

CHAPTER-5 : STATE EXCISE

5.1 Results of Audit

Test check of records in the offices of the Deputy Commissioners of Excise and Superintendents of Excise conducted during 2001-2002 revealed non/short realisation and loss of revenue amounting to Rs.9.92 crore in 1150 cases which may broadly be categorised as under:

(Rupees in crore)

| Sl. No. | Category | No. of cases | Amount |
|--------------|---|--------------|-------------|
| 1 | Non/short realisation of duty, licence fee | 214 | 7.93 |
| 2 | Other irregularities (Irregularities of miscellaneous nature) | 862 | 1.10 |
| 3 | Loss of revenue due to delay in granting of licence | 74 | 0.89 |
| Total | | 1150 | 9.92 |

During the course of the year 2001-2002, the department accepted under-assessment etc. of tax amounting to Rs.0.57 lakh in 51 cases which had been pointed out in audit in earlier years. Of these, the department recovered Rs.0.12 lakh in 20 cases.

A few illustrative cases highlighting important audit observations involving Rs.3.19 crore are mentioned in the following paragraphs.

5.2 Sub-normal yield of spirit from molasses

Under the Board's Excise Rules, 1965, samples of raw materials used in distilleries for manufacture of spirit and spirit manufactured therefrom shall be sent to the Chemical Examiner for examination once in July and again in December each year and at other times, if required. In the absence of any norm Chemical Examiner's report is the only basis provided in the rules on which the production of spirit can be ascertained.

Test check of records (July 2001) of Superintendent of Excise, Ganjam, Chatrapur, it was noticed that 5434.195 Metric Tonne (MT) of molasses was used in the distillery during 2000-2001 for manufacture of spirit. The samples of molasses were sent to Chemical Examiner during December 2000 and January 2001. Based on these reports the out turn of spirit from 5434.195 MT of molasses should have been 2764510 London Proof Litre (LPL) against actual production of 2490949 LPL shown by the distiller. This resulted in shortfall in production of spirit of 273561 LPL involving excise duty of Rs. 2.46 crore.

On this being pointed out in audit (July 2001), the Superintendent of Excise, Ganjam stated that action was being taken to investigate the matter.

The above matter was referred to Government (November 2001). In reply Government stated (July 2002) that the out turn as per the report of the Chemical Examiner of Orissa State Drug Testing and Research Laboratory, Bhubaneswar is approximate and yield of spirit depends upon the extent of fermentation and can not be taken as a conclusive basis for the rate of yield. The reply is not tenable as sample tests of raw materials used for manufacture of spirit are provided under Board's Excise Rules 1965 and should be taken as a guideline for output of spirit and levy of duty in revenue interest of the State.

5.3 Non-realisation of Excise duty on short production of IMFL

As per Orissa Excise (Exclusive privilege) Foreign liquor Amendment Rules, 1997 as amended in 1998, all licensees of IMFL bottling plants guarantee Minimum Guaranteed Quantity (M.G.Q) of 50 *per cent* of the installed capacity of their bottling plant in a year. In case of any shortfall in the MGQ fixed by the Excise Commissioner, the licensee of the bottling plant shall be liable to make payment of the duty for the shortfall quantity at the rate of Rs 10 per LPL and the amount is to be recovered as arrear dues from the licensee. Default in payment of arrear dues towards MGQ by end of the financial year would entail cancellation of the licence of the bottling plant. Government can allow renewal of licence, only on payment of arrear MGQ dues along with fine equivalent to 10 *per cent* of the revenue shortfall collectable.

Test check of records of the Superintendent of Excise, Khurda and Superintendent of Excise, Ganjam (between July 2001 and November 2001) revealed that short production of IMFL in three bottling plants with reference to the MGQ resulted in short realisation of excise duty. The licences of the defaulting bottling plants were not cancelled at the end of the year and licences were renewed without collection of excise duty and fine on short production. This resulted in non-realisation of Excise Duty of Rs.52.08 lakh as detailed below:

(R u p e e s i n l a k h)

| Sl. No. | Name of the licensee | Minimum Guaranteed Quantity (MGQ) | Production of IMFL | Short production with reference to MGQ | Excise duty and fine | | |
|--------------|--------------------------------------|-----------------------------------|--------------------|--|----------------------|-------------|--------------|
| | | | | | (in terms of LPL) | | |
| | | | | | Excise Duty | Fine | Total |
| 1 | M/s Ocean Beverage (P) Ltd. | 259200 | 16734.762 | 242465.238 | 24.25 | 2.42 | 26.67 |
| 2 | M/s Oriental Bottling Plant (P) Ltd. | 825000 | 594024.225 | 230975.775 | 23.10 | 2.31 | 25.41 |
| | M/s Kaleast Bottling (P) Ltd. | | | | | | |
| Total | | 1084200 | 610758.987 | 473441.013 | 47.35 | 4.73 | 52.08 |

On this being pointed out in audit, the Department accepted the audit observations in two cases and raised demand for Rs.25.41 lakh. In another case the Superintendent of Excise, Ganjam agreed to raise demand.

5.4 Loss of revenue due to delay in confirmation of provisional settlement of new IMFL off-shop

Sub-section 2 of Section 38 of Bihar and Orissa Excise Act, 1915 read with Rule 31 of Orissa Excise Rules, 1965 stipulates that licence for the wholesale or retail vend of intoxicants may be granted for one year from 1 April to 31 March. Government in their instruction July 1975, prescribed that in case of newly sanctioned IMFL off-shops, the whole process starting from inviting of applications upto opening of the shops should be completed within six weeks.

Test check of records of two Superintendents of Excise, Bhadrak and Sundargarh (between September 2001 and December 2001) revealed that after provisional settlement in auction sale, proposals for confirmation of 12 new IMFL off-shops were sent to Government (between April 1999 and December 2000). Out of the 12 IMFL off-shops, only one off-shop was confirmed in time. Government issued confirmation for five IMFL off-shops of Bhadrak district on 21 December 1999 for the year 1999-2000 and for six IMFL off-shops under the Excise circle Sundargarh on 30 April 2001 i.e. after the end of year 2000-2001 respectively. Due to inordinate delay in confirmation, revenue of Rs.14.87 lakh was foregone in shape of licence fee.

On this being pointed out in audit (between September 2001 and December 2001), the Superintendents of Excise stated that there was no delay at district level.

The above matter was referred to Government (April 2002). In reply it was stated (June 2002) that Government is the best judge to grant exclusive privilege and no time limit has been envisaged under the Act. The reply is not tenable as settlement of IMFL off-shops were not done as per the executive instructions of July 1975.

5.5 Loss of Excise duty due to export of malt spirit

According to Section 9(2)(i)(ii) and 10(a)(b) of the Bihar and Orissa Excise Act, 1915, no intoxicant shall be imported or exported or transported unless duty payable under the Act has been paid or a bond has been executed for payment of duty.

Test check of records of the Superintendent of Excise, Khurda (June 1998) revealed that a distillery of Khurda imported 3000 BL of malt spirit under bond in August 1996 from Uttar Pradesh for manufacture of India Made Foreign Liquor. The malt spirit was kept unutilised and thereafter authorised to transport 2970 BL of malt spirit out of the above to M/s Vorin Distilleries, Bangalore (December 1997) without realisation of Excise duty which resulted in loss of revenue of Rs.6.04 lakh.

On this being pointed out (June 1998), the Excise Commissioner, Orissa directed (May 2002) the Superintendent of Excise, Khurda to issue demand notice for realisation of the Excise Duty.

The above matter was referred to Government (April 2002). Government in their reply (July 2002) stated that the spirit was not used within the State but was transferred to M/s Vorin Distillery, Bangalore. The reply is not tenable as the Act does not provide any transfer of spirit from one bottling unit's warehouse in bond in Orissa to another such bottling plant situated outside the State.