

## CHAPTER-V : STATE EXCISE

### 5.1 Results of Audit

Test check of records in the offices of the Excise Commissioner, Deputy Commissioners of Excise and Superintendents of Excise conducted during 2002-2003 revealed non/short realisation and loss of revenue amounting to Rs.14.49 crore in 1,865 cases which may broadly be categorised as under:

<b>(Rupees in crore)</b>			
<b>Sl. No.</b>	<b>Category</b>	<b>No. of cases</b>	<b>Amount</b>
1	Loss of revenue due to delay in granting, issue of licence	994	9.59
2	Non/short realisation of duty/licence fee	190	3.64
3	Other irregularities	681	1.26
<b>Total</b>		<b>1,865</b>	<b>14.49</b>

During the course of the year 2002-2003, the department accepted under-assessment etc. of tax amounting to Rs.0.26 crore in 20 cases out of which Rs.0.21 crore in 3 cases were pointed out in Audit in 2002-03. The Department has recovered Rs.0.19 crore in 19 cases.

A few illustrative cases highlighting important audit observations involving Rs.12.25 crore are discussed in the following paragraphs.

## **5.2 Loss of revenue due to delay in settlement of country spirit shops**

According to Section 38(2) of the Bihar and Orissa Excise Act, 1915 read with Rule-31 of the Orissa Excise Rules, 1965, licences for the wholesale or retail vend of intoxicant may be granted for one year from 1 April to 31 March following. Government of Orissa approved the Excise Policy for the year 2001-02 in March 2001 according to which country spirit shops to be opened in 16 districts of the State during the year 2001-02 were to be settled by way of tender-cum-auction-cum-negotiation. In April 2001, the exclusive right and privilege of carrying on the wholesale trade and distribution of country spirit in the State was also granted to the Orissa State Beverage Corporation Ltd.

Test check of records of the Superintendents of Excise of 14 districts<sup>49</sup> revealed that licences of 207 country spirit shops though settled in May 2001 were issued on 20 November, 2001 after delay of almost six months as the Secretary to Government, Excise Department directed all the concerned Collectors on 30 May 2001 not to issue licences till the finalisation of modalities of wholesale disposal including selection of manufacturer for supply of country spirit. The licences were finally issued only on 20 November 2001. Applicants of 20 shops under the jurisdiction of Superintendent of Excise, Ganjam refused to take the licences due to delay in issue of licences. Thus, delay in issuing licences due to non-finalisation of modalities for supply of country spirit resulted in loss of revenue of Rs.5.12 crore on account of licence fee.

On this being pointed out in audit, Excise Superintendents attributed this delay to non-finalisation of the modalities regarding wholesale distribution of country spirit by the Government. The reply was not tenable as the Government should have made necessary arrangements before the commencement of the year for supply of country spirit to the licensees in order to avoid loss of revenue.

The matter was referred to Government in January and March 2003; their reply was awaited (November 2003).

## **5.3 Loss of revenue due to delay in finalisation and implementation of Excise Policy**

The Bihar and Orissa Excise Act, 1915 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 communicated the Excise Policy for 2001-02 spelling out the procedure for settlement of shops through the process of tender followed by negotiation/auction on 30 March 2001. Further instructions regarding fixation

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<sup>49</sup> Angul Balasore, Baripada, Cuttack, Dhenkanal, Gajapati Ganjam, Jajpur, Kendrapara, Keonjhar, Khurda, Nayagarh, Phulbani and Puri.

of reserve price were issued on 25 April 2001. Government allowed renewal of existing licences for a period of two months i.e. 1 April 2001 to 31 May 2001 with the existing consideration money and minimum guaranteed quantity (MGQ).

Test check of records of 28 Superintendents of Excise<sup>50</sup> revealed that 466 IMFL off-shops and 281 out still (OS) liquor shops were renewed for the month of April, May and June 2001 at the existing rate of monthly consideration money plus duty on MGQ of Rs.7.13 crore. These shops were, however, settled afresh in May 2001 and June 2001 with enhanced rate of monthly consideration money plus duty on MGQ of Rs.9.02 crore effective from 1 June 2001 and July 2001. Due to delay in finalisation of Excise Policy for 2001-02, the above shops could not be settled afresh at the increased rate of monthly consideration money plus duty on MGQ for the period 1 April 2001 to 30 June 2001. Thus, the Government sustained a loss of revenue of Rs.3.91 crore.

On this being pointed out in audit, Superintendents of Excise stated that the matter may be referred to Government since it relates to Government Policy.

The matter was referred to Excise Commissioner/Government in February and April 2003; their reply was awaited (November 2003).

#### **5.4 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 (MGQ) of 50 *per cent* of the installed capacity of their bottling plant in a year. In case of any shortfall with reference to 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 at the rate of Rs.10 per London Proof Liter (LPL), the amount is being 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. 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.

(a) Test check of records of the Superintendents of Excise, Ganjam, Khurda and Sambalpur revealed short production of IMFL in four bottling plants with reference to MGQ for the period mentioned in the following table against each plant. Non levy of excise duty with fine, on short production of IMFL resulted in non-realisation of excise duty of Rs.2.61 crore as detailed below:

50 Angul, Balasore, Baragarh, Bhadrak, Bolangir, Boudh, Cuttack, Dhenkanal, Gajapati, Ganjam, Jagatsinghpur, Jharsuguda, Kalahandi, Kendrapara, Keonjhar, Khurda, Koraput, Mayurbhanj, Malkangari, Nawarangapur, Nayagarh, Nuapada, Phulabani, Puri, Rayagada, Sambalpur, Sonepur and Sundargarh.

( Rupees in lakh )									
Sl. No.	Year	Name of the licensee	Installed capacity in LPL	Minimum Guaranteed Quantity (MGQ)	Production of IMFL	Short production with reference to MGQ	Amount		
							(in terms of LPL)		
1	2001-2002	M/s Ocean Beverage (P) Ltd.	9,92,250 LPL	4,96,125	48,832.740	4,47,292.260	44.73	4.47	49.20
2	2001-2002	M/s Gemini Distilleries Ltd.	12,15,000 LPL	6,07,500	3,25,102.185	2,82,397.815	28.24	2.82	31.06
3	2001-2002	M/s Kaleast Bottling (P) Ltd.	12,15,000 LPL	6,07,500	2,03,911.392	4,03,588.608	40.36	4.04	44.40
4	2/97 to 8/2002	M/s Hitech bottling plant (P) Ltd.	9,00,000 LPL	19,50,000	6,66.705	1,283.295	128.33	8.37	136.70
<b>Total</b>				<b>36,61,125</b>	<b>5,78,513.022</b>	<b>11,34,561.978</b>	<b>241.66</b>	<b>19.70</b>	<b>261.36</b>

On this being pointed out Superintendents of Excise stated between September 2002 and December 2002 that action would be taken on receipt of clarification/instruction from the Government. The reply is not tenable as the Excise Rules clearly stipulate the method of realisation of duty and fine for the shortfall of production with reference to MGQ.

The matter was reported to Government in March 2003; their reply was awaited (November 2003).

(b) Test check of records of Superintendent of Excise, Jharsuguda revealed that although demand notice was issued to M/s East India Bottlers (P) Ltd., Jharsuguda for realisation of Rs.54.97 lakh towards excise duty on short production of IMFL with reference to MGQ for the years 2000-01 and 2001-02, fine at the rate of 10 *per cent* amounting to Rs.5.50 lakh was not levied.

On this being pointed out, Superintendent of Excise, Jharsuguda stated in February 2003 that the demand would be raised after verification.

The matter was reported to Excise Commissioner/Government in March 2003; their reply was awaited (November 2003).

### **5.5 Loss of revenue due to adoption of injudicious procedure**

Under Section 93 of Bihar and Orissa Excise Act, 1915 all dues of excise revenue may be recovered by the process prescribed for the recovery of arrears of land revenue. The Collector may if he considers necessary, insist upon bank guarantee from any bidder whether from outside or inside the State, up to the extent of the consideration money and the duty for minimum guaranteed

quantity for the entire year. It had been judicially held<sup>51</sup> in 1979 that excise dues of Orissa were not realisable through Certificate proceedings in Bihar.

Test check of records of Superintendents of Excise, Mayurbhanj, Koraput and Malkangiri revealed that despite Hon'ble Patna High Court's judgement of 1979 the Collectors of the three districts sent certificates of public demands between May 1993 and February 1998 to the Collectors of concerned districts of Bihar for initiating 10 certificate proceedings against ex-exclusive privilege<sup>52</sup> holders of Bihar for realisation of arrear excise dues. Certificate proceedings were quashed by the Hon'ble High Court, Patna in February 1997 as arrear Excise revenue was not considered as arrear of land revenue. Subsequently the Special Leave Petition (SLP) filed by the Collector, Mayurbhanj in September 2002, was also dismissed by the Hon'ble Supreme Court in September 2002 on the ground of delay in filing SLP. Had the bank guarantee covering the dues for the entire financial year been insisted upon and obtained from the bidders, whether from outside or inside the State, the loss of Rs.33.15 lakh could have been avoided.

Thus Excise revenue of Rs.33.15 lakh was lost due to inappropriate action for recovery of arrear dues.

The matter was brought to the notice of Excise Commissioner/Government in March 2003; their reply was awaited (November 2003).

### **5.6 Loss of revenue due to non-issue of Mohua Flower (storage) licences**

As per Rule 4 of the Orissa Excise (Mohua Flower) Rules, 1976 any firm, person, Co-operative Society or Government establishment desiring to store or possess mohua flower for a period ordinarily not exceeding a year, and in a quantity exceeding the limit of retail sale fixed by the Board shall apply to the Collector of the district within which the storage or possession is to be made. The rules provides inter-alia, for issue of permits, on payment of dues in favour of the applicants specifying the place or premises where mohua flower is to be stored or possessed.

Test check of records of Superintendent of Excise, Koraput revealed that no licences were issued for the calender years 2000 & 2001, although 100 applications were received for grant of licences for storage of mohua flower. The said applications were processed but the licences were not issued on the specific orders of the Collector despite the fact that Excise Commissioner in his letter of May 2000 had requested the Collector to issue licences so as to prevent not only loss of revenue but also illegal storage and sale of mohua flowers. As a result, the Government sustained a loss of revenue of Rs.12.03 lakh for the year 2000-01 on account of licence fee.

51 C.W.J.C. No.2039/1995-Binay Prasad Vrs. State of Bihar

52 Exclusive privilege granted by the State u/s-22 of Bihar and Orissa - Excise Act, 1915

On this being pointed out in audit, Excise Commissioner stated in June 2003 that the licences were not issued as Mada Mukti Abhijan<sup>53</sup> was going on in the District. The reply was not tenable as issue of storage permit was to prevent the illegal storage and sale of mohua flower which was evident from the letter of Excise Commissioner of May 2000.

The matter was brought to the notice of Excise Commissioner/Government in March 2003; their reply was awaited (November 2003).

### **5.7 Non realisation of cost of establishment charges**

As per Rule-34 (2) of the Board's Excise Rules, 1965, licensees of bonded foreign liquor warehouses, including the warehouses of foreign liquor manufacturing and bottling plants, are required to pay to Government (at the end of each month) fees for deployment of excise staff engaged in supervision of the operations carried out in such warehouses and plants.

Test check of records of two District Excise Officers, Jharsuguda and Koraput revealed that the demand of Rs.6.78 lakh towards cost of establishment charges for different period between April 2000 and March 2002 was not raised against two private bottling plants<sup>54</sup>.

On this being pointed out, Superintendent of Excise, Koraput stated in March 2003 that a demand of Rs.5.90 lakh had been raised against the concerned bottling plant. Further position of recovery and action in other case was awaited (August 2003).

The matter was reported to Excise Commissioner/Government in March 2003; their reply was awaited (November 2003).

### **5.8 Non-realisation of transport fee on mohua flower**

As per Rule 11 of Orissa Excise Mohua Flower (M.F) Rules, 1976 as amended in June 2000, the rate of fee in respect of a pass for transport of mohua flower within the State shall be Rs.10 per quintal payable prior to the grant of the pass.

Test check of the records of Superintendent of Excise, Bargarh revealed that a quantity of 32,342 quintals of mohua flower was procured in 2001-02 by 40 outstill liquor licensees for manufacture of outstill liquor. However, no transport fee of Rs.3.23 lakh was demanded.

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53 "Mada Mukti Abhijan" is liquor prohibition campaign.

54 M/s East India Bottlers (P) Ltd.-May 2000 to March 2001 and M/s Umeri Distillery (P) Ltd.-April 2000 to March 2002.

On this being pointed out, Superintendent of Excise issued demand notices for realisation of the above amount in September 2002. Further reply was awaited (November 2003).

Excise Commissioner stated in April 2003 that transportation fee of Rs.2.42 lakh had been realised from 35 licensees and that action would be taken in respect of the other cases.

The matter was brought to the notice of Excise Commissioner/Government in March 2003; their reply was awaited (November 2003).