

CHAPTER-V: STATE EXCISE

5.1 Results of Audit

Test check of records in the offices of the Excise Commissioner, Deputy Commissioner of Excise and Superintendents of Excise conducted during 2004-05 revealed non/short realisation and loss of revenue amounting to Rs.29.44 crore in 427 cases which may broadly be categorised as under:

(Rupees in crore)

Sl. No.	Categories	No. of cases	Amount
1.	Non/short realisation of duty/licence fee	360	13.25
2.	Loss of revenue due to delay in granting/issue of licence.	44	11.23
3.	Other irregularities	23	4.96
Total		427	29.44

During the year 2004-05, the Department accepted non levy/short realisation etc. of duty amounting to Rs.3.13 crore in 365 cases pointed out in audit in 2004-05. The Department recovered Rs.1.64 crore in 316 cases including Rs.1.53 crore in 216 cases of 2004-05.

A few illustrative cases highlighting important audit observations involving Rs.11.03 crore are discussed in the following paragraphs. After issue of draft paragraphs the Department recovered Rs.1.40 crore.

5.2 Loss of revenue due to non observance of prescribed procedure for settlement of IMFL "off" shops

Under the Bihar and Orissa Excise Act (BOE Act), 1915, licences of wholesale or retail vend of intoxicants may be granted for one year from 1 April to 31 March following. Government of Orissa in their excise policy for the years 2002-03 and 2003-04 decided that all the existing IMFL off shops of 2001-02 and 2002-03 would be renewed for 2002-03 and 2003-04 respectively without any change in the licence fee and minimum guaranteed quantity (MGQ). The shops, which remained unrenewed, should be settled immediately. Under the provision of excise policy and instruction of Board of Revenue (BOR) such shops should be settled through sale notice. As per section 22 of the BOE Act read with Rule-3 of the Orissa Excise (Exclusive privilege) Foreign Liquor Rules, 1989, before issue of sale notice for auction of the shops, a public notice shall be issued inviting objection from public and obtaining prior approval of concerned Gram Panchayat accorded with concurrence of Gram Sasan under Section 26A of the BOE Act. In case, the bid/negotiated amount does not reach the reserve price, confirmation of Government may be obtained for settlement of the shop.

5.2.1 Scrutiny of records of Superintendent of Excise (SE), Sundergarh revealed between August 2003 and September 2004 that out of 34 IMFL off shops¹ which existed in 2001-02, 18 shops were renewed in 2002-03 and 2003-04. For the rest of 16 shops², sale notice for the year 2002-03 was issued on 1 April 2002 without inviting public opinion and obtaining prior approval of Gram Panchayat. A non government organisation filed a writ petition³ in Hon'ble High Court of Orissa on 16 April 2002 challenging the legality of the sale notice. The Court granted interim stay in April 2002. As such auction sale could not be conducted for settlement of the off shops. For the year 2003-04 sale notice was not issued on the ground that the case was subjudice. The stand taken by the Department was not in order as the stay was granted on auction sale for the year 2002-03. The writ petition, which became infructuous was disposed of on 20 April 2004. Thus due to non observance of the prescribed procedure for the year 2002-03 and taking incorrect plea about subjudice of the case for the year 2003-04, IMFL off shops could not be settled for these years. This resulted in loss of revenue of Rs.10.17 crore worked out on the basis of consideration money and duty on MGQ at the prevailing rates⁴.

After this was pointed out in audit, the SE, Sundergarh stated in September 2004 that as the case was subjudice, the shops could not be settled.

1 Retail sale of India made Foreign liquor for consumption off the shop premises.

2 Bisra Road 1 & 2 Rourkela, Kalinga, Lathikata, Basanti colony, Biramitrapur, Nayabazar, Chhend, Power House Road, Vedvyas, Gandhi Road, Bandomunda, 7 & 8 Area Rourkela, Rajgangapur and Sundergarh No. 2 & 3.

3 OJC No.4251/2002 (between Secretary Lok Manch , Rourkela Vs. State of Orissa).

4 For the years 2002-03 and 2003-04 Excise duty at the rate of Rs.92 and Rs.100 per LPL respectively.

The reply was not tenable as prescribed procedure was not followed during 2002-03 and stay was not applicable during the year 2003-04. Further reply had not been received (October 2005).

The matter was reported to the Excise Commissioner (EC)/Government of Orissa in March 2005, reply had not been received (October 2005).

5.2.2 Test check of records of SE, Khurda revealed in July 2003 that the licensee of Tamando IMFL off Shop for 2001-02 did not opt for renewal of license for the year 2002-03. The Collector proposed to shift the shop to Aiginia on 19 April 2002, but the Government did not accept the proposal and directed the Collector for settlement of the shop through auction procedure. Although the Collector repeatedly requested the Government to consider shifting the shop, yet the proposal was not accepted. Ultimately the shop was put to auction and settled on 2 January 2003 at Rs.52,100 against the reserve price of Rs.60,100. Non adherence to the Government's orders and delay in settlement of the shop led to loss of revenue of Rs.17 lakh worked out on the basis of monthly consideration money and duty on MGQ.

After this was pointed out in audit in July 2003 the SE, Khurda stated in August 2003 that the shifting proposal was in anticipation of not achieving reserve price due to which the process of settlement was delayed. The reply was not tenable in view of the provisions of excise policy that the Government was competent to decide the bid value below reserve price.

The matter was reported to EC in September 2003. EC stated (May 2005) that the correspondence between the Collector and Government caused unintentional delay.

5.2.3 Test check of records of eight⁵ Excise Districts between October 2003 and February 2005 revealed that 20 Excise off shops were provisionally settled for the year 2002-03 through auction/tender/negotiation. Government confirmed the proposal for settlement of shops after a delay ranging between 42 days and 108 days from the date of provisional settlement. Thus due to delay in confirmation, revenue of Rs.28.82 lakh was foregone in shape of licence fee and duty on MGQ worked out for 21 days and 97 days after deducting three weeks for communication of final orders of the Government.

After this was pointed out between October 2003 and February 2005, all the SEs, except Ganjam stated between October 2004 and February 2005 that after receipt of confirmation from Government, licences were issued. SE, Ganjam stated that such delay was inevitable in the process of taking a decision for settlement of shops below the reserve price. The reply was not tenable since shops were not settled in the specific time frame before the commencement of the next financial year as per the provisions of the Act.

The matter was reported to EC and Government between October 2003 and February 2005; reply had not been received (October 2005).

5 Bhadrak, Ganjam, Jharsuguda, Kendrapara, Keonjhar, Mayurbhanj, Puri and Sambalpur.

5.2.4 Scrutiny of records of SE, Ganjam revealed in September 2004 that four existing country spirit shops held by three exclusive privilege holders (EP Holder) were not renewed for the year 2003-04, on the ground that one of the EP holders was declared defaulter. Collector, Ganjam moved the EC/Government in April 2003 for renewal of four shops at a consideration money of Rs.2.30 lakh per month in favour of the other two EP holders for the year 2003-04. On receipt of Government order in October 2003, licence was issued on 25 October 2003. Thus delay in issue of Government order led to loss of revenue of Rs.23.24 lakh towards licence fee and duty on M.G.Q for the period from May 2003 to 24 October 2003.

After this was pointed out in audit in September 2004, the SE did not furnish any specific reply.

The matter was reported to EC and Government in October 2004; reply had not been received (October 2005).

5.3 Loss of revenue on IMFL made from imported base

As per excise policy of Government of Orissa for the year 2003-04, excise duty at the rate of Rs.100 and Rs.120 per London Proof Litre (LPL) was prescribed for India made whiskey, rum, brandy, vodka etc. and Rs.200 per LPL for IMFL blended with imported element containing more than 20 *per cent* (including scotch bottled in India). In April 2003, Government instructed the EC to accept the certificates from the supplier in good faith indicating that the blended materials were less than 20 *per cent* and in case of any deviation, the supplier would be liable to pay duty at the rate of Rs.200 per LPL. As per provision of Board's Excise Rules 1965, the EC before approval of brands and labels shall make such enquiries and also ensure that samples of liquor are chemically examined before such approval so that the liquor meets the required standards.

5.3.1 Test check of records of SE, Khurda revealed in June 2004 that Orissa State Beverages Corporation Limited (OSBC) procured 12,35,578.0077 LPL of IMFL made from imported base during the year 2003-04 but in no case higher duty of Rs.200 per LPL was charged. It was clearly written on the label that the product was a blend of scotch but no percentage of blending was indicated in the labels. The imported element, scotch, was the dominating element which attracted higher duty. Certificates were obtained from the suppliers stating that their product contained less than 20 *per cent* blend material and excise duty of Rs.100/Rs.120 per LPL was charged in all cases. Higher duty of Rs.200 per LPL could not be levied for want of adequate mechanism for ascertaining the percentage of blending of scotch.

As the excise policy did not prescribe any norm or any mechanism for ascertaining the percentage of blending of scotch, higher duty at the rate of Rs.200 per LPL could not be charged and as such the very purpose of excise policy for augmenting revenue of State was defeated. Government sustained loss of Rs.2.33 crore due to non levy of higher duty at the rate of Rs.200 per

LPL at least on 20 *per cent* of the total procurement of IMFL made from imported base.

After this was pointed out in audit in June 2004 the SE did not furnish any specific reply.

5.3.2 Test check of records of SE of Excise, Khurda revealed (July 2004) that the manufacturers of four brands⁶ of IMFL did not disclose the presence of scotch in their labels registered by the EC, Orissa for the year 2003-04, whereas these brands contained scotch which was disclosed on the approved labels in 2002-03. The OSBC procured 3,21,906.0968 LPL of IMFL which did not disclose the presence of scotch in the approved labels in 2003-04 for which higher duty could not be charged. This resulted in loss of Government revenue of Rs.62.48 lakh due to non levy of higher duty at the rate of Rs.200 per LPL at least on 20 *per cent* of the total procured quantity of IMFL which contained scotch.

After this was pointed out in audit the SE, Khurda stated in July 2004 that the distillery officers concerned would be asked to investigate the matter and OSBC authority would be asked to furnish the price structure for the year 2002-03 and 2003-04. The reply was not tenable since Department failed to verify the presence of scotch in above four brands before the approval of brands and labels.

The matter was reported to EC and Government in August 2004, reply had not been received (October 2005).

5.4 Short realisation of transport fee on mohua flower

As per Rule 11 of Board's Excise (Fixation of fees on mohua flower) Rules 1976 as amended in June 2000, rate of fee in respect of a transit pass for transporting mohua flower within the state shall be Rs.10 per quintal.

Test check of records of 11 District Excise Offices⁷ between December 2003 and January 2005 revealed that 326 outstill⁸ liquor licensees procured 1,83,773.72 quintals of mohua flower in the years 2002-03 and 2003-04 on which transport fee of Rs.0.70 lakh was collected as against Rs.18.37 lakh. No demand for the balance amount was raised which resulted in short realisation of transport fee of Rs.17.67 lakh.

The matter was referred to EC and Government between January 2004 and February 2005 EC in his reply between March 2005 and June 2005 stated that

6 8 PM Rare Whisky, Aristocrat Black Whisky, Mc Dowell's Diplomat Whisky and Bag Piper Whisky.

7 Bargarh, Bhawanipatna, Bolangir, Boudh, Deogarh, Koraput, Nuapada, Paralakhemundi, Rayagada, Sonepur, Sambalpur.

8 Outstill is a system of preparation of intoxicants based on mohua flower.

an amount of Rs.13.34 lakh in respect of eight district excise offices was realised. Final reply in remaining cases had not been received (October 2005).

5.5 Non realisation of revenue due to non affixture of excise adhesive labels

Under the BOE Act and Rules made thereunder, excise adhesive labels (EALs) shall be affixed on each bottle/can of IMFL/beer and on each pouch of country spirit. Further, the OSBC should ensure that no bottle/can is received from outside the State without affixture of EALs. The BOR prescribed on 2 February 2002 a fee of 20 paise for each EAL to be charged for each bottle/can irrespective of size from the manufacturer.

Test check of records of SE, Cuttack in August 2004 revealed that OSBC imported 46,29,227 bottles of beer from outside the State for Manguli Depot without affixture of EALs. Non affixture of EALs led to non realisation of revenue of Rs.9.26 lakh.

After this was pointed out in audit in August 2004, the SE, Cuttack stated that the branch manager would be asked to comply with the audit observation. Further reply had not been received (October 2005).

The matter was brought to the notice of EC/Government in March 2005; reply had not been received (October 2005).

5.6 Irregular renewal of licence of bottling plant

The BOE Act and Rules made thereunder stipulate that licence for the wholesale or retail vend of intoxicants may be granted for one year from 1 April to 31 March following. Government of Orissa in their excise policy for the years 2002-03 and 2003-04 decided to renew the licence of bottling plants on the basis of production capacity in proof litres along with payment of annual renewal licence fee for bonded warehouse attached to manufacturing company. Further, as per the provision of the BOE Act, the holder of a licence to manufacture and sell may surrender the licence on expiry of term and the EC may take over the balance of liquor for disposal under Board's Excise Rules.

Scrutiny of the records of M/s. Hitech Bottling Plant under the control of SE, Sambalpur revealed in November 2004 that the licence of the bottling unit was neither renewed for the year 2002-03 nor was surrendered to the Collector. No action was taken by the EC for disposal of balance liquor of the plant. However, on an application of the ex licensee in June 2003 the earlier licence of 2001-02 was renewed by the Government in October 2003 for the period 1 October 2003 to 31 March 2004. Since the validity and renewal of licence is a continuous process and there was no existing licence for the year 2002-03, grant of renewal from 1 October 2003 to 31 March 2004 was irregular which

led to non realisation of license fee of Rs.11.63 lakh for the period from 1 April 2002 to 30 September 2003.

After this was pointed out in November 2004 the EC stated in May 2005 that SE, Sambalpur raised demand of Rs.11.63 lakh as per audit observation. Further report on recovery had not been received (October 2005).

The matter was referred to Government in March 2005, reply had not been received (October 2005).

5.7 Loss of revenue due to delay in issue of notification

Under Section 90 of BOE Act, the BOR is empowered to make/ amend rules for carrying out policies of Government of Orissa. Government of Orissa, Excise Department in their letter of December 2001 directed EC, Orissa to revise the fee on adhesive label to 20 paise per label irrespective of size of bottle/ pack, which should be effective from 31 December 2001. The BOR issued notification revising the fee on 2 February 2002.

Test check of records of SE, Ganjam in June 2002 revealed that excise adhesive labels on 8,33,433 bottles of IMFL and 26,55,000 pouches of country liquor in respect of four⁹ manufacturing units were not affixed between 31 December 2001 and 1 February 2002 due to non issue of notification by the BOR. This resulted in loss of revenue of Rs. 6.98 lakh.

After this was pointed out in audit in June 2002 the SE, Ganjam did not furnish any specific reply.

The matter was brought to the notice of EC/Government in March 2005, reply had not been received (October 2005).

⁹ M/s Ocean Beverages (P) Ltd., M/s Poonam Distillery (P) Ltd., M/s Mahanadi Distilleries (P) Ltd., M/s Aska Co-operative Sugar Industries Ltd.