

CHAPTER- III
STATE EXCISE

3.1 Results of Audit

Test-check of records of State Excise, conducted during 2002-2003 revealed non-assessment, under-assessment loss of revenue and non-levy of penalties amounting to Rs.160.36 crore in 15,154 cases as under:

(Rupees in Crore)

S. No.		Number of cases	Amount
1.	Review on uncollected Excise Revenue	01	45.57
2.	Non-levy of penalty for breach of conditions of licence	132	0.49
3.	Accumulation of arrears of licence fees/ auction money	231	23.03
4.	Loss of revenue due to low yield of alcohol	13	6.43
5.	Loss in foreign liquor trade in Madhya Pradesh	605	0.93
6.	Non-levy/recovery of duty on excess wastage	4,473	6.24
7.	Loss of revenue to Government due to acceptance of low auction bids/tender rates	373	19.46
8.	Others	9,326	58.21
	TOTAL	15,154	160.36

A review, **Uncollected Excise Revenue**, and other important observations involving Rs.54.08 crore are discussed in the following paragraphs:

3.2 Review : uncollected Excise Revenue

Highlights

- In 14 cases involving government revenue of Rs.3.12 crore, the recovery could not be made in absence of the details of property of the defaulters.

(Paragraph 3.2.6)

- Demand notices in revenue recovery certificate cases involving Rs.11.29 crore could not be served as the addresses of the defaulters were found fake.

(Paragraph 3.2.7)

- Demand notice in 38 cases involving Rs.3.60 crore were not issued resulting in non-realisation of government revenue.

(Paragraph 3.2.8)

- Service charges of Rs.1.36 crore recoverable from Madhya Pradesh Agro Industries Development Corporation were not realised.

(Paragraph 3.2.11)

Introduction

3.2.1 Every licensee holding licence for production of alcohol, manufacture of liquor and for wholesale or retail vend of excisable intoxicants is required to pay excise duty and licence fee and other fees in accordance with the provisions of Madhya Pradesh Excise Act, 1915 and Rules made thereunder. The licences to sell excisable intoxicants by retail venders is granted by auction and licences to wholesale venders are granted on fixed licence fee which is renewed for every year.

Audit objectives

3.2.2 Test-check of records of the office of the Excise Commissioner and 13 out of 45 offices was conducted for the period from 1997-98 to 2002-03 with a view to obtain assurance on :

- Prompt collection of excise revenue and its remittances into the government account.
- Compliance of various provisions of the Act, rules and procedures by departmental authorities.
- Adequacy of internal control in recovery of the uncollected excise revenue.

Organisational Set up

3.2.3 The Principal Secretary, Commercial Tax Department is the administrative head of the department at government level. The Excise Commissioner (EC) is the Head of the Department and is assisted by two Additional Excise

Commissioner (Addl. EC), one Deputy Excise Commissioner (DEC), one Assistant Excise Commissioner (AEC) and two District Excise Officers (DEOs) at the head quarters at Gwalior. There are seven division in the State each headed by DEC. In addition each division has its own flying squad working under DEC. There is a State level flying squad working under over all control of EC. Collector is the head of Excise Administration in the District and is assisted by AEC/DEO at division/district.

Position of arrears of Excise Revenue

3.2.4 The position of uncollected excise revenue is watched at the Commissioner's level, through returns submitted by DEOs. Rupees 51.99 crore were outstanding on account of uncollected excise revenue as on 31 March 2003 with the following year-wise and age-wise break up :

- Yearwise break up :

Sl. No.	Year	Amount (Rs. in crore)
1.	Up to 1997-98	33.98 ¹
2.	1998-99	1.25
3.	1999-2000	1.31
4.	2000-2001	3.53
5.	2001-2002	11.92
	Total	51.99

- Agewise breakup :

Sl. No.	Agewise period	Amount (Rs. in crore)
1.	More than 10 years	20.66
2.	Between 4 to 10 years	13.32
3.	Between 3 to 4 years	1.25
4.	Between 1 to 3 years	16.76
5.	Less than one year	Nil
	Total	51.99

It would be seen from above that forty percent of the revenue remained uncollected for more than 10 years, of which Rs.14.58 crore were pending against defaulters declared insolvent. Details of such defaulters were not made available to audit.

Non-recovery of Excise Revenue

3.2.5 Madhya Pradesh Excise Act, 1915 provides that all dues to the Government that have not been paid by the defaulters may be recovered as arrears of

¹ Details like Opening Balance, addition during the year were not furnish by the department.

land revenue under M.P. Land Revenue Code 1959. AEC/DEO has been delegated with powers of recovery of uncollected excise revenue as arrears of land revenue. However, no time limit has been prescribed for treating the defaulters case as Revenue Recovery Certificate cases.

Test-check of the records of AEC, Gwalior revealed that eight cases involving excise revenue of Rs.97.67 lakh relating to the period 1988-89 and 1993-94 were treated as arrears of land revenue from time to time but in none of the cases, recovery was made. The cases were transferred to the Tahsildar, Gwalior in May 2000 for recovery as arrears of Land Revenue. The amount was not recovered by the Tahsildar also. The transfer of cases to Tahsildar was incorrect as the AEC was himself empowered to recover the amount as arrears of land revenue. Thus, incorrect action on the part of department resulted in non-recovery of revenue to that extent.

Absence of Provisions for obtaining details of Property.

3.2.6 Provision for obtaining solvent surety for grant of licence was dispensed with from the year 1991-92 onwards. Moreover, there was no provision for obtaining the details of properties at the time of grant of licence.

Test-check of the records of five districts² revealed that in 14 cases, recovery of excise revenue of Rs.3.12 crore for the period 1991-92 to 2001-2002 could not be made as the details of property were not available with the department. In the absence of these details, no action could be taken by the Department for recovery of the amount as arrears of land revenue.

3.2.7 Test-check of the records of five districts³ revealed that demand notices in 70 cases of revenue recovery certificates were issued for recovery of excise revenue aggregating to Rs.11.29 crore for the period of 1975-76 to 1997-98. The notices however, could not be served as the address of the defaulters were found fake. This indicated that the Department had not verified the antecedents of the licensees at the time of grant of licence because of which government revenue could not been realised.

Non-raising of demand in certificate cases

3.2.8 Madhya Pradesh *Lokdhan (Shodhya Rashiyon ki Vasuli)* Rules 1988 provide for the issue of demand notice to the defaulters within 15 days from the date of receipt of revenue recovery certificate. In case a defaulter fails to deposit the amount within the period mentioned in the demand notice, *kurki* warrant is to be issued. No time limit has been fixed for treating the defaulter cases as arrears of land revenue.

- Test-check of the records of seven districts⁴ revealed that in 38 revenue recovery certificate cases involving excise revenue of Rs.3.60 crore for the period 1991-92 to 2001-2002, demand for recovery was not issued at all resulting in non-realisation of government revenue to that extent.

² Bhopal, Dhar, Jabalpur, Khargone and Sagar

³ Bhopal, Gwalior, Indore, Khargone and Rewa

⁴ Bhopal, Chhatarpur, Dhar, Jabalpur, Khargone, Sagar and Ujjain

- In five cases involving excise revenue of Rs.1.74 crore for the year 1999-2000 and 2001-2002, AEC/DEO had issued demand notices in November 2002 to the licensee. No further action for recovery was taken by the Department and the amount remained uncollected even after 20 months (June 2004).

This was pointed out in audit and all the DEOs stated that action would be taken to recover the same as arrear of land revenue.

Non-vacation of stay orders

3.2.9 Test-check of the records of Jabalpur districts revealed that in two cases of penalty of Rs.4.11 lakh of imposed by EC was stayed by High Court in August 1993. In another case, recovery of government dues on account of penalty of Rs.36.04 lakh of Khargone district imposed by EC was stayed by the Board of Revenue in May 2001. The cases had neither been decided nor any action was taken to get the stay order vacated even though period of 25 to 118 months had elapsed. This resulted in blockage of government revenue to that extent.

Non-raising of demand of process expenses

3.2.10 Under the provisions of Madhya Pradesh *Lokdhan (Shodhya Rashiyon ki Vasuli) Adhiniyam*, 1987, process expenses at the rate of three per cent of the principal amount shall be included by DEO in the demand notice to be issued to the defaulter in cases of revenue recovery certificate.

In eight districts⁵ it was noticed that in 156 cases, process expenses of Rs.64.60 lakh on principal amount of arrear of Rs.21.53 crore were not included in the relevant demand notices issued to the defaulters for the period from 1988-89 to 2002-2003.

This was pointed out in audit and six district officers⁶ stated that revised demand notices would be issued. Final reply from other two DEO had not been received (June 2004)

Non-deposit of share of service charges

3.2.11 Madhya Pradesh Agro Industries Development Corporation (MPAIDC) was the wholesale distributor of Foreign Liquor (FL) during 2001-2002 for Indore division. The Corporation was required to recover 10 per cent as service charges; out of which 50 per cent was required to be deposited in government account.

Test-check of records of AEC Indore revealed that service charges of Rs.2.71 crore were recovered by MPAIDC on sale of foreign liquor worth Rs.27.11 crore during 2001-2002, of which, Rs.1.36 crore being 50 percent of service charges was required to be deposited into government account. The corporation neither deposited the amount nor was any action taken by the Department to recover it.

⁵ *Exact date not available*

Bhopal, Dhar, Gwalior, Indore, Jabalpur, Khargone, Sagar and Ujjain

⁶ *Gwalior, Indore, Jabalpur, Khargone, Sagar and Ujjain*

This was pointed out in audit and the AEC, Indore, accepted to recover the entire amount. However, further action taken had not been intimated (June 2004).

Non-recovery of expenditure incurred on Government establishment

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

Test-check of records revealed that the expenditure on government establishment in nine distilleries⁷ was Rs.0.86 crore and the revenue earned by the government was Rs.3.06 crore during 1997-98 to 2001-2002. Consequently, an amount of Rs.70.47 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.

This was pointed out in audit and all the DEOs accepted the audit observations and stated that action to recover the same was being taken. (June 2004)

Non-recovery of duty on foreign liquor exported

3.2.13 As per Madhya Pradesh Excise Act, 1915, 'Export' means export of FL out of the state. M.P Foreign Liquor Rules, 1996, further provide that in case of an export, excise verification report should be received from the Importers within 21 days failing which, leviable duty is to be recovered.

- Test-check of records of Nine districts⁸, revealed that in 305 permits, 7.75 lakh proof litre foreign liquor and 5.75 lakh bulk litre beer were exported to various other States by the exporters during June 2001 to February 2003. However, no excise verification report were received from the importers even after a lapse of one to thirty five months. Consequently, excise duty of Rs.5.22 crore became recoverable. But no action was taken to recover the same by the department.
- It was further noticed that in 18 permits issued between December 2001 and November 2002, excise verification report were received after a lapse of 39 to 270 days. As excise verification reports were not received within 21 days. The Department was required to recover excise duty of Rs.27.80 lakh from the exporters which was not done.

⁷ (i) M/s Associated Alcohols and Breweries, Barwah, Khargone
(ii) M/s Agarwal breweries, Barwah, Khargone.
(iii) M/s Gwalior Distillers, Gwalior
(iv) M/s Rairu Distillery Rairu, Gwalior
(v) Cox India Chhattarpur
(vi) Oasis Distilleries, Dhar
(vii) Kedia Great Galleon, Dhar
(viii) Som Distillery Sehatganj, Raisen
(ix) Som Distillery and Breweries, Raisen

⁸ Bhopal, Chhattarpur, Dhar, Gwalior, Indore, Khargone, Ratlam, Raisen and Ujjain

Loss of revenue due to non-disposal of balances of foreign liquor

3.2.14 Madhya Pradesh Foreign Liquor Rules, 1996, provide that on expiry or cancellation of licence, the licensee shall place his entire stock of liquor under the control of the District Excise Officer. However, he can be permitted to dispose of such balances to any other licensee within 30 days of such expiry or cancellation, failing which the Excise Commissioner may ask any other eligible licensee of the state to purchase such stock or may give necessary directions for the disposal of the stock.

Test-check of records of the AEC Gwalior, Indore and Ujjain revealed that in eight licences, 26,813 proof litre foreign liquor and 10,952 bulk litres of beer remained in stock on the date of expiry of their licences between April 1995 and April 2002. This stock involving excise duty of Rs.17.18 lakh was not disposed of even after 4 to 84 months resulting in non-realisation of the government revenue to that extent.

This was pointed out in audit and the AECs stated between July and December 2002 that action for disposal would be taken.

Non-recovery of duty on quantity of spirit/foreign liquor/malt transported

3.2.15 Madhya Pradesh Excise Act, 1915 provides that no intoxicant shall be transported from any distillery, brewery, warehouse or other place of storage unless the duty has been paid or a bond has been executed for the payment.

Test-check of records of ten district offices⁹ revealed that 4.60 lakh proof litre of Extra Neutral Alcohol (ENA), 14.42 lakh proof litre of country liquor, 12.55 lakh proof litre of foreign liquor and 23.06 lakh Bulk litre of beer involving excise duty of Rs.16.06 crore were transported on 1,003 permits during the period May 1999 to March 2003 without payment of duty or execution of bond. Out of the above, one tanker carrying 19,968 proof litre rectified spirit from distillery of Khargone involving excise duty of Rs.4.79 lakh was hijacked in November 2001 before reaching its destination. Since excise duty was not paid nor was any bond executed, no action could be taken by the Department to recover the amount.

This was pointed out in audit and all the District Officers stated between October 2002 and April 2003 that no rules had been prescribed for execution of bond on transport of liquor as such no bond was executed or duty recovered in advance. The reply is not tenable since provision for transport of intoxicant under bond or on payment of duty already exists in the Act.

Recommendation

3.2.16 To plug loopholes and safeguard the government revenue in the provisions contained in Act/Rules Government may consider the following:

- prescribe a time period for treating the defaulter cases as arrears of land revenue;

⁹ *Bhopal, Chhattarpur, Dhar, Gwalior, Indore, Khargone, Rajgarh, Ratlam, Raisen and Sagar*

- ensure obtaining solvency certificate and details of property of the licensee to safeguard government revenue.

The above points were reported to the Government between June 2002 and April 2003; their reply had not been received. (June 2004)

3.3 Loss of revenue due to non-acceptance of tender

As per Government of Madhya Pradesh Commercial Tax Department circular dated 22 April 2001 if the bid/tender amount for settlement of country and foreign liquor shops is more than five per cent below the reserve price, the proposal for acceptance of bid/tender should be sent to the Government through Commissioner, Excise (EC) Gwalior.

Test-check of records of District Excise Officer (DEO), Hoshangabad revealed that a tender for one group of 20 country and 8 foreign liquor shops of Itarsi-Piparia for the period 1 May 2001 to 31 March 2002 was received for Rs.9.13 crore on 2 May 2001 against the reserve price of Rs.10.67 crore. As the tender was 14.5 per cent below the reserve price, the same was rejected by the DEO in view of the instructions of EC issued in May, 2001 to reject offers which were more than 10 per cent less than the reserve price. The instructions issued by the EC were not in consonance with the circular of 22 April 2001 issued by the Government. Out of these, six country and five foreign liquor shops were auctioned between May 2001 and March 2002 for periods ranging from three to ten months for Rs.4.07 crore. The remaining shops were run departmentally and a revenue of Rs.1.08 crore was realised. Thus, the non-consideration of the tender and failure to send the same to the Government for acceptance resulted in loss of revenue of Rs.3.98 crore.

This was pointed out in audit and the DEO, Hoshangabad stated in August 2002 that the proposal was sent to the EC in May 2001 which was rejected on receipt of instructions issued by EC. The reply was not acceptable as the specific orders of the Government as envisaged in circular at 22 April 2001 were not obtained on the tender. Further reply was awaited (June 2004).

The matter was reported to the Government between January and May 2003; their reply had not been received (June 2004).

3.4 Short-production of alcohol from bases other than molasses

The State Government have not laid down norms for the production of alcohol from bases other than molasses. However, the Technical Excise Manual, provides that per quintal of grain (Indian)¹⁰ should yield 40.03 proof litres of alcohol.

Test-check of records of one distillery at Dhar revealed that 59.80 lakh proof litre of alcohol was produced from 1,76,150 quintals of grain (Indian) between October 2000 and December 2002 as against the expected yield of 70.51 lakh proof litre. Thus, there was a shortfall of 10.71 lakh proof litre alcohol involving potential loss of excise duty of Rs.2.57 crore.

¹⁰ *Indian means Jawar and Maize*

This was pointed out in audit and the DEO (Distillery) Dhar stated in January 2003 that norms for production of alcohol from bases other than molasses had not been provided in the Rules. Although EC's commitment was there in June 1997 to frame rules regarding yield from bases other than molasses no rules had been framed so far. In view to this, the instructions contained in Technical Excise Manual should have been followed.

The matter was reported to the Government in April 2003; their reply had not been received (June 2004).

3.5 Incorrect fixation of selling rates of country liquor in sealed bottles

The country liquor shops situated in tribal sub-plan area are run by the Department. The selling rates of sealed country liquor bottles of different sizes are fixed by the Excise Commissioner. The selling rates are to be so fixed that besides the cost of empty bottles and sealing charges, the price obtained for a specific quantitative unit of liquor sold remains uniform irrespective of the size of the bottle.

Test-check of records of the Assistant Excise Commissioner (AEC), Ujjain revealed that selling price of country liquor per bulk litre in bottles with different quantities viz 180 ml., 375 ml. and 750 ml. were fixed by the Collector inclusive of cost of empty bottles and sealing charges. This resulted in incorrect determination of rate of country liquor by Rs.4 and Rs.8.89 per bulk litre for the sizes of 375 ml. and 180 ml. respectively. This resulted in loss of revenue of Rs.37.39 lakh on sale of 5 lakh bulk litre country liquor during 2001-02.

This was pointed out in audit and the AEC, Ujjain stated in October 2002 that selling rates of country liquor were fixed by the Collector. The reply is not tenable as the selling rates were not fixed in accordance with government instructions in June 1999 keeping in view the cost of bottles and sealing charges.

The matter was reported to the Government between January and May 2003; their reply had not been received (June 2004).

3.6 Irregular allowance of wastage of molasses

Madhya Pradesh Distillery Rules, 1995, provide that every quintal of fermentable sugar present in molasses should yield 91.8 proof litre alcohol. No allowance for wastage of molasses in storage or otherwise is provided in the rules.

Test-check of records of the DEO (Distillery), Ratlam, revealed that 3965.59 quintals molasses having fermentable sugar of 1,482.73 quintal capable of yielding 1.36 lakh proof litre of spirit was shown as wastage between November 2001 and October 2002. This resulted in loss of potential excise duty of Rs.32.64 lakh.

The matter was reported to the Government in May 2003; their reply had not been received (June 2004).

3.7 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 during re-distillation for manufacturing extra neutral alcohol (ENA).

Test-check of records of two distilleries of Dhar district revealed that 68.26 lakh proof litre rectified spirit was redistilled to produce ENA between October 2000 to December 2002 and wastage of 0.22 lakh proof litre rectified spirit was allowed. This was not admissible and resulted in loss of excise duty of Rs.5.28 lakh.

This was pointed out in audit and the DEO (Distilleries) stated in January 2002 and January 2003 that re-distillation was done under the orders of EC and the wastage was within the prescribed limit. The reply is not tenable as the rules do not provide any wastage of rectified spirit during re-distillation for manufacturing of ENA.

The matter was reported to the Government (April 2003); their reply had not been received (June 2004).

3.8 Non-levy of penalty

Madhya Pradesh Distillery Rules, 1995, require the distillers to maintain minimum fermentation and distillation efficiencies at 84 and 97 percent respectively. Every quintal of fermentable sugar present in the molasses should yield at least 91.8 proof litres of alcohol. In case of shortfall, the EC may impose penalty under the Act and Rules.

Test-check of records of three distilleries of Dhar and Khargone district revealed that distillers used 1,32,845 quintal of molasses having fermentable sugar of 47,135 quintals and produced 42.57 lakh proof litre alcohol during October 2000 to December 2002 as against the expected yield of 43.27 lakh proof litre of alcohol. The Department failed to levy penalty of Rs.21 lakh leviable on shortfall of 0.70 lakh proof litre alcohol.

The matter was reported to the Government between January and May 2003; their reply had not been received (June 2004).

3.9 Non-maintenance of minimum stock of spirit at distillery

Madhya Pradesh Distillery Rules, 1995, require licensees to maintain at distillery the minimum stock of spirit as prescribed by the EC. In the event of failing to maintain minimum stock, the EC may impose a penalty not exceeding Rs.5 per proof litre on the quantity found short of the minimum prescribed stock.

Test-check of records of one distillery in Dhar District revealed that though prescribed minimum stock of spirit was not maintained by it on 13 occasions between December 2001 and December 2002, a penalty of Rs.99.84 lakh on 19.97 lakh proof litre spirit found short of minimum prescribed stock was not levied.

This was pointed out in audit and the DEO (Distillery) stated in January 2003 that the production was affected due to non-availability of molasses. The reply is not tenable as per rules the distiller was required to maintain minimum stock as prescribed by the EC otherwise penalty was leviable. Further reply had not been received (June 2004).

The matter was reported to the Government in April 2003; their reply had not been received (June 2004).

