

CHAPTER-III: State Excise

3.1 Results of Audit

Test check of the records of the excise offices, conducted in audit during the year 2002-2003, revealed under assessments and losses of revenue amounting to Rs 89.05 crore in 1,043 cases, which broadly fall under the following categories:

(Rupees in crore)			
Sl. No.	Category	No. of cases	Amount
1.	Non/delayed settlement of excise shops	177	6.91
2.	Non- realisation of license fee	97	0.37
3.	Loss of revenue due to wastage of spirit including foreign liquor/denatured spirit	02	0.01
4.	Review : Working of State Excise Department	01	78.95
5.	Other cases	766	2.81
Total		1,043	89.05

During the year 2002-2003, the concerned department accepted under assessment etc of Rs 0.11 crore involved in 11 cases pointed out in audit prior to 2002-2003.

A Review, **Working of State Excise Department** involving tax effect of Rs 78.95 crore is discussed in the following paragraphs:

3.2 Review: Working of State Excise Department

Highlights

There was a loss of Rs 4.13 crore due to low recovery of alcohol from molasses.

(Paragraph 3.2.5)

There was loss of revenue of Rs 10.22 crore due to non-settlement of excise shops.

(Paragraph 3.2.7)

Due to Non-filing of certificate proceedings interest of Rs 32.91 crore was foregone.

(Paragraph 3.2.18)

Introduction

3.2.1 State Excise duty is levied by the State Government under constitutional provision. State list of the seventh Schedule to the Constitution empowers a State Government to levy excise duty on alcoholic liquors for human consumption, on opium, Indian hemp and other narcotic drugs manufactured or produced in the State. The levy of excise duty is governed by the Bihar Excise Act, 1915 (BE Act) and the rules made thereunder.

State Excise revenue is one of the most important sources of tax revenue in the state. It is derived from auction fees for the grant of licences of various vends of country spirit and India Made Foreign Liquor (IMFL) and from excise duty levied on country spirit, spiced liquor, IMFL, beer removed from distilleries and breweries and on import/export thereof.

Organisational set up

3.2.2 State Government through the Excise and Prohibition Department administers the excise laws. The Excise Commissioner (EC) is the Head of the Department. He is primarily responsible for the administration and execution of the excise policies and programme of the State Government. He is assisted by the Joint Commissioner of Excise (JCE), Deputy Commissioner of Excise (DCE) and Assistant Commissioner of Excise (ACE) at the Headquarters and DCEs in divisions.

At the district level, the Collector of the district is in-charge of the Excise administration and is assisted by the ACEs where the excise revenue exceeds rupees one crore or by Superintendent of Excise (SE) where it is less and

Excise Inspectors, Sub-Inspectors and Excise Constables. For efficient control, the district is further divided into circles and blocks.

Audit objectives

3.2.3 Detailed scrutiny of records of Commissioner of Excise Bihar, Patna, 15¹ out of 37 District Excise offices (D.E.O.) and two distilleries for period from 1997-1998 to 2001-2002 was conducted between January and May 2003 to;

- seek assurance that the provision of Act, Rules and executive instructions were followed in the realisation of revenue by the Department,
- ascertain whether government had taken adequate steps to realise the arrears.

3.2.4 Budget estimates and actuals

(Rupees in crore)				
Year	Budget estimates	Actual	(+) Excess (-) Short fall	Percentage variation
1997-1998	264.50	226.36	(-) 38.14	(-) 14.42
1998-1999	361.00	239.51	(-) 121.49	(-) 33.65
1999-2000	450.00	277.80	(-) 172.20	(-) 38.26
2000-2001*	275.90	242.58	(-) 33.32	(-) 12.12
2001-2002	275.00	238.90	(-) 36.10	(-) 13.13

* (Lower BEs are due to reorganisation of Bihar state)

It was noticed that the budget estimates were never achieved during the period 1997-1998 to 2001-2002. The shortfall varied between 12 percent to 38 percent during this period. It is evident that budget estimates were not prepared on realistic basis.

Loss of revenue due to low recovery of alcohol from molasses

3.2.5 Under the Bihar Excise (B.E.) Act, 1915 and rules framed thereunder read with notification issued on 11 January 2000, the distillers shall be responsible for maintaining a minimum recovery of 92 London Proof Litre (LPL) (52.5 alcoholic litres) of alcohol per quintal of fermentable sugar present in molasses.

Test check of spirit production register, molasses consumption register and chemist's report regarding fermentable sugar contents revealed that three distillers failed to achieve the minimum recovery of alcohol from molasses consumed during 2001-2002 resulting in loss of revenue amounting to Rs 4.13 crore by way of excise duty as per details given below:

¹ Arrah (Bhojpur), Begusarai, Darbhanga, Gopalganj, Gaya, Katihar, Muzaffarpur, Motihari, Madhubani, Madhepura, Purnea, Patna, Rohtas (Sasaram), Saran (Chapra) and Siwan.

(Rupees in crore)						
Year	Name of distillery	Qty. of molasses distilled (in Quintals)	Minimum recovery of alcohol required as per chemist 's report (in LPL)	Actual recovery of alcohol (in LPL)	Short-fall (in LPL)	Loss of excise duty
2001-2002	U.B. Distillery Mirganj, Gopalgang	2,45,350.00	59,33,665.50	58,48,458.90	85,206.60	0.85
2001-2002	Mc Dowell Distillery Hathidah, Patna	1,56,502.08	49,46,937.88	46,34,074.18	3,12,863.70	3.13
2001-2002	S.C.I. Distillery Rajaun, Banka	65,880.00	20,25,466.69	19,81,503.29	43,963.40	0.15
	Total	4,67,732.08	1,29,06,070.07	1,24,64,036.37	4,42,033.70	4.13

Non-realisation of establishment cost from licensee

3.2.6 Rule 36 A framed under Section 90 of the B.E. Act, 1915 provide that the EC shall decide whether a whole time or part time excise official is necessary for proper supervision of operation of blending, compounding and bottling of foreign liquor for the purpose of sale. The licensee shall pay to the Government the actual cost of the Excise staff deployed at the distillery.

In two distilleries, viz. McDowell, Hathidah and U.B. Distillery Ltd., Mirganj, Gopalganj, it was noticed that expenditure of Rs 48.59 lakh incurred on pay and allowances of excise officials deployed in the distilleries during the years 1996-1997 to 2001-2002 was not recovered by the Department.

On this being pointed out, the Superintendent of Excise, McDowell distillery, Hathidah, Patna replied in December 2002 that notices had been issued for payment of establishment cost. The Superintendent of Excise, U.B. Distillery, Mirganj, Gopalganj stated in February 2003 that action would be taken after scrutiny of records.

Loss of revenue due to non-settlement of excise shops

3.2.7 Under Bihar Excise Act, 1915 and rules made thereunder, the system of settlement of excise shops through auction is in force for the retail vend of country spirit, spiced country spirit and IMFL. The excise shops are put to auction subject to a reserved/upset fee. When the upset fee is not obtained the Collector of the district may accept a lower fee subject to the approval of EC. The EC also issued instructions in June 1995 for operation of unsettled excise shops departmentally. If the shops are settled subsequently, the departmental operation would be withdrawn.

In 17 Excise districts², it was noticed that 109 country spirit shops, 88 spiced country spirit shops and 32 IMFL shops remained unsettled during 2000-2001 and 2001-2002 resulting in loss of revenue of excise duty and licence fee

² Araria, Bhojpur, Bhagalpur, Darbhanga, Gopalganj, Gaya, Katihar, Khagaria, Kishanganj, Muzaffarpur, Madhubani, Madhepura, Motihari, Munger, Rohtas cum Kaimur, Saran and Siwan.

amounting to Rs 10.22 crore. No efforts were made to run the shops departmentally.

On this being pointed out 10³ Superintendents of Excise replied that the efforts were made several times to settle the shops but due to non-availability of bidders, the shops in question could not be settled. A.C.E., Gaya stated in August 2002 that the shops in question could not be settled due to the district being a naxalite affected area, but efforts were being made for settlement. But none of the A.C.E./S.E. had stated why the unsettled shops could not be operated departmentally in accordance with the instructions of the EC.

Loss of revenue due to belated settlement of excise shops

3.2.8 As per sale notification issued by Excise Department for the year 2000-2001 auction of retail vends was to be held on 14 March 2000 and the vends were to be settled with effect from 1 April 2000 to 31 March 2001. Similarly, for the year 2001-2002, the sale notification for settlement of retail vends for the period from 1 June 2001 to March 2002 was issued in the month of May 2001.

In eight excise districts⁴, it was noticed that though the auction of various retail vends were held in March 2000 for the year 2000-2001 and in May 2001 for the year 2001-2002, 38 country spirit shops, 15 spiced country spirit shops and 25 IMFL shops were settled belatedly during 2000-2001 and 2001-2002. The delay ranging between three to eleven months, resulted in loss of excise duty and licence fee amounting to Rs 1.80 crore.

On this being pointed out, the S.E., Gopalganj stated in February 2003 that shops could not be settled in time due to late approval of reduced rate of monthly license fee from the competent authority while seven SEs stated that due to non-availability of bidders, shops were settled belatedly.

Loss of revenue due to non-settlement of excise shops after cancellation

3.2.9 Under condition No. 14 (b) of the sale notification issued by the Department for settlement of shops, every bidder is required to deposit six months licence fee immediately after the bid. The balance amount of licence fee is to be deposited in equal monthly instalments between July and December by 10th of each month failing which licence shall be cancelled and security money forfeited. Further, each licensee is required to lift the approved Minimum Guaranteed Quota (MGQ) of country spirit, India Made Foreign Liquor (IMFL) and spiced country spirit by last day of the month.

In eight excise districts⁵, it was noticed that licences of 28 country spirit shops, 17 spiced country spirit shops and six IMFL shops were cancelled between

³ Bhagalpur, Araria, Katihar, Munger, Madhubani, Motihari, Muzaffarpur, Madhepura, Siwan and Saran (Chapra)

⁴ Gaya, Munger, Muzaffarpur, Motihari, Patna, Rohtas, Siwan and Saran(Chapra).

⁵ Gaya, Munger, Muzaffarpur, Motihari, Patna, Rohtas, Siwan and Saran.

June 2001 and March 2002 due to non-payment of licence fee by the vendors. These shops remained unsettled after the date of cancellation i.e. upto March 2002. The Department also failed to run these shops departmentally. This resulted in loss of revenue of excise duty (based on the MGQ) and licence fee amounting to Rs 44.72 lakh.

On this being pointed out 6 S.E.⁶, replied that efforts were made several times for settlement of shops but due to non-availability of bidders, the shops could not be resettled. But none of the A.C.E./S.E. stated as to why the unsettled shops could not be operated departmentally in accordance with the instructions of the EC. No reply was received in remaining cases (August 2004).

Non-realisation of outstanding licence fee

3.2.10 As per the sale notification for the year 2001-2002, the excise vendor was required to deposit licence fee of the excise shop for six months at the time of settlement of the shop, and subsequent licence fee was to be realised on monthly installments basis from July to December by 10th of each month.

In nine Excise districts⁷, it was noticed that the licensees of 36 country spirit shops, 20 spiced country spirit shops and 32 IMFL shops did not deposit licence fee in full leaving a balance of Rs 14.20 lakh during 2001-2002. This resulted in loss of licence fee amounting to Rs 14.20 lakh.

On this being pointed out, S.E. Saran (Chapra) stated in February 2003 that distress warrant had been issued for realisation of arrears. Reply in other cases was awaited (August 2004).

Non-realisation of additional licence fee on excess lifting of country spirit beyond the permissible limit

3.2.11 In accordance with the sale notification for the year 2001-2002, the licensed vendor of country spirit was required to pay additional licence fee at the rate of Rs 15 per LPL at the time of lifting the country spirit in excess of 30 per cent of the quota fixed for a particular month.

In 12 excise districts⁸, it was noticed that 28,262.48 LPL of country spirit was lifted by vendors in excess of permissible limit without payment of the additional licence fee during the period 2001-2002. This resulted in non-realisation of additional licence fee amounting to Rs 4.24 lakh.

⁶ Munger (2000-2001), Motihari, Muzaffarpur, Patna, Siwan and Saran (Chapra).

⁷ Araria, Bhagalpur, Gaya, Gopalganj, Muzaffarpur, Motihari, Patna, Siwan and Saran

⁸ Araria, Bhojpur, Gaya, Gopalganj, Khagaria, Munger, Muzaffarpur, Madhepura, Motihari, Patna, Rohtas and Vaishali.

Non-realisation of additional licence fee

3.2.12 As per the condition of the agreement of licence (Form 27) for exclusive privilege of sacheting/bottling for wholesale supply of country liquor, the licensee is to pay licence fee in advance in one lump sum calculated on the basis of annual M.G.Q. However, if the total wholesale lifting of the country liquor exceeds the annual M.G.Q., additional licence fee shall be realised at the rate of Re one per LPL.

In four excise districts viz. (Bhojpur, Gopalganj, Saharsa and Vaishali), it was noticed that the Department failed to realise the additional licence fee of Rs18.45 lakh on excess lifting of country spirit by 12 licensees having exclusive privilege licence for bottling and sacheting for wholesale supply during the year 2000-2001 and 2001-2002.

Arrears of revenue

3.2.13 The position of arrears of revenue of state excise during 1997-1998 to 2001-2002 is as under:

(Rupees in crore)			
Year	Total arrears	Arrears more than 5 years	Percentage (Col. 3 to 2)
1	2	3	4
1997-1998	21.04	10.91	51.85
1998-1999	47.27	36.01	76.17
1999-2000	52.77	45.21	85.67
2000-2001	45.44	40.72	89.61
2001-2002	44.74	37.96	84.84

The total arrears increased from Rs 21.04 crore during 1997-1998 to Rs 52.77 crore in 1999-2000. Thereafter, the arrears declined marginally to Rs 45.44 crore in 2000-2001 due to reorganisation of Bihar State. The percentage of arrears for more than five years increased from 51.85 per cent in 1997-1998 to 89.61 per cent in 2000-2001 which marginally declined to 84.84 per cent in 2001-2002.

3.2.14 The position of certified arrears to total excise arrears as on 31 March 2002 is as under:

(Rupees in crore)			
Year	Total arrears	Certified	Percentage
1997-1998	21.04	5.78	27.47
1998-1999	47.27	5.76	12.18
1999-2000	52.77	7.34	13.90
2000-2001	45.44	2.84	6.25
2001-2002	44.74	3.36	7.51

The percentage of certified arrears to total arrears decreased during the period from 1997-1998 to 2000-2001 with a marginal rise in 2001-2002. This indicated that the Department did not take effective steps to recover the excise arrears under the Bihar and Orissa Public Demand and Recovery Act, 1914.

3.2.15 The agewise position of arrears as on 31 March 2002 was as under:

(Rupees in crore)	
More than 10 years	20.88
More than 5 years but less than 10 years	17.08
More than 3 years	4.10
More than 1 year	2.68
Total	44.74

Out of total arrears of Rs 44.74 crore, the demand certified for recovery was Rs 3.36 crore, stay granted by the Court/Government was Rs 2.68 crore, amount likely to be written off was Rs 0.12 crore and Rs 38.58 crore was pending for recovery for other reasons.

Test check of records of 15 excise districts and two distilleries (Narkatiaganj and Mirganj) revealed that there were arrears of Rs 39.64 crore pertaining to the period 1981-1982 to 2001-2002 which accounted for 88.64 per cent of the total state excise arrears of the State. Out of this, certificate cases were instituted only for Rs 1.17 crore in nine districts and recovery of Rs. 2.47 crore was stayed by the Courts and Government and the balance of Rs 36 crore was outstanding for "other reasons". The Department could produce details of Rs 10.32 crore and details of the balance amount of Rs 25.68 crore were not available with the Department.

Understatement of arrears

3.2.16 In 15 excise districts⁹, it was noticed that arrears of Rs 11.42 crore was outstanding as on 31 March 2002, whereas as per the records maintained by the E.C., Bihar, an amount of Rs 10.28 crore was shown as arrears pertaining to these offices. Thus, there was understatement of arrears to the extent of Rs 1.14 crore.

Undue financial aid to distillers

3.2.17 Under the provision of the Bihar Excise Act, 1915 and the Bihar and Orissa Public Demand and Recovery Act, 1914, an arrear of excise revenue may be recovered from the person primarily liable to pay the same or from his surety, if any, by distress sale of his movable property or by process prescribed for the recovery of arrears of revenue.

Scrutiny of records of SEs of two distilleries (New Swadeshi distillery, Narkatiaganj and U.B. distillery, Mirganj, Gopalganj) revealed that against these distilleries an arrear of Rs 26.49 crore was outstanding for the period from 1981-1982 to 2001-2002 i.e. for 21 years, out of which details of Rs 10.32 crore was available while no details of arrears for Rs 16.17 crore was available with the Department. The Department had not taken any step to initiate certificate proceedings in the Court of Law under the Public Demand and Recovery Act (P.D.R. Act), or to adopt any other measure to effect

⁹ Arrah (Bhojpur), Begusarai, Darbhanga, Gopalganj, Gaya, Katihar, Muzaffarpur, Motihari, Madhubani, Madhepura, Purnea, Patna, Rohtas (Sasaram), Saran (Chapra) and Siwan.

recovery of the same. It is also pertinent to mention here that U.B. distillery, Mirganj, Gopalganj against which an arrear of Rs 2.54 crore was outstanding had stopped operation in February 2003, so recovery from this distillery might not be feasible. This resulted in undue financial aid to the distilleries.

Non-institution of certificate proceedings for recovery of excise arrear or non-adoption of other measures against these distilleries was indicative of negligence on the part of the Department in realisation of excise arrears as well as of poor monitoring of outstanding dues.

Loss of interest due to non-filing of certificate cases

3.2.18 The Bihar Excise Act, 1915, does not provide for levy of interest for late payment of dues. As per the PDR Act, interest upon public demand to which certificate relates shall be charged at the rate of 12 per cent from the date of signing of the certificate upto the date of realisation. Any delay in institution of certificate proceedings would result in loss of revenue in the form of interest.

In 11 Excise districts¹⁰ and two distilleries (Mirganj and Narkatiaganj), it was noticed that arrears of Rs 33.92 crore relating to the period 1990-1991 to 2001-2002 were outstanding as on 31 March 2002. But the Department had not taken any steps to institute the certificate cases till now. Due to non-institution of certificate proceedings Government had foregone revenue of Rs 32.91 crore by way of interest.

Certified arrears

3.2.19 Under the BE Act, read with PDR Act, arrears of excise revenue can be recovered as arrears of land revenue. As per instructions of Board of Revenue, the Requiring Officer (Superintendent of Excise) is primarily responsible for systematic application of certificates and prompt disposal of objection if raised by the Certificate Officer. The Requiring Officer (RO) and the Certificate Officer (CO) are jointly responsible for the disposal of certificate cases.

In three excise districts (Aurangabad, Gopalganj and Muzaffarpur), it was noticed that 106 certificate cases involving Rs 91.94 lakh were filed during 1990-1991 to 2001-2002 against which 11 cases involving Rs 1.46 lakh were disposed of and 11 cases involving Rs 1.74 lakh were dropped upto 31 March 2002 as the defaulters were not traceable. So, 84 certificate cases involving Rs 88.74 lakh were still pending as on 31 March 2002. This shows that effective steps were not taken by the ROs and COs for disposal of certificate cases filed during 1990-1991 to 2001-2002 resulting in non-realisation of Rs 88.74 lakh.

¹⁰ Begusarai, Darbhanga, Gopalganj, Khagaria, Madhubani, Motihari, Madhepura, Patna, Purnea, Sasaram (Rohtas) and Vaishali.

Non-realisation of revenue due to non-pursuance of certificate proceedings

3.2.20 In the excise district of Gopalganj, it was noticed that the CO had called for certain informations/details of the dealers in 36 cases involving Rs 6.74 lakh in August 1999, but the same was not supplied by the RO, Gopalganj so far. Thus, the failure on the part of RO in supplying the required information resulted in non-realisation of Rs 6.74 lakh.

Recommendations

3.2.21 There was loss of revenue due to less recovery of alcohol from molasses, non/belated settlement of excise shops, non-realisation of additional licence fee and inadequate steps taken to realise arrears.

The Government may consider taking following action:

- enforce the minimum recovery requirements of alcohol from molasses as per prescribed norms..
- take effective steps for timely settlement of excise shops to avoid loss of excise revenue.
- take appropriate action to realise the long outstanding arrears.

The matter was reported to Department in September 2003 and Government in September 2003; their replies were awaited (August 2004).