

CHAPTER III
STATE EXCISE

3.1 Results of Audit

Test check of the records of the departmental offices during the period from April 2006 to March 2007 revealed non/short collection of licence fee, privilege fee, penalty and interest etc., amounting to Rs.70.85 crore in 16 cases as mentioned below:

(Rupees in crore)

Sl. No.	Categories	No. of cases	Amount
1	Non/short collection of penalty and interest	2	64.31
2	Non/short collection of licence fee, privilege fee	7	6.13
3	Others	7	0.41
	Total	16	70.85

During the year 2006-07, the department accepted non/short collection of fee, penalty and interest in respect of 15 cases involving Rs.69.93 crore, of which, six cases amounting to Rs.69.86 crore were pointed out during 2006-07 and the rest in the earlier years. Out of the above, Rs.55.39 crore has been recovered.

After the issue of draft paragraph, the department recovered Rs.2.73 crore in one case during the year 2006-07.

A few illustrative cases involving Rs.67.63 crore are mentioned in the following paragraphs:

3.2 Non-raising of demand for shortfall in minimum off-take of liquor

As per the Tamil Nadu Liquor (Retail Vending) Rules, 1989 and terms and conditions of the licence, a licensee permitted to sell liquor should lift the minimum off-take of liquor fixed for the shop by the licensing authority. In case, the licensee failed to lift the minimum off-take so fixed consecutively for two months, he was liable to pay a penalty proportionate to the loss of revenue sustained by the Government due to such non-lifting. A number of licensees filed writ petitions in 2002 against this penalty provision and the High Court of Madras in November 2003 held that the petitioners were liable to pay penalty of 20 *per cent* of the value of the deficit in the minimum off-take for the first violation or 30 *per cent* of the value of the deficit in the minimum off-take for the second violation and directed the Government to rework the penalty accordingly within two months from the date of receipt of the Court order. The copy of the judgement was stated to have been received by the department in June 2004. Even thereafter penalty was not levied. After the non-levy was pointed by audit in September 2004, the department worked out the total penalty leviable as Rs.64.32 crore only in June 2006 for the years 2001-02 and 2002-03. However, the demand has not been raised even after three years from the date of receipt of court order resulting in non-realisation of the revenue.

After the case was again pointed out in November 2006, the Government issued an order in February 2007 to recover the penalty partly by forfeiture of deposit of Rs.52.59 crore made by the licensees. For the balance amount of Rs.11.73 crore to be recovered, the Government directed the Commissioner to invoke the provisions of the Revenue Recovery Act. Report on further action taken has not been received (October 2007).

3.3 Non-levy of import fee on the stocks of concentrates imported

Rule 22 of the Tamil Nadu Indian Made Foreign Spirit (Manufacture) Rule 1981 read with G.O.Ms.112 P&E dated 3 June 2003 provides for the levy of import fee of Rs.5 per bulk litre on the stocks of concentrates imported for the manufacture of Indian Made Foreign Spirit (IMFS) from June 2003. However, the term 'concentrates' has not been defined in the rules.

It was noticed in six IMFS units that though 37.75 lakh bulk litres of various types of special spirits were imported and used in the manufacture of IMFS during 2003-04 to 2005-06, the import fee of Rs.1.89 crore was not levied. As these spirits were of higher strength and added for giving taste and aroma, they were to be treated as concentrates and import fee charged accordingly.

After the case was pointed out in November 2006, the department/ Government replied in March/September 2007 that the matter would be consulted with a technical committee to decide on whether concentrates and special spirits were one and the same.

3.4 Non-realisation of licence fee

As per the Tamil Nadu Rectified Spirit Rules, 2000, RL4 licence should be obtained by those manufacturers who possess and use rectified spirit (RS) for non-potable purpose (i.e., for the production of denatured spirit which in turn is used for any other end product). The licence fee is Rs.5 lakh if the capacity exceeds 10 lakh litres per annum.

It was noticed that two³⁰ distilleries had not obtained the said licence eventhough they used RS for non-potable purpose. This resulted in loss of revenue of Rs.50 lakh during the period from 2001-02 to 2005-06.

After the case was pointed out, the Government replied in September 2007 that RL4 licences were not required as the distilleries were not using the spirit manufactured by them. The reply is not tenable since the records revealed that both the distilleries had used the spirit for production of end products (like poly vinyl chloride) and were, therefore, required to obtain RL4 licence. Further report has not been received (October 2007).

3.5 Non-levy of special import permit licence fee on direct import of IMFS by clubs and star hotels

The Government in their order issued in October 2002 directed the department to send a proposal for amendment of the rule for imposing 'special import permit licence fee' (SIPLF) from October 2002 on clubs and star hotels equal to the profit margin of M/s. Tamil Nadu State Marketing Corporation Ltd. (TASMAC) in respect of IMFS/beer imported directly by the clubs and star hotels.

It was noticed in the office of the Commissioner of Prohibition and Excise, Chennai that no action had been taken by the department to amend the rules so as to include the above mentioned levy. As a result, eventhough a total of 20,431 cases of IMFS and 2,597 cases of beer were imported during the period from 2003-04 to 2005-06, by clubs and star hotels, special import permit licence fee of Rs.92.44 lakh³¹ was not levied.

³⁰ M/s Chemplast Sanmar Limited and M/s.Trichy Distilleries Limited.

³¹ Calculation is based on the profit of 20 per cent on IMFL and 40 per cent on beer.

After the case was pointed out in November 2006, the department stated in March 2007 that only recommendations had been made in the G.O. issued in October 2002 and further stated that in the GO No.112 dated 3 June 2003, the Government had ordered specific rates of import licence fee on IMFS. The reply is not tenable as in the G.O. issued in October 2002, the Government had categorically accepted the recommendations of a committee and directed the department to take necessary action to implement the recommendations. Further, the GO dated 3 June 2003 cited by the department pertains to import licence fee generally leviable in case of import of IMFS by everybody including TASMAL, whereas the SIPLF is for clubs and hotels alone. Thus due to inaction on the part of the department, special import permit licence fee was not levied on the clubs and star hotels importing IMFS and beer. Further reply has not been received (October 2007).

The Government to whom the matter was reported in May 2007, replied (September 2007) that the matter was under consideration. Further report has not been received (October 2007).