Chapter - III: State Excise, Entertainment and Luxury Tax

3.1 Results of audit

Test check of records relating to State excise, entertainment and luxury tax conducted in audit during the year 2004-05 revealed non/short levy of fee/tax and other irregularities involving Rs.12.27 crore in 34 cases which broadly fall under the following categories:

(Rupees in crore)

Sl. No.	Categories	No. of cases	Amount
1.	Non/short levy of fee/tax	8	3.48
2.	Loss of revenue/blockage	5	1.98
3.	Others	21	6.81
	Total	**34**	**12.27**

During the course of the year 2004-05, the department accepted non/short levy of fee/tax and loss of revenue of Rs. 0.79 crore out of which Rs.10.25 lakh was recovered at the instance of audit.

A few illustrative cases involving Rs.5.46 crore highlighting important observations are given in the following paragraphs.

3.2 Loss of vend fee

Grant of licence for sale of Indian made foreign liquor (IMFL), and conditions relating thereto, are fixed and issued by excise department every year. The lowest exdistillery price (EDP) net of all duties/fees, discounts/commissions of whatsoever nature allowed in respect of any market in India forms the basis for fixation of wholesale price for NCT Delhi.

As per terms and conditions fixed by excise department for the grant of licence for the year 2003-04, maximum wholesale price of cheaper brand of IMFL was to be fixed upto Rs.20 per quart. However a distillery quoted Rs.18.48 per quart for its cheaper brand, against which, the department allowed Rs.20 per quart. This resulted in short realisation of Government revenue by Rs.4.02 lakh on sale of 2.65 lakh quarts sold as cheaper brand.

The matter was referred to Government in July 2005; no reply has been received as of December 2005.

3.3 Loss due to short supply of country liquor

The terms and conditions for the grant of L-9 licence stipulate inter alia that if the quantity ordered by the Collector on monthly basis is not supplied by the licensee by the last date by which the supplies should have been made, the Collector shall procure such quantities of country liquor of a comparable quality from a readily available alternative source at the risk and expense of the licencee without giving any further opportunity to the licencee.

Test check of the records relating to the State Excise Commissioner between February and March 2005 revealed that a distillery defaulted by short supply of 1,16,448 cases as depicted in the supply table position at the end of each of the months from June 2003 to 15 May 2004. The department however procured only 74,949 cases at the risk and expense of the distillery. Non procurement of balance 41,499 cases led to revenue loss of Rs.1.16 crore based on the procurement at the highest accepted rate of Rs.129.50 per case.

The department stated in July 2005 that the distillery was asked to supply 4,74,300 cases of which they supplied 3,92,951 cases. The balance quantity of 81,349 cases was subsequently purchased at the risk and cost of the distillery. The reply was not tenable as the distillery was asked to supply 4,87,800 cases during June 2003 to 15 May 2004 and not 4,74,300 cases and they supplied 3,71,352 and not 3,92,951 cases during this period. The default quantity of 41,499 cases was not procured by the Collector which resulted in the revenue loss pointed out in audit.

Thus, failure of the department to procure 41,499 cases of country liquor at the risk and cost of the defaulting supplier resulted in revenue loss of Rs.1.16 crore.

3.4 Loss due to reduction in element of excise while fixing retail price of country liquor

Tenders are invited every year by the Excise Commissioner for wholesale supply of country liquor through licensed vends in NCT of Delhi. In March 2003, sealed tenders were invited for procurement of 400-500 lakh bulk liters of country liquor for the year 2003-2004, i.e. from 1 May 2003 to 31 March 2004. In response, 15 tenders were received which were considered by the negotiation committee in April 2003. As the lowest tenderer was not in a position to supply the entire required quantities, Government decided to place orders for procurement of country liquor with eight wholesellers at varying rates as follows:

Rates per case (Rs.)	No. of suppliers	Percentage quantity to be supplied
119.50	1	9
128.50	2	28
129.00	2	27
129.50	3	36

Test check of records of the office of Commissioner of State Excise between February and March 2005 revealed that in order to fix a uniform selling price of Rs.40 per bottle, the department reduced the excise component from Rs.10.84 to Rs.10.04 per bottle to maintain the price line. This resulted in loss of revenue of Rs.3.44 crore. It was observed in audit that such reduction in the excise element was both unnecessary as well as unjustified as the impact of maintaining the excise component to avoid the revenue loss would have been only a marginal rise in the selling price per bottle from Rs.40 to Rs.41 which could have been absorbed by the consumers.

The department stated in July 2005 that the negotiating committee had fixed the price and the quantities to be ordered from each supplier after considering all the factors and that there was no departure from the prescribed procedure. The reply does not address the point of reduction in the excise element while fixing the prices. This reduction in excise element was clearly not in the interest of revenue as it resulted in loss of state excise of Rs.3.44 crore.

3.5 Loss due to delayed implementation of reduced export pass fee

Government of NCT of Delhi imports Indian made foreign liquor (IMFL) from Punjab distilleries every year. The export pass fee payable to Punjab State constitutes a component while fixing the wholesale price/retail price of country liquor in Delhi.

Test check of records of the excise department during February and March 2005 revealed that the Punjab Government reduced the export pass fee from Rs.13.50 to Rs.1.69 per case w.e.f. 1 April 2004. The excise department however revised the price structure with effect from 4 June 2004 instead of 1 April 2004 and continued to pay export pass fee at pre revised rates during the intervening period in which 1,07,956 cases of country liquor obtained from five Punjab distilleries were sold in Delhi. This resulted in higher wholesale price to the distilleries and loss of revenue of Rs.13.37 lakh to Government.

After this was pointed out, the department confirmed a recovery of Rs.10.25 lakh made from the distilleries. Further position of recovery has not been intimated as of December 2005.

3.6 Non recovery of entertainment tax

Rule 26 of the Delhi Entertainments and Betting Tax Rules, 1997 stipulates that every cable television operator shall file a monthly return in Form 10 showing the number of subscribers and the tax due from them. Section 15 of the Delhi Entertainments and Betting Tax Act, 1996, provides inter alia that in case the operator fails to submit his monthly returns, the assessing authority may finalise the assessment. Any demand of tax not paid by the operators within the prescribed time period is recoverable under the Act ibid as arrears of land revenue under the Delhi Land Reforms Act, 1954.

Audit of the office of the Commissioner of Entertainment and Luxury Tax revealed that three cable operators did not file their monthly returns. Of these, two operators had not obtained any permission for conducting the business while the third operator had obtained permission in 2002 and paid Rs.0.44 lakh. None of the operators were however assessed till October 2002 to January 2003 when complaints were received against the operators though the operators were stated to be in operation since 1 April 1998, i.e. after a lapse of four to five years. The tax due from the above operators amounted to Rs.68.54 lakh.

As the operators failed to pay the amount, the department initiated certificate proceedings against them in December 2002 and March 2003. However, it failed to effectively pursue the recovery certificates as envisaged in the Act other than routinely reminding the concerned deputy commissioner. This lack of action on the part of department resulted in non realisation of Government dues of Rs.68.54 lakh.

The department stated in November 2005 that the objections raised by audit had been noted and they have since started regular monitoring of monthly returns along with launching and pursuing recovery proceedings against defaulting cable operators. In so far as the specific cases were concerned, orders of attachment of property have since been issued in one case, summons served in the second and warrant of arrest issued in the third case. The fact remained that Government dues were yet to be recovered and such undue delay in enforcing the provisions of the Act complicates and reduces the probability of such recovery.