

CHAPTER III : STATE EXCISE

3.1 Results of audit

Test check of records of State Excise conducted during 2005-06 revealed non assessment, under assessment, loss of revenue and non levy of penalty amounting to Rs. 77.12 crore in 5,405 cases, which can broadly be categorised as under:

(Rupees in crore)

Sl. No.	Category	Number of cases	Amount
1.	Non realisation of licence fee from excise shops	346	7.54
2.	Loss in re-auction/bidding of excise shops.	93	7.26
3.	Non levy of penalty for breach of licence conditions.	878	8.30
4.	Non levy/recovery of duty on excess wastages.	2446	0.55
5.	Non levy of penalty on non-maintenance of minimum stock of country spirit/rectified spirit.	44	3.83
6.	Others	1598	49.64
	Total	5,405	77.12

During the year 2005-06, the Department accepted underassessment of tax of Rs 39.03 crore involved in 1,110 cases of these 972 cases involving Rs. 27.10 crore were pointed out during 2005-06 and remaining cases in earlier years . Rs. 3.25 crore has been recovered in 88 cases.

A few illustrative cases involving Rs.7.67 crore are mentioned in this chapter.

3.2 Non recovery of licence fee from defaulting licencees

Madhya Pradesh Excise Act, 1915 and conditions of sale of retail shops provide that the successful applicant/tenderer shall pay prescribed basic licence fee and security deposit before issue of licence. If he does not deposits the same or deposits it partly, the deposits made by him shall be forfeited and shop be resold. The successful applicant/tenderer is granted licences and annual licence fee¹ is payable in equal 24 fortnightly instalments in the prescribed manner. In case of default authority granting licence is empowered to cancel or suspend the licence. Where a licence is cancelled, the Collector may take charge of management of such shops or resell the shops at the risk and cost of ex-licensees. The loss, if any sustained in this process, would also be recovered as excise revenue from defaulter.

Test check of records of four district excise offices² (DEOs) between May and December 2005 revealed that licences of 32 retail shops of liquor were granted for the year 2004-2005 or part thereof for an aggregate licence fee of Rs.7.95 crore. The licensee were required to deposit security of Rs.1.32 crore. Of this 20 licensees did not deposit security at all while 12 licensees deposited only Rs.9.39 lakh. As such basic licence fee of Rs.71.69 lakh and security deposited by the licensee was required to be forfeited and shops were required to be resold. The department, however allowed the licensees to run the liquor shop.

Further, all the licensees defaulted in making payment of fortnightly instalment of licence fee. No action for cancellation of licence was taken in 13 cases, while licences of remaining 19 shops were cancelled after a lapse of 1 to 9 months from the date of their default. After cancellation of licences, these shops were either run departmentally or were retendered. During this process the department suffered a loss of Rs.1.96 crore which was recoverable from defaulters. No action was taken to recover the same from the defaulters.

After this was pointed out the Excise Commissioner intimated in June and July 2006 that RRC were issued in 31 cases and in one case it was being issued. It was further stated that Rs. 21.14 lakh was recovered between June 2005 and May 2006 in respect of three shops and action for recovery was in progress; final reply had not been received (January 2007).

The matter was reported to Government between August 2005 and February 2006; reply had not been received (January 2007).

3.3 Non realisation of excise duty on unacknowledged export of liquor

Madhya Pradesh Excise Act, 1915 and Rules made thereunder provide that if an exporter exports foreign liquor/beer and country liquor within India, without payment of duty, he shall obtain a verification report from the officer-incharge of the importing unit and furnish it to the authority who issued the

¹ Annual licence fee = Annual value - basic licence fee.

² *Chhindwara, Gwalior, Jabalpur, Ratlam .*

export permit within 21 days/ one month of the expiry of period of permit. If the exporter fails to do so, duty leviable on liquor exported shall be recovered from exporter in addition to any other penalty, which may be imposed under rules.

Test check of records of three DEOs³ between June 2005 and February 2006 revealed that four licensees exported 2,00,204.21 proof litre of foreign liquor, 32,760 bulk litre of beer and 4,482 proof litre of country liquor on 72 permits during January 2004 to December 2005. The verification reports were not received even after a lapse of one to 22 months from the date of expiry of the permits. No action to recover the duty was taken by the department. Failure of department to recover duty resulted in non realisation of excise duty of Rs.3.10 crore.

After this was pointed out, the excise officers Dhar and Morena stated between December 2005 and February 2006 that action to collect verification report would be taken. The reply was not tenable as non receipt of verification reports within specified period of 21 days/one month excise duty was required to be recovered from exporters.

The matter was reported to the Excise Commissioner and Government between August 2005 and April 2006; their reply had not been received (January 2007).

3.4 Incorrect allowance of wastage of spirit in re distillation

Madhya Pradesh Distillery Rules, 1995, do not provide for any allowance for wastage of rectified spirit (RS) during re distillation for manufacturing extra neutral alcohol (ENA).

Test check of three distilleries of Dhar and Rajgarh district revealed that 144.31 lakh proof litre of RS was redistilled to produce ENA between October 2003 and October 2005 and wastage of 2.12 lakh proof litre RS was allowed. This was not admissible and resulted in loss of excise duty of Rs.1.98 crore.

After this was pointed out, the Excise Commissioner stated in June 2006 that the wastages of RS during manufacture of ENA was allowed under Rule 6 (2) of Madhya Pradesh Distillery Rules, 1995. Rule 6 (2) read with Rule 4 related to wastage in respect of spirits which was below standard or unfit for human consumption. The reply was not tenable as the RS used was neither unfit for human consumption nor was below standard. It was used for making of superior quality of liquor like brandy, gin and whisky etc.

The matter was reported to Government between February and April 2006 reply had not been received (January 2007).

³ Dhar, Gwalior, Morena

3.5 Inadmissible wastage of spirit

Madhya Pradesh Distillery Rules 1995 provides that in case of wastages beyond permissible limit, during transport/export of spirit in tankers penalty at the rate not exceeding Rs.30 per proof litre shall be leviable. Madhya Pradesh Country Spirit Rules, 1995 provide that in case of wastages beyond permissible limits during transport of country spirit in sealed bottles, duty at prescribed rates shall be recovered from licensee.

Test check of records of four DEOs⁴ revealed between August 2005 and February 2006 that 54.53 lakh proof litre RS was exported in tankers by three distilleries⁵ during September 2003 to December 2005 but only 54 lakh proof litre was acknowledged by the importing states. Wastage of 0.42 lakh proof litre was in excess of permissible limit of 0.11 lakh proof litre. Penalty up to Rs.12.68 lakh could have been levied on excess wastages of 0.42 lakh proof litre. Further, 11.64 lakh proof litre of country spirit was transported by four manufacturing warehouses⁶ to storage warehouses during January 2004 to January 2006 but only 11.51 lakh proof litre was acknowledged by storage warehouses. Wastage of 7,223.5 proof litre was in excess of permissible limit of 5,821.8 proof litre on which leviable duty worked out to Rs.7.84 lakh. Thus total amount of penalty/duty leviable worked out to Rs.20.52 lakh which was not levied and recovered by the department. This resulted in non realisation of penalty/duty of Rs.20.52 lakh.

After this was pointed out, the Excise Commissioner intimated in July 2006 that action for levy/recovery of duty and penalty was in progress. Final reply had not been received (January 2007).

The matter was reported to Government between January & April 2006, reply had not been received (January 2007)

3.6 Non recovery of Government dues .

According to the provisions of the Madhya Pradesh Excise Act, 1915 and rules made thereunder, any licensed vendor of intoxicants may be required to purchase the intoxicants left by an outgoing licensee after the expiration, suspension or cancellation of his licence, on payment of such price of intoxicant as the district excise officer may determine. Further, in the event of enhancement of rates of duty by the government on intoxicants covered by various licences, the licensees are liable to pay the differential duty within thirty days in respect of the stock held by them at the close of the day immediately preceding the day from which such enhancement was applicable. The Government in its notification dated 12 April 2004 revised the rate of excise duty on country liquor from Rs. 24 to Rs. 105 per proof litre with effect from 1 April 2004.

⁴ Dhar, Hoshangabad, Mandsaur, Rajgarh

⁵ M/s Great Galeon Distillery, Sejwaya (Dhar),
M/s Oasis Distillery Borali (Dhar)

M/s Vindhyaachal Distillery, Pilukhedi (Rajgarh)

⁶ Betul, Dhar, Manduar, Narsingharh (Rajgarh)

Test check of records of DEOs Jabalpur and Vidisha in May and September 2005 revealed that three country liquor and 12 foreign liquor shops were disposed off in favour of retail vendors after being run departmentally from April to June 2004 and May 2004 to March 2005 respectively. Intoxicants valued at Rs.25.36 lakh were transferred to new vendors. The vendors paid only Rs.6.21 lakh leaving unpaid balance of Rs.19.15 lakh. Further, there was a balance of 6602.41 proof litre of country liquor in possession of two retail licensees at the close of 31 March 2004 on which the differential duty of Rs.5.35 lakh was payable by the licensees. However, licensees paid only Rs.1.73 lakh and balance of Rs.3.62 lakh was not paid. No action was taken by the department to realise the balance amount. This resulted in non-realisation of Government dues to the extent of Rs.22.77 lakh.

After this was pointed out, the Excise Commissioner intimated in June 2006 that Rs. 16.49 lakh has been recovered in respect of cost of liquor between May 2005 and April 2006. As regard differential duty, it was stated that licensees were directed in June 2006 to deposit the dues. Final reply had not been received (January 2007).

The matter was reported to Government between August 2005 and April 2006; reply had not been received (January 2007).

3.7 Non realisation of expenditure incurred on Government establishment.

Madhya Pradesh Distillery Rules, 1995 provide that if the expenditure incurred on the State Government establishment at a distillery exceeds five *per cent* of revenue earned on the issue of spirit there from by export fee or any other levy, amount in excess of the aforesaid five *per cent* of revenue earned in distillery shall be realised from the distiller.

Test check of records of three DEO⁷ between November 2005 and February 2006 revealed that expenditure incurred on the State Government establishment on account of pay and allowances in three distilleries⁸ was Rs.20.21 lakh and revenue earned by Government was Rs.15.59 lakh during April 2001 to November 2005. Consequently an amount of Rs.19.43 lakh incurred in excess of five *per cent* of revenue earned was required to be realised from the distillers. No action was taken by the department to recover the same.

After this was pointed out the Excise Commissioner intimated in July 2006 that D.E.O. Dhar and Ratlam had asked the distiller in April 2006 to deposit the amount.

The matter was reported to Government (March and April 2006); reply had not been received (January 2007).

⁷ Dhar, Rajgarh, Ratlam

⁸ M/s Oasis Distillery Borali, Dhar

M/s Vindhyachal Distillery Pilukhedi, Rajgarh

M/s Ratlam Alcohol and Carbon dioxide Plant Ratlam

3.8 Non recovery of excise revenue due to absence of provisions for obtaining details of property

Madhya Pradesh Excise Act, 1915 provides that all dues to Government that have not been paid by the defaulters may be recovered as arrears of land revenue. Assistant Excise Commissioner (AEC)/DEO has been delegated power of recovery of uncollected excise revenue as arrears of land revenue.

3.8.1 In Indore, demand notices in two cases of revenue recovery certificates were issued for recovery of excise revenue aggregating to Rs.36.76 lakh for the year of 2001-2002. The notices, however, could not be served as the address of the defaulter were found fake. This indicated that department had not verified the antecedents of the licensees at the time of grant of licence, because of which government revenue could not be realised and are likely to become irrecoverable.

After this was pointed out, the AEC, Indore stated in January 2006 that the defaulters were not traceable and action regarding write off of the excise revenue was in progress.

3.8.2 Test check of records of the DEO, Neemuch in June 2005 revealed that in one case, recovery of excise revenue of Rs. 32.04 lakh for the year 2004-2005 could not be made as details of the properties were not available with the department or the defaulter had no property. As such, recovery of the excise revenue was not feasible.

After this was pointed out the DEO Neemuch intimated in April 2006 that RRC was sent to collector Chittorgarh (Rajasthan) to which defaulter belonged who intimated that the defaulter had no property, so recovery was not possible. DEO had sent proposal to write off the dues to the Excise Commissioner in December 2005.

The fact remains that the non recovery of Government dues was due to absence of provisions for ascertaining the financial status and non-verification of antecedents of licensee at the time of grant of licence.

The matter was reported to the Excise Commissioner and the Government between August 2005 and April 2006; their replies had not been received. (January 2007).