ₹26 (₹130 x 20 *per cent*). Total is ₹126.

<sup>57</sup> London Proof Litre (LPL) - Strength of alcohol measured in terms of 'Degree Proof'. Strength of 13 parts such alcohol weigh exactly equal to 12 parts of water at 51 Degree F is assigned 100 Degree proof

<sup>58</sup> Specific Component per LPL = ₹360 + *Ad-valorem* component *i.e.* 50 *per cent* of Landing cost (319.04/6.75) x 50 *per cent* = ₹24 (23.63). All total ₹384

<sup>59</sup> Specific component per BL = ₹35 and *Ad-valorem* component *i.e.* 40 *per cent* of Landing cost (315.71/7.8) x 40 *per cent* = ₹15. All total ₹50

<sup>60</sup> Bulk Litre (BL) - a litre with reference to the bulk or quantity of the contents

<sup>61</sup> ED ₹1.60 crore for 1,26,991 LPL @ ₹126 per LPL and fine ₹16 lakh *i.e.* 10 *per cent* of ED

It was also noticed that, during the year 2018-19, 24 licensees in five DEOs lifted 1,58,874.47 LPL of IMFL and 8,13,449.30 BL of Beer before the last day of March 2019 against the MGQ of 2,46,804 LPL of IMFL and 11,69,479 BL of Beer fixed for their shops with short lifting of 87,929.53 LPL of IMFL and 3,56,029.70 BL of Beer. As such, the licensees were liable to pay ED with fine of ₹5.67 crore on short lifted MGQ as given in the **Table 3.3**.

**Table 3.3: Excise duty and fine not realized on short lifted quantity of IMFL and Beer**

Name of DEO	No. of Shops	MGQ fixed upto March 2019		Total quantity lifted upto March 2019		Short lifted		Total Excise duty involved (in ₹)		Total (in ₹)	Fine (in ₹)	Total revenue unrealised (in ₹)
		IMFL (LPL)	Beer (BL)	IMFL (LPL)	Beer (BL)	IMFL (LPL)	Beer (BL)	IMFL	Beer			
Mayurbhanj	13	63000	612000	47712.14	463412.20	15287.86	148587.80	5870537	7429390	13299927	1329993	14629920
Cuttack	3	136500	256936	100434.10	111520.40	36065.90	145415.60	13849297	7270752	21120049	2112005	23232054
Phulbani	1	42000	60000	6417.77	9844.80	35582.23	50155.20	13663578	2507760	16171338	1617134	17788472
Khordha	4	5304	543	4310.46	273.00	993.54	270.00	381520	13500	395020	39502	434522
Berhampur	3	0	240000	0	228398.90	0	11601.10	0	580058	580058	58006	638064
<b>Total</b>	<b>24</b>	<b>246804</b>	<b>1169479</b>	<b>158874.47</b>	<b>813449.30</b>	<b>87929.53</b>	<b>356029.70</b>	<b>33764932</b>	<b>17801460</b>	<b>51566392</b>	<b>5156640</b>	<b>56723032</b>
<b>Total ED due for CL, IMFL and Beer as per table 1 and 2</b>												<b>74324054</b>

Since the DEOs failed to raise any demand against the licensees on short lifted MGQ of CL, IMFL and Beer, ED with fine amounting to ₹7.43 crore remained unrealised as of August 2020.

The matter was intimated to Government of Odisha during May 2021. Their reply is awaited (September 2021).

**Case II:** Audit noticed that the DEO Sundargarh awarded the licence to one IMFL ‘Off shop’ settled through lottery system. The DEO issued (15 May 2018) licence for functioning of the shop up to 31 March 2019 and fixed the monthly MGQ at 5,250 LPL for IMFL and 7,500 BL for Beer. But the licensee could not open his shop due to public objection from the date of issue of licence to 5 September 2018 (approximately four months). Besides, the licensee also could not lift the MGQ of IMFL (36,265.159 LPL) and Beer (59,111.904 BL) up to the expiry of licence for which the licensee was required to pay excise duty and fine on short-lifted quantity of MGQ.

The Superintendent of Excise (SE), Sundargarh framed a charge sheet against the licensee during March 2019 to lift the unlifted MGQ within the validity period of the licence *i.e* upto 31 March 2019. The licensee challenged the charge sheet by preferring a writ petition before the Hon’ble High Court of Odisha. While disposing the case, the Hon’ble High Court (March 2019) had given liberty to the licensee to make a representation before the Excise Commissioner (EC) within 10 days which was to be disposed of by 30 April 2019. After that, the licensee filed a representation before the EC on 10 April 2019 for exemption of excise duty on short lifted MGQ of the year 2018-19.

In response, the EC directed (7 August 2019) SE, Sundargarh to calculate the shortfall MGQ along with the amount of ED for the closure period (15 May 2018 to 05 September 2018) only in 2018-19 for onward transmission to Government to take a decision on exemption of duty on MGQ short lifted. The EC also directed to calculate shortfall of MGQ during 06 September 2018 to March 2019 separately. Accordingly, SE, Sundargarh

calculated and intimated (13 December 2019) to EC, the ED of ₹97.71 lakh on shortfall MGQ of 19,504.033 LPL of IMFL and 27,862 BL of Beer for closure period, for necessary action. Besides, the SE also calculated that against the MGQ of 35,875 LPL of IMFL and 51,250 BL of Beer, the licensee could lift 19,113.874 LPL of IMFL and 20,001 BL of Beer with shortfall 16,761.126 LPL of IMFL and 31,249 BL of Beer during the remaining period of 2018-19. The Excise Duty (ED) and fine was worked out as ₹87.99 lakh on shortfall MGQ of IMFL and Beer as detailed in the *Appendix - II*.

Audit noticed that the EC failed to intimate Government regarding the ED on short lifting of MGQ for the closure period as well as to take a decision on exemption of duty of ₹97.71 lakh. Further, SE, Sundargarh neither raised demand worth ₹87.99 lakh for the subsequent period nor the SE was instructed by the EC to collect the outstanding dues for which the excise revenue remained unrealised for a considerable period of time. Due to such lackadaisical approach, the decision of Hon'ble High court to dispose the case by 30 April 2019 was also not adhered to.

In reply, the DEO, Sundargarh stated that the required information on shortfall of MGQ had been sent to EC for taking necessary action at his end. The matter was intimated to Government of Odisha during June 2021. Their reply is awaited (September 2021).

### 3.5.2 Charges for extra hour operation not realised

**Failure on the part of DEO, Ganjam to raise demand for unauthorised extra hours of operation, resulted in non-realisation of the Government revenue to the tune of ₹51.09 lakh towards excise duty from one of the defaulting Distilleries.**

As per Rule 79 (2), (3) and (5) of the Odisha Excise Rules, 2017, the licensee of any distillery or other production unit shall arrange its operations so that no Excise Officer or any of his employees need to be on duty for more than eight hours per day which is specified as scheduled hours of duty per shift. If it becomes necessary for the licensee to run the second shift of eight hours, then he can do so only with the prior permission of the Commissioner. The Distillery/ Brewery/ Bottling Unit will pay to the State Government ₹3,000 per extra hour of operation of their bottling Unit/ Warehouse beyond the scheduled hours, in addition to the overtime fees payable to the Excise Staff in pursuance of the provisions prescribed.

During scrutiny of records of 16 out of 31 District Excise Offices (DEOs), Audit noticed that one<sup>62</sup> distillery under DEO, Ganjam carried out extra hour operations for 1,703 hours beyond the scheduled hours during April 2018 to March 2019 without any prior permission of the Commissioner. Therefore, the distillery was liable to pay extra hour charges worth ₹51.09 lakh at the rate of ₹3,000 per hour for the above extra hours of operation. Since the DEO did not raise any demand against the distillery for realisation of above excise revenue, the distillery did not deposit the same into the Government account till the date

<sup>62</sup> Aska Co-operative Sugar Industries Ltd.

of audit (September 2019). Thus, an amount of ₹51.09 lakh towards extra hour operation remained unrealised.

In reply, the DEO, Ganjam stated that demand would be raised against the distillery for deposit of extra hour operation fees. The matter was intimated to Government of Odisha during May 2021. Their reply is awaited (September 2021).

### **3.5.3 Fees not levied for exercising the option for submission of agreements without registration with the land owners**

#### **Superintendents of Excise did not raise demand for realisation of fee of ₹45.50 lakh for submission of unregistered land agreements.**

As per Rule 51 of the Odisha Excise Rules, 2017, an application for foreign liquor/ IMFL/ Beer 'ON' shops shall be submitted in Form XI B only by those who are having hotels or restaurants. The application shall be accompanied with the documents namely:- (a) evidence regarding ownership of the land and building (b) in case the shop is proposed to function in a rented building, the details of the land and building along with the registered agreement or an undertaking to furnish a registered agreement duly executed with the land or house owner to hire the building (c) where there is no such agreement, the written willingness of the land or house owner to execute a registered agreement in the event of the grant of licence by the State Government. As per clause 4.2.15 of Annual Excise Policy (AEP) for the year 2017-18, the licensees are given an option for submitting agreements without registration with the land owner to avoid closure of shops under compelling circumstances. The licensees shall have to pay ₹25,000 for exercising this option.

Audit scrutinised records relating to land agreements, lease deeds and licence related documents for 2017-18 in 28 out of 31 District Excise Offices (DEOs). It was observed that 300 licensees in 18 DEOs<sup>63</sup> submitted unregistered land agreements with the land owners while applying for issue/ renewal of licences for functioning of Excise shops during 2017-18. The licensees had not deposited the required fees of ₹75 lakh (300 \* ₹25,000) for exercising the option of submission of agreements without registration as per the clause *ibid*. At the time of issue/ renewal of licences for the year 2017-18, the Superintendents of Excise (SEs) also did not insist to realise the amount for submission of unregistered agreements. After issue of Audit observation (July 2018 to March 2019), eight<sup>64</sup> SEs realised ₹29.50 lakh from 118 licensees. Yet, 10 DEOs did not take proper action to realise the amount of ₹45.50 lakh from 182 licensees who had submitted unregistered agreements as detailed in the *Appendix – III*.

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<sup>63</sup> SEs Balasore, Bargarh, Berhampur, Balangir, Cuttack, Gajapati, Ganjam, Jagatsinghapur, Kendrapara, Keonjhar, Khordha, Koraput, Mayurbhanj, Nabarangpur, Nuapada, Puri, Rayagada and Sundargarh.

<sup>64</sup> SEs Balasore, Bargarh, Balangir, Jagatsinghapur, Mayurbhanj, Nabarangpur, Rayagada and Sundargarh



Further, the AEP was silent about levy of fees/ fines towards non-submission of land agreements at the time of applying for new/ renewal of licenses. Although, 440 licensees had not submitted land agreements at the time of renewal of excise shops, concerned SEs renewed the licences irregularly. It was also noticed that 53 licensees had deposited ₹13.25 lakh towards non-submission of agreements. Arbitrary implementation of the policy may lead to corruption in renewal of licences. In absence of any policy, the amount received from 53 licensees and non-collection of any amount from balance 387 licensees could not be authenticated. Therefore, a clause should be incorporated in the AEP depicting the fees and fines to be levied on licensees who failed to submit the land agreements at the time of issue of new/ renewal of licences.

The matter was intimated to Government of Odisha (June 2021). Their reply is awaited (September 2021).

### 3.5.4 Fees towards cost of establishment not realised

**Failure on the part of two Superintendents of Excise to raise demand against two distilleries resulted in ₹13.06 lakh unrealised, as cost of establishment for the year 2018-19.**

As per Rule 93 of the Odisha Excise Rules, 2017, the Excise Commissioner (EC) shall determine and appoint the Excise Officer and staff necessary for the proper supervision of the operations carried out in each warehouse or store-room. The licensee shall pay to the Government the fees for maintaining a warehouse and for conducting the operations at the rates as may be determined by the State Government, from time to time, which shall be payable at the end of each calendar month and shall not exceed in amount the whole of the cost of the excise staff employed for the purpose of this rule.

During scrutiny of records in 16 out of 31 District Excise Offices (DEOs), Audit noticed that eight excise officers and staff members were posted during April 2018 to March 2019 for supervision of the operations carried out in two<sup>65</sup> distilleries under two<sup>66</sup> DEOs. The pay and allowances in respect of eight excise officers and staff members deployed in those distilleries relating to the said period was calculated as ₹13.06 lakh as detailed in the *Appendix-IV*. As per aforesaid provisions, the pay and allowances of eight excise officers and staff members was to be reimbursed by those distilleries in which they were deployed to supervise. The Superintendents of Excise (SEs) did not raise demand against two distilleries for reimbursement of pay and allowances. As a result, ₹13.06 lakh was remained unrealised.

In reply, the SEs, Dhenkanal and Ganjam stated (May 2019 and September 2019) that demand would be raised for realisation of the establishment cost after verification of records. The replies of the SEs are not acceptable as the excise officers and staff members were deployed by the concerned SEs. Accordingly, the cost of establishment was to be realised by the SEs as per the above prescribed provision of OER, 2017. The matter was also intimated (May 2021) to Government of Odisha. Their reply is awaited (September 2021).

<sup>65</sup> M/s Sakthi Sugar Industries Ltd. & M/s Aska Co-operative Sugar Industries (ACSI) Ltd.

<sup>66</sup> DEOs, Dhenkanal & Ganjam