

CHAPTER-III : STATE EXCISE

3.1 Results of Audit

Test check of the records of the excise offices, conducted in audit during the year 2003-2004, revealed under assessments and losses of revenue of Rs 32.37 crore in 97 cases, which broadly fall under the following categories.

Sl. No.	Categories	No. of cases	(Rupees in Crore)
			Amount
1	Loss of revenue due to low yield of spirit	4	0.98
2	Non/delayed settlement of excise shop	35	16.68
3	Non realisation of license fee	11	0.76
4	Excess payment/non-realisation of cost price	5	0.04
5	Other cases	42	13.91
	Total	97	32.37

During the year 2003-2004, the concerned Department accepted under assessments etc., of Rs 0.58 crore involved in 8 cases which had been pointed out in audit during earlier years.

A few illustrative cases involving tax effect of Rs 6.08 crore are discussed in the following paragraphs:-

3.2 Loss of revenue due to non-settlement of excise shops

Under the Bihar Excise Act, 1915 and rules framed thereunder, the licences for retail vend of country spirit (CS), spiced country spirit (SCS) and India made foreign liquor (IMFL) are settled annually at auction by the Collector and if reserved/upset fee is not obtained, the Collector of the district may, at his discretion, settle the shops below reserved fee provisionally subject to approval by the Excise Commissioner. The department issued (June 1995) instructions to all Collectors to operate the unsettled excise shops departmentally.

In six excise offices¹, it was noticed in December 2003 and January 2004 that 27 CS shops, 40 SCS shops and 21 IMFL shops remained unsettled or inoperative departmentally during 2001-2002 and 2002-2003. This resulted in loss of excise duty and licence fee of Rs 5.08 crore as worked out on the basis of minimum guaranteed quota (MGQ) and reserve fee respectively fixed for the concerned excise shops.

After this was pointed out by audit in December 2003 and January 2004, the Assistant Commissioner of Excise (ACE), Patna and the Superintendent of Excise (SE), Samastipur stated in December 2003 and January 2004 that the shops could not be settled inspite of efforts as no bidder turned up. The SEs² in respect of four offices stated between August and September 2004 that the shops could not be

¹ Bettiah, Bhagalpur-cum-Banka, Nalanda, Patna, Samastipur and Saran,

² Bettiah, Bhagalpur-cum-Banka, Nalanda and Saran

run departmentally as the Department had not issued any instructions regarding the modalities to run the shops.

The reply of the department was not tenable as no efforts were made to run the shops departmentally or to settle them below the reserved fee.

The cases were reported to the Government between March and June 2004; their reply has not been received (September 2004).

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

Under condition No. 14(b) of the sale notification issued (February 2002) by the department for settlement of shops, successful bidder is required to deposit six month's 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 the licence shall be cancelled and security money forfeited. Further, each licensee of the shop is required to lift the approved minimum guarantee quota (MGQ) of the CS, SCS, IMFL and beer by last day of the month. In case of any failure to comply with the conditions of sale notification, action is required to be taken against the licensee under section 42 of the BE Act. Further, under departmental instructions of June 1995, unsettled excise shops are required to be operated departmentally.

In two excise offices (Nalanda and Saran) it was noticed in September and December 2002 that licences of 6 CS and 9 SCS shops were cancelled between September 2002 and December 2002 due to non-payment of licence fee and short lifting of MGQ by retail licensees. These shops remained unsettled after cancellation upto March 2003 and were not run departmentally also. This resulted in loss of excise revenue of Rs 17.72 lakh as worked out on the basis of MGQ and reserve fee respectively fixed for the concerned excise shops.

After this was pointed out in December 2003, the SEs, Nalanda and Saran stated that despite efforts the shops could not be settled, as no bidder turned up and the shops could not be run departmentally as the department had not issued any instructions regarding modalities to run the shops.

The reply of the department was not tenable as the unsettled shops were not operated departmentally in contravention of instructions.

The matter was reported to the Government in March 2004; their reply has not been received (September 2004).

3.4 Loss of revenue due to low recovery of spirit from molasses

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

Test check of records of SE, McDowell Distillery, Hathidah, Patna revealed that 1,54,075.22 quintal of molasses was consumed in the distillery during the period

from October 2002 to September 2003 out of which 31,31,732.20 LPL alcohol was actually recovered against 31,88,963.85 LPL alcohol required as per norms. Short recovery of 57,231.65 LPL of spirit resulted in loss of revenue amounting to Rs 57.23 lakh.

After this was pointed out in audit, the SE stated (October 2003) that action for recovery would be taken after review.

The matter was reported to the Government in February 2004; their reply has not been received (September 2004).

3.5 Undue advantage to retail vendor

Under condition 18 of the sale notification, every bidder is required to lift a fixed MGQ of CS, SCS and IMFL failing which defaulter licensees are liable to be penalised or their licences are to be cancelled under section 68 and 42 of the Bihar Excise Act, 1915. Further, as per condition 15 (*Kh*) of the sale notification licensee is responsible to make available objection free site and in case he fails to start the shop within a month, the licence shall be cancelled without any opportunity to be heard and without any claim for refund of any advance fee and security money deposited by the licensee.

Test check of records of ACE, Patna revealed that CS shop, Lodipur was settled in March 2002 at monthly licence fee of Rs 35,300 per month. The licensee deposited the licence fee for the entire year 2002-2003 but could not open the shop as the licensee failed to provide objection free site for the shop. The Department neither cancelled the licence nor the shop was re-auctioned / run departmentally. This resulted in loss of Rs.16.59 lakh in shape of excise duty as worked out on the basis of MGQ of CS fixed for the shop.

After this was pointed out in audit, the department stated in December 2003 that shop could not be opened due to non-availability of objection free site in the area. The reply was not tenable as the Department failed to cancel the licence and run the shop departmentally.

The matter was reported to the Government in March 2004; their reply has not been received (September 2004).

3.6 Non-realisation of revenue due to default in payment of advance licence fee

The Bihar Excise Act, and the Rules framed thereunder provide that in settlement of excise shops, a person whose bid has been accepted by the Presiding Officer, at the auction, must pay six months advance licence fee immediately. Notification for sale of excise shops issued each year in the prescribed form-127 further stipulates that when a shop is knocked down, the purchaser is liable for any loss that may accrue to Government in case it becomes necessary to re-sell the shop for a lower sum or to keep it non-settled in consequence of his failure to pay the sum at the time of sale. Further, the notification also provides for deposit of security money equal to the reserved fee of the shop by the bidder.

In Bhagalpur-cum-Banka Excise district, one CS, one SCS and one IMFL shop were settled between March 2002 and April 2002 for the year 2002-2003 through auction without obtaining security money, at monthly licence fee of Rs 20,812 per month, Rs. 1,200 per month and Rs 21,318 per month respectively. The bidders of these three shops failed to deposit the advance licence fee for six months as required under the rules and shops remained unsettled for the entire financial year. The Department did not take any action to cancel the settlement and re-auction / run the shops departmentally. This resulted in loss of revenue of Rs. 8.90 lakh as licence fee and excise duty as worked out on the basis of reserve fee and MGQ respectively fixed for the concerned excise shops.

After this was pointed out in September 2003, the SE stated that action would be taken after examination. Further reply has not been received (September 2004).

The matter was reported to Government in April 2004; their reply has not been received (September 2004)