

CHAPTER V STATE EXCISE

5.1 Results of audit

Test check of the records of the offices of the State Excise Department conducted during the year 2006-07 revealed non/short realisation of revenue due to low yield of spirit from molasses, non/short demand of differential cost of establishment, etc., amounting to Rs. 126.57 crore in 31 cases which fall under the following categories:

(Rupees in crore)			
Sl. No.	Category	No. of cases	Amount
1.	Excise receipts from distilleries, breweries and KSBC ¹	2	125.09
2.	Low yield of spirit from molasses	1	1.03
3.	Non/short demand of differential cost of establishment	14	0.06
4.	Other lapses	14	0.39
Total		31	126.57

During 2006-07, the department accepted underassessments and other deficiencies of Rs. 7.59 lakh involved in 23 cases of which six cases involving Rs. 1.28 lakh were pointed out during 2006-07 and the rest in the earlier years. The department recovered Rs. 7.48 lakh in 23 cases pointed out in the earlier years.

A few illustrative cases involving Rs. 124.91 crore are mentioned in the succeeding paragraphs.

¹ Kerala State Beverages Corporation

5.2 Loss due to non-levy of import fee

Under the Kerala Abkari Act (Abkari Act) and the Foreign Liquor Rules, 1953 (FL Rules), plain rectified spirit including absolute alcohol, intended to be used for the manufacture of liquor meant for human consumption, manufactured in India and or outside and imported into the State is 'foreign liquor'. As such extra neutral alcohol (ENA), grape spirit, malt spirit, etc., imported into the State from other States for the manufacture of potable liquor, come under the classification of Indian made foreign liquor (IMFL). As per a notification issued in March 1996, import of IMFL other than beer attracts import fee of Rs. 5 per proof litre².

Nine distilleries and six FLCBB³ units imported 2,496.36 lakh proof litres of spirit (ENA, grape spirit, malt spirit, etc.) from other States for manufacture of liquor meant for human consumption during the period from 2001-02 to 2005-06. However, the department failed to collect the import fee while issuing import permits though export fee prescribed in the same notification on export of spirit meant for manufacture of potable liquor was levied by it. Import/export permits of other States available at the institutions test checked revealed that other States are levying import fee on spirit imported into their States from Kerala and export fee for export of spirit/ENA to Kerala. Loss due to non-levy of import fee on 2,496.36 lakh proof litres of spirit imported amounted to Rs. 124.82 crore as mentioned in Annexure I.

The case was pointed out to the department between July 2006 and May 2007 and reported to the Government in June 2007. The Government stated in August 2007 that though IMFL included rectified spirit, import fee could not be levied in view of the Supreme Court decision in the case of Synthetic and Chemicals Vs. State of UP and others of October 1989 holding that rectified spirit was not an alcohol fit for human consumption but an industrial alcohol which was outside the purview of State legislation. The reply is not tenable as in a subsequent decision (Bihar distillery and ANR Vs. Union of India and others) of January 1997, the Supreme Court held that so far as the rectified spirit supplied or utilised for potable purpose was concerned, levy of excise duty and all other control shall be that of States.

The Government further stated that the matter would be referred to the Law Department and the rate of fee for import/export of plain rectified spirit/ENA would also be notified if required. The reply regarding notification of separate rate for rectified spirit, ENA is not tenable as import fee of Rs. 5 per proof litre is already specified for the same. Further report has not been received (December 2007).

² Spirit having same alcohol content as one litre of 'proof spirit', i.e., a mixture of alcohol and water with alcohol content 57.06 *per cent* by volume at 60^o F.

³ Foreign Liquor Compounding Blending and Bottling

5.3 Incorrect allowance of wastage in transit and storage of molasses

The Abkari Act and Rules made thereunder do not provide for any allowance of wastage of molasses in transit or storage. However, the erstwhile Board of Revenue directed in October 1978 that wastage of one *per cent* each can be allowed in transit and storage of molasses used in the manufacture of spirit.

A total quantity of 464.097 MT of molasses was unauthorisedly allowed as wastage in McDowell distillery and Travancore Sugars and Chemicals Ltd. between April 2001 and March 2006. As per the norms fixed by the Central Board of Molasses, 1.73 lakh proof litres of spirit involving excise duty of Rs. 26.87 lakh could have been produced from the above quantity.

After the case was pointed out to the department in August 2006 and April 2007 and reported to the Government in June 2007, the Government stated in August 2007 that one *per cent* wastage allowed in transit and storage of molasses would be withdrawn. Further report has not been received (December 2007).

5.4 Irregular exemption from payment of tax

Under the Tree Tax Rules, 1954, a licence is to be obtained for tapping or drawing toddy from toddy producing trees such as coconut, palmyrah and choondapana palms. Persons applying for this licence should remit tree tax in respect of the trees which they desire to tap. Tree tax per coconut tree is Rs. 30 per half year. The Government in September 2002 and April 2003 exempted committees with representatives of employees of toddy shops/trade unions, constituted to run toddy shops, from the payment of tree tax for the years 2002-03 and 2003-04.

In excise circle offices Irinjalakuda and Kochi, committees/samitis of representatives of toddy workers running toddy shops during 2004-05 were exempted from the payment of tree tax on 10,469 coconut trees, even though exemption was not in force during that year. Incorrect exemption resulted in non-levy of tree tax of Rs. 6.28 lakh.

After the case was pointed out in January and February 2006, circle inspectors of excise stated that the exemption has been extended to 2004-05 also. However, order sanctioning such exemption is not available with either the department or the Government.

The matter was reported to the Government in January 2007; their reply has not been received (December 2007).

5.5 Non-demand of differential cost of establishment

As per the proceedings (June 1999) of the Excise Commissioner, rates of average cost of pay and allowances, leave salary and pension contribution (LS&PC), etc., recoverable on excise supervisory staff deputed for the

supervision of distilleries, KSBC warehouses, etc., were revised with effect from 1 March 1997. The combined rate of LS&PC specified therein was 25 *per cent* of the average cost of pay. As it was not in conformity with the provisions of the Kerala Service Rules, the Commissioner ordered in May 2005 that LS&PC should be recovered at 25 *per cent* of the maximum of the scale of pay from 1 March 1997 onwards.

In three institutions⁴, in respect of excise officers posted on deputation, recovery of LS&PC at 25 *per cent* of the maximum of the scale of pay was effected only during the period between August 2005 and February 2006. However, no action was taken to demand arrears for the prior period. This resulted in short recovery of LS&PC amounting to Rs. 3.22 lakh.

After the case was pointed out to the department between January and November 2006 and reported to the Government in February 2007, the Government stated in March 2007 that Rs. 1.87 lakh was collected in July 2006 from warehouse at Kannur and distillery at Pudukkad. Reply in the remaining case has not been received (December 2007).

⁴ Kaycee Distillery, Pudukkad and KSBC warehouses at Kannur and Nedumangad.