
EXECUTIVE SUMMARY

What we have highlighted in this Chapter	In this Chapter we present illustrative cases of ₹ 192 crore selected from observations noticed during our test check of records relating to low recovery of alcohol from molasses, non-imposition of penalty, short levy of licence fee on shops of foreign liquor short levy of interest, other irregularities and a paragraph on “New Excise policy and its effect on revenue”.
Trend of receipts	Total collection from State Excise Department during the year 2012-13 was ₹ 9,782.49 crore, which increased by 20.19 <i>per cent</i> as compared to the previous year, however, it decreased by ₹ 285.79 crore from budget estimates which is (-) 2.84 <i>per cent</i> .
Internal Audit Wing/Internal control	During the year 2012-13, 140 units were planned for audit by the Department of which only 119 units were audited.
Status of compliance to Inspection Reports (2012-13)	<p>Our test check of the records of 148 units relating to State Excise receipts during 2012-13 revealed under assessments of tax and other irregularities involving ₹ 238.03 crore in 317 cases relating to low recovery of alcohol from molasses, non-imposition of penalty, short levy of licence fee on shops of foreign liquor short levy of interest and other irregularities</p> <p>The Department accepted and recovered underassessment and other deficiencies of ₹ 6.55 lakh involved in 34 cases of which five cases involving ₹ 2 lakh had been pointed out during 2012-13 and the remaining in the earlier years.</p>
Our conclusion	<p>The Department needs to improve the internal control system including strengthening of internal audit so that weaknesses in the system are addressed and omissions of the nature detected by us are avoided in future.</p> <p>It also needs to initiate immediate action to recover non-realisation, short levy of tax, penalties etc. pointed out by us, more so in those cases where it has accepted our observation.</p>

CHAPTER-III STATE EXCISE

3.1 Tax administration

Excise duty on liquor for human consumption, fees in case of other intoxicants such as *charas*, *bhang* and *ganja* etc. and confiscation imposed or ordered is levied under the UP Excise Act, 1910 and rules made thereunder. These rules have been made in order to have a proper check over leakages of revenue in the Department by enforcing control over illicit production, import and export of alcohol, illegal purchase and sale of liquor and other intoxicants.

Alcohol is produced in distilleries mainly from molasses obtained as a byproduct during manufacturing of sugar. Various kinds of liquor, such as country liquor (CL) and Indian made foreign liquor (IMFL) like whisky, brandy, rum and gin are manufactured from alcohol. Excise duty on production of alcohol and liquor in distilleries forms a major part of excise revenue. Liquor for human consumption is issued from distilleries either under bond without excise duty or on pre-payment thereof at the prescribed rates. Apart from excise duty, licence fee also forms part of excise revenue. The District Collector (DC) with the assistance of the District Excise Officer (DEO) is responsible for settlement of liquor shops in the district.

3.2 Trend of receipts

Actual receipts from State Excise during the years 2008-09 to 2012-13 along with the total tax receipts during the same period is exhibited in the table no. 3.1:

Table No. 3.1

(₹ in crore)

Year	Budget estimates	Actual receipts	Variation excess (+) shortfall (-)	Percentage of variation	Total tax receipts of the State	Percentage of actual receipts vis-à-vis total tax receipts
2008-09	5,040.00	4,720.01	(-) 319.99	(-) 6.35	28,658.97	16.47
2009-10	5,176.45	5,666.06	(+) 489.61	9.46	33,877.60	16.73
2010-11	6,763.23	6,723.49	(-) 39.74	(-) 0.59	41,355.00	16.26
2011-12	8,124.08	8,139.20	(+) 15.12	0.19	52,613.43	15.47
2012-13	10068.28	9782.49	(-) 285.79	(-) 2.84	58098.36	16.84

Source: Finance Accounts of the Government of Uttar Pradesh.

Total collection from State Excise Department during the year 2012-13 was ₹ 9,782.49 crore, which increased by 20.19 per cent as compared to the previous year, however, it decreased by ₹ 285.79 crore from budget estimate which is (-) 2.84 per cent.

3.3 Analysis of arrears of revenue

The arrears of revenue as on 31 March 2013 amounted to ₹ 54.06 crore of which ₹ 48.51 crore were outstanding for more than five years. The table no. 3.2 depicts the position of arrears of revenue during the period 2008-09 to 2012-13:

Table No. 3.2

(₹ in crore)

Year	Opening balance of arrears	Addition during the year	Amount collected during the year	Closing balance of arrears
2008-09	61.39	0.59	0.03	61.95
2009-10	61.95	1.35	0.07	63.23
2010-11	63.23	0.45	6.96	56.72
2011-12	56.72	0.03	1.93	54.82
2012-13	54.82	0.02	0.78	54.06

Source: Information provided by the Department.

We recommend that the Government may consider taking appropriate steps for early recovery of the arrears.

3.4 Cost of collection

The gross collection from State Excise, expenditure incurred on collection and percentage of such expenditure to the gross collection during the years 2010-11, 2011-12 and 2012-13 along with the relevant all India average percentage of cost of collection to gross collection for the previous years are mentioned in the table no. 3.3:

Table No. 3.3

(₹ in crore)

Year	Gross collection	Cost of collection	Percentage of cost of collection to gross collection	All India average percentage of cost of collection for the previous year
2010-11	6,723.49	95.72	1.42	3.64
2011-12	8,139.20	101.26	1.24	3.05
2012-13	9,782.49	116.88	1.19	2.98

Source: Finance Accounts of the Government of Uttar Pradesh and information provided by the Department.

We noted that the cost of collection for the State Excise Department is well below the all India average.

3.5 Internal Audit

Internal Audit Wing (IAW) of an organisation is a vital component of the internal control mechanism and is generally defined as the control of all controls. It enables the organisation to assure itself that the prescribed systems are functioning reasonably well.

IAW in the Department was working with strength of one Senior Finance Accounts Officer, one Finance Accounts Officer, two Assistant Accounts officer, two Senior Auditors and three Auditors posted against sanctioned strength of one Finance Controller, one Senior Finance Accounts Officer, one Finance Accounts Officer, two Assistant Accounts officers, six Senior Auditors and six Auditors. During the year 2012-13, 140 units were planned for audit but only 119 units was audited by the IAW. However, number of observations raised and money value involved therein, follow-up/compliance thereof was not intimated by the Department by December 2013.

3.6 Impact of Audit

3.6.1 Status of compliance to Audit Reports (2007-08 to 2011-12)

During the period 2007-08 to 2011-12, through our Audit Reports we had pointed out the cases of under assessments of tax and other irregularities

involving ₹ 1360.37 crore. The Department has accepted the observations of ₹ 8.53 crore of which ₹ 4.83 crore was recovered till March 2013 as shown in the table no. 3.4:

Table No. 3.4

(₹ in crore)				
Sl. No.	Year of Audit Report	Money value of the paragraphs	Money value of accepted paragraphs	Amount recovered during the year
1	2007-08	1.26	0.76	0.26
2	2008-09	1,344.56	4.24	3.93
3	2009-10	1.44	0	0
4	2010-11	1.03	3.04	0.52
5	2011-12	12.08	0.49	0.12
	Total	1,360.37	8.53	4.83

The analysis of the above table shows that the percentage of the paragraphs accepted and their money value is very low. The amount of recovery in relation to the money value of accepted paragraph is 57 per cent.

3.6.2 Status of compliance to outstanding Inspection Reports (2007-08 to 2011-12)

During the period 2007-08 to 2011-12, we had pointed out through our Inspection Reports non/short levy, non/short realisation, underassessment/loss of revenue, incorrect exemption, application of incorrect rate of tax, incorrect computation etc. with revenue implication of ₹ 1786.46 crore in 1240 cases. Of these, the Department/Government had accepted audit observations in 108 cases involving ₹ 2.65 crore and had since recovered the amount. The details are shown in the table no. 3.5:

Table No. 3.5

(₹ in crore)							
Year	No. of units audited	Amount objected		Amount accepted		Amount recovered	
		No. of cases	Amount	No. of cases	Amount	No. of cases	Amount
2007-08	82	93	18.80	12	0.06	12	0.06
2008-09	118	189	1,372.36	9	0.20	9	0.20
2009-10	119	140	66.93	20	0.95	20	0.95
2010-11	190	435	231.03	46	1.33	46	1.33
2011-12	200	383	97.34	21	0.11	21	0.11
Total	709	1240	1,786.46	108	2.65	108	2.65

The analysis of the above table shows that the percentage of amount of the accepted paragraphs is very low. However, the amount of recovery in relation to accepted paragraphs is cent per cent.

3.6.3 Status of compliance to Inspection Reports (2012-13)

Our test check of the records of 148 units relating to State Excise receipts during 2012-13 revealed under assessments of tax and other irregularities involving ₹ 238.03 crore in 317 cases which fall under the following categories as mentioned in the table no. 3.6:

Table No. 3.6

(₹ in crore)

Sl. No.	Categories	Number of cases	Amount
1.	New Excise Policy and its impact on revenue	1	188.80
2.	Low recovery of alcohol from molasses	10	24.60
3.	Non-lifting of MGQ of country liquor	04	3.00
4.	Non/short levy of licence fee	101	11.75
5.	Non-levy of interest	07	0.25
6.	Other irregularities	194	9.63
Total		317	238.03

During the year 2012-13, the Department accepted and recovered underassessment and other deficiencies of ₹ 6.55 lakh involved in 34 cases of which five cases involving ₹ 2 lakh had been pointed out during 2012-13 and the remaining in the earlier years.

A paragraph on "New Excise Policy and its impact on revenue" and a few other illustrative cases involving ₹ 192 crore are mentioned in the succeeding paragraphs.

3.7 Audit Observation

Our scrutiny of records in the offices of the State Excise Department revealed cases of low yield of alcohol, non-imposition of penalty/interest, etc. as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on a test check carried out by us. We point out such omissions each year, but not only do the irregularities persist; these remain undetected till we conduct an audit. There is need for the Government to improve the internal control system so that recurrence of such lapses in future can be avoided.

3.8 New Excise Policy and its impact on revenue

3.8.1 Introduction

State Excise Department is the second largest revenue collecting Department of the State. The United Provinces Excise Act, 1910 and the Uttar Pradesh Sheera Niyantran Adhinyam, 1964 and Rules made there under and New Excise Policy of 2001, as amended¹ from time to time gives the power to the State Government to levy fee and excise duty on production, possession, transportation, sale and purchase of alcohol.

An excise policy called the “New Excise Policy” promulgated with effect from 1 April 2001 provides for the entry of new liquor professionals by reducing/ending the monopoly of liquor syndicates. The main feature of the policy was the allotment of shops through public lottery in place of auction through bids or tender. The policy also ensures availability of better quality liquor at reasonable price to the customers. From a consumption-based levy of excise duty, the new policy was geared to

- fix the maximum wholesale price (MWP) and maximum retail price (MRP) of liquor and limit the profit margin of wholesale and retail liquor licensees.
- lay down a process for granting licences of liquor shops and fixing the licence fee.
- fix the excise duty payable on different types of liquor.
- make it mandatory to fix holograms to reduce leakage of excise revenue and to ensure quality liquor to the consumers.
- establish model shops.

3.8.2 Organisational structure

The Principal Secretary, State Excise is the administrative head at Government level. The overall control and responsibility of the State Excise Department is with the State Excise Commissioner (EC), Uttar Pradesh with headquarters at Allahabad, who is assisted by two Additional Excise Commissioners, three Joint Excise Commissioners, ten Deputy Excise Commissioners and six Assistant Excise Commissioners at headquarters. In financial matters, the Excise Commissioner is assisted by Finance Officer and Chief Accounts

¹ Dated 10 January 2007, 4 March 2008, 11 February 2009, 26 February 2010 and 12 March 2011.

Officer. The EC is also responsible for keeping watch over different units through the Internal Audit Wing. For the purpose of effective administration the State is divided in five Zones and 18 charges, each under the charge of a Joint Excise Commissioner and a Deputy Excise Commissioner respectively, who are assisted by an Assistant Excise Commissioner in each district. In case of excise receipts the collector of the district is the head of the excise administration within the district.

3.8.3 Audit objective

The audit was conducted with a view to ascertain

- whether adequate and sufficient procedure existed in the Department for assessment and collection of excise duty and licence fees etc. and their credit to Government account;
- the provisions of New Excise policy are adequate and effectively implemented; and
- an internal control mechanism exists in the Department and is adequate and effective.

3.8.4 Audit criteria

The audit examination of New Excise Policy and its impact on revenue was conducted with reference to the provisions made under following Acts, Rules and orders:

- The United Provinces Excise Act, 1910
- The *Uttar Pradesh Sheera Niyamtran Adhiniyam*, 1964
- The *Uttar Pradesh Sheera Niyamtran Niyamawali*, 1974
- New Excise Policy as amended from time to time
- Government/Departmental orders/circulars and Acts² etc.

Specific provisions have been quoted in the related paragraphs.

3.8.5 Audit scope and methodology

For the purpose of this audit we segregated the units into high, medium and low risk areas³ on the basis of revenue realized by the DEOs covering the period from 2007-08 to 2011-12. We examined the records of all the fourteen district⁴ offices identified as high risk, seven district⁵ offices out of 27 districts identified as medium risk and 3 district⁶ offices out of the remaining 30 district offices identified as low risk areas. The units of medium and low risk category were selected on random sampling basis. The records of the EC were examined whereas Government records⁷ were not made available to us despite several attempts. The audit was conducted during the period from September 2012 to April 2013.

² Indian Stamp Act, 1899, Registration Act 1908 and The U.P. Stamp (Valuation of Property) Rules 1997.

³ High Risk: where the revenue collection was above ₹ 100 crore annually.

Medium Risk: where the revenue collection ranged between more than ₹ 10 crore and less than ₹ 100 crore annually.

Low Risk: where the revenue collection was less than ₹ 10 crore.

⁴ Aligarh, Bareilly, GB Nagar, Ghaziabad, Ghazipur, Gorakhpur, Khiri, Lucknow, Meerut, Muzaffar Nagar, Rampur, Sarahanpur, Shahjahanpur and Unnao.

⁵ Allahabad, Bijnore, Firozabad, Jaunpur, Kanpur Nagar, Moradabad and Varanasi.

⁶ Badaun, Bagpat and Kaushambi.

⁷ Policy related documents for the year 2007-08 to 2012-13.

The objectives of this audit were discussed in an entry conference held on 20 November 2012 with the EC and exit conference held on 31 July 2013 with Principal Secretary/EC and other Departmental officers. The replies of the Department/Government to our observations have been incorporated appropriately.

3.8.6 Acknowledgement

We acknowledge the co-operation of Excise Commissioner (EC) Uttar Pradesh in providing necessary information and records for audit.

Audit findings

3.8.7 Pricing of country liquor

Section 41 of United Provinces Excise Act, 1910 and Rule 13 of the Uttar Pradesh Excise (Settlement of licences for wholesale of country liquor) Rules 2002 provides that the Excise Commissioner (EC), with prior sanction of the State Government, may fix the strengthwise (25 per cent, 36 per cent and 42.8 per cent v/v) price or quantity in excess of or below which any intoxicant shall not be sold or supplied.

The Excise Commissioner constitutes a committee⁸ for fixation of maximum wholesale and retail price of country liquor. The pricing committee fixes the maximum wholesale price (MWP) and

maximum retail price (MRP) by taking the following into account:

- fixed price of molasses⁹.
- conversion cost of molasses to rectified spirit and Extra Neutral Alcohol (ENA)
- adding: labour costs and wastage on dilution of alcohol,
 - caramelisation and essence costs,
 - bottling, labeling, capsuling and packaging costs,
 - transportation cost from distillery to warehouse,
 - incidence of wholesale licence fees and godown expenses,
 - hologram fixation costs,
 - incidence of retailers basic licence fees,
 - expenses and profit of retailers.

to arrive at MWP and MRP of country liquor (CL).

Since pricing is critical to the levy of excise duty, we examined the pricing process for assurance that due diligence was performed by Department when recommending the pricing to the Government. Our findings are detailed in subsequent sub-paragraphs:

⁸ The Additional Excise Commissioner (Administration), Deputy Excise Commissioner (Licencing), Deputy Excise Commissioner (Production), Finance Controller, Senior Technical Officer and Senior Statistics Officer are the members of this committee.

⁹ Including cost of molasses, central excise paid, administrative charges and its transportation costs.

3.8.7.1 Inconsistency in fixation of Maximum Retail Price in treatment of rounding off amount of IMFL and country liquor

As per price list of Foreign liquor (FL) the MRP of FL shall be rounded off to next stage in terms of ₹ 5 and this amount shall be incorporated in excise revenue as additional licence fees. However, in case of Country Liquor (CL) the rounded off amount is not credited to Government account as additional licence fees. The pricing committee of country liquor in their recommendation fixed the retailer's profit and expenses at the rate of ₹ 15 per BL (36% v/v) for 2007-08, ₹ 20 for 2008-09 to 2010-11 and ₹ 21.50 for the year 2011-12 to 2012-13, and the same was included in calculation of maximum retail price (MRP) of CL.

The MRP of IMFL is calculated by adding the excise duty to the ex-factory price, then adding the retailer margins to the total. The same is then rounded off to the next ₹ 5 and is incorporated in excise revenue as additional licence fees.

Scrutiny of records¹⁰ of Excise Commissioner Uttar

Pradesh and 18 Distilleries¹¹ for the period April 2007 and March 2013, showed that a similar procedure is followed while fixing the MRP of Country Liquor (CL). But, the rounded off amount is not credited to Government account as additional licence fees, rather this rounded off amount is added to the optimum retailer margin to increase the margin for retailer. Thus due to this difference in the treatment of rounded off amount while fixing the MRP of CL, the Government was deprived of revenue of ₹ 481.20 crore by way of additional licence fees and this amount was passed on to the retailers of country liquor. Details are shown **Appendix-V**.

We reported the matter to the Government (June 2013). The Government replied (July 2013), the price fixing committee had taken a view that the benefit of the rounded off amount is traditionally given to the retailer. We do not agree with the reply as the objective of the policy was to limit the profit margin of retailers is defeated by giving more¹² benefit to retailers against the margins fixed by the Committee. By adding the rounding off figure to the margin, the margin fixed by the committee gets exceeded resulting in loss to the state exchequer.

We recommend that similar principle may be followed in CL for crediting the rounded off amount to Government revenue as additional licence fee as is followed in the case of IMFL.

¹⁰ Price list, sales return and excise policy etc.

¹¹ Wave Distillery (Aligarh), Kesar Enterprises, Superior Distillery (Bareilly), Simbholi Distillery, Modi Distillery (Ghaziabad), Lords Distillery (Ghaziipur), Saraya Distillery, IGL Distillery (Gorakhpur), Pallia Distillery (LakhimpurKheri), Daurala Distillery (Meerut), NICL Distillery (Moradabad), Shamli Distillery, Sir Shadilal Distillery (Muzaffarnagar), Rampur Distillery (Rampur), Pilkhani distillery, Shakumbhari Distillery, Cooperative Distillery, Tapari (Saharanpur) and Unnao Distillery (Unnao).

¹² Example : for 2010-11, total number of bottles (750 ml of 36% v/v) sold = 3978180
Optimum Retail Price(ORP) = MWP + Incidence of retailers BLF + Retailers profit and expenses = (123.61 + 15.75 + 15) = ₹ 154.36
However MRP was ₹ 158
MRP – ORP = ₹ 158 - ₹ 154.36 = ₹ 3.64 the rounded off amount is added to retailers margin, which increases to ₹ 18.64 per bottle (750ml) instead of ₹ 15 (@ ₹ 20 per BL) for 750 ml as fixed by the Pricing Committee.

3.8.7.2 Undue advantage to the wholesalers of country liquor

Under Rule 11 of the Uttar Pradesh Excise (Settlement of licences for country liquor bonded warehouse) Rules 2003, grant for licenced warehouses for the storage of bottled CL, no transit loss allowance shall be given for the destruction, loss or damage by fire, accident, theft or by any other cause whatsoever during its transit or storage into the bonded warehouse. Under Rule 4 of above Rules the licensee shall procure supplies of country liquor from the distillery in bottles of the prescribed capacity and strength having security holograms, approved by the EC.

During the audit of records¹³ of EC Uttar Pradesh for the period April 2007 and March 2012, we found that the pricing committee for CL incorrectly permitted 0.5 *per cent* wastage on ex-factory price (including excise duty) to the wholesalers while fixing the maximum wholesale and retail prices. Rule 4 and 11 of Uttar Pradesh Excise (Settlement of

licences for country liquor bonded ware house) Rules 2003 do not permit wastage in bottled CL. Further, three and one *per cent*¹⁴ inadmissible profit¹⁵ was also allowed thereon. These allowances gave an undue advantage of ₹ 111.57 crore to wholesalers. Details of the undue advantage given to the wholesalers of CL are shown in **Appendix – VI**.

The Government replied (July 2013) that 0.5 *per cent* transit wastage is allowed in bulk transportation¹⁶ of liquor. We do not agree as these were not cases of bulk transport of liquor in tankers and bottled CL on which holograms fixed were transported. Moreover, the excise rules do not provide for any wastage in bottled liquor.

3.8.7.3 Absence of provision to deposit excess collection of wholesale licence fees by wholesalers of country liquor

As per Uttar Pradesh Excise (Settlement of licences for wholesale of country liquor) Rules, 2002 the licence fee is defined as the consideration of grant of licence for exclusive privilege of wholesale of country liquor under Section 24 of the Act, payable by the licensee before the licence is granted to the wholesaler on such rates notified by the excise policy. As per pricing formula and for fixing of the maximum wholesale price (MWP) of CL, this licence fee is adjusted in the MWP of CL fixed by EC.

The wholesale licence fee is calculated on the estimated sale of CL for an excise year and collected in advance from the wholesaler at the time of grant of licence. While fixing the MWP, the licence fee paid by the wholesalers is adjusted. The wholesaler recovers the excess licence fee

¹³ Price list, sales return and excise policy etc.

¹⁴ Three *per cent* in 2007-08 & 2008-09 and one *per cent* in 2009-10, 2010-11 and 2011-12.

¹⁵ Example: Number of bottles (750 ml of 36% v/v) sold during 2010-11 = 3978180
wastage @ 0.5% + 1% profit on wastage = (0.59 + 0.0059) = ₹ 0.5959
Total profit given on wastage = 3978180 x 0.5959 = ₹ 2370597

¹⁶ Transportation of liquor in bulk in tankers etc.

from the retailers on actual sale of CL which is higher than the estimated sale. Our scrutiny of the records of the office of EC Uttar Pradesh showed that for two years¹⁷ the adjusted licence fee recovered from retailers of CL, by the wholesalers was higher than the licence fee paid by the wholesalers to the Government. The details of excess licence fees recovered and retained by the wholesalers of CL are as mentioned in the table no. 3.7:

Table No. 3.7

(In ₹)

Year	Consumption of CL in BL (36% v/v)	Rate of incidence licence fee of wholesaler's per BL in the form of (36% v/v)	Wholesale licence fee (WLF) paid by wholesaler	WLF collected by wholesaler from retailer	Excess collection of WLF over WLF paid to Government
2009-10	229260962	1.46	327100000	334721005	7621005
2010-11	234546651	1.56	359810000	365892776	6082776
Total					13703781 or ₹ 1.37 crore

Source: Information provided by the Department.

The excess adjusted licence fees recovered from the retailers of CL is retained by the wholesalers as there is no provision in the rules and policy to enable deposit of the same to Government as licence fees.

The Government replied (July 2013) that the difference arises because the licence fee is assessed on the basis of presumptive data. But it was silent on the issue of adjustment of excess licence fee.

We recommend that the Government may consider making a provision to recover the differential wholesale licence fees at the end of the year or the adjust this differential amount from the security deposit of wholesalers at the end of the year. This procedure is as per excise policy and is followed in recovery of bottling fees of Foreign Liquor bottled on the estimate, where the differential renewal fees of FL3 and FL3A¹⁸ are deposited accordingly before the end of April of the subsequent financial year.

3.8.8 Non compliance of UP Excise (Settlement of Licences of Retail Sale of Country Liquor) Rules 2002

Compliance of provisions of excise policy from 2007-08 to 2012-13 was also examined and we observed non compliance on issues such as non-forfeiture of basic licence fees (BLF) and security deposit (SD), short lifting of MGQ, enhancement of MGQ at lower base, low recovery of alcohol from molasses, short levy of licence fees and non levy of interest etc. Our observations are enumerated below.

¹⁷ 2009-10 and 2010-11

¹⁸ FL3- A bottling licence to a distiller to bottle IMFL and FL3A- a bottling licence to a outside distiller, brewer or vintner to put his own brand name on the labels of IMFL.

3.8.8.1 Non-forfeiture of Basic Licence Fee and security deposits

Rule 12 of the Uttar Pradesh Excise (Settlement of Licences of Retail Sale of Country Liquor) Rules 2002 provides that amount of Basic Licence Fee (BLF) shall be deposited in full within three working days, half of the security amount within 10 working days and rest of the amount within 20 working days, of receipt of the intimation of the selection of shops. In case of default, the selection of shop would be cancelled and amounts of BLF and security deposits, if any, would be forfeited in favour of the Government and the shops would be resettled forthwith.

We examined the records¹⁹ of six District Excise Offices²⁰ and observed that during the year 2011-12 though the licences of the 639 country liquor shops were settled or renewed, these licensees, however, did not deposit the entire amount of BLF and

security deposit as required under the Rules. The delay ranged from 01 to 105 days. For this default no action was initiated as envisaged in the Rules.

As no relaxation is allowed under the provisions/rules, the inaction of the Department deprived the Government to the tune of ₹ 53.68 crore by way of depositing BLF and security deposit.

We reported the matter to the Government (June 2013). The Government accepted (July 2013) our observation. The Government also stated that perhaps due to operational difficulties, no action was taken under Rule 12 by the district officials.

The reply of the Government established that action under Rule 12 was not taken.

3.8.8.2 Non-realisation of excise duty due to short lifting of annual minimum guaranteed quota of country liquor

Under the provisions of Rule 14 of the Uttar Pradesh Excise (Settlement of license for the retail sale of country liquor), Rules 2002, a licensee is liable to lift the entire Minimum Guaranteed Quota (MGQ) fixed for him during the year. In case of failure, the licensing authority has to adjust the outstanding balance amount of license fee from the security deposit of the licensee and also issue a notice to the licensee by the third day of the next month to replenish the deficit in the security amount either by lifting such quantity of country liquor involving duty equivalent to the adjusted amount or by depositing cash or a combination of both. In case the licensee fails to replenish the deficit in security amount by the tenth day of the next month, his licence shall stand cancelled.

We observed from the records of DEO, Mainpuri in May 2012 that four licensees lifted 29381.70 BL against MGQ of 42560 BL during the period 2011-12. As the full quantity of MGQ of country liquor was not lifted during the year, the differential amount of licence fee of ₹ 20.69 lakh²¹ on the short lifted quantity of 13178.30 BL of liquor was to be recovered from the licensees.

¹⁹ G-12 – Details of settled shops.

²⁰ DEO – Aligarh, Allahabad, Ghazipur, Gorakhpur, Kanpur and Kaushambi.

²¹ Short lifted quantity (13178.30) multiplied by ₹ 157 per BL.

We reported the matter to the Government (June 2012), Government accepted the audit observation and stated that recovery is under process.

3.8.8.3 Short-realisation of excise duty due to short-lifting of Minimum Guaranteed Quota (MGQ) of Country Liquor in March

As per the Excise Commissioner's circular dated 9 March 2009, under the UP Excise (Settlement of licences for retail sale of country liquor) Rules 2002, the licensee has to lift at least 80 per cent of the Minimum Guaranteed Quota (MGQ) in the month of March. If a licensee fails to do this, the licence fee will be adjusted from the security deposit of the licensee.

We observed from the records of 15 DEOs²² between August 2012 and March 2013, that during the year 2007-08, 2008-09 and 2009-10, 902 licensees lifted

1140947.58 BL country liquor against the quota of 1724353.05 BL fixed for the month of March 2008, March 2009 and March 2010. The differential amount of licence fee amounting to ₹ 5.51 crore due to this short lifting had not been adjusted by the Department from the security deposit of the licensees.

We reported the matter to the Government (June 2013). The Government accepted (July 2013) our observation and stated that an amount of ₹ 54.27 lakh has been recovered and recovery of the balance amount is under process.

3.8.9 Enhancement of MGQ at lower base MGQ for country liquor

As per the excise policy of the relevant years the MGQ of 2008-09 was to be fixed by enhancing the MGQ of the previous year. The rate of enhancement was 7 per cent in 2008-09, 7 per cent (8 per cent in special Zone Meerut) for 2009-10, 3 per cent for 2010-11 and 1 per cent for 2011-12. The settlement of shops was for the years to be made as per the above enhancement.

We scrutinised the consumption register, G-12²³ and other records of 13 DEOs²⁴ and noticed that the enhancement of MGQ was done on the fixed MGQ of previous years,

whereas the actual consumption in the previous years ranged 0.001 to 6.69 per cent above the MGQ. Taking the previous years MGQ as base rather than actual lifting led to short fixation of MGQ of 24.99 lakh BL in the years and Government was deprived of revenue in the form of BLF of ₹ 4.13 crore. Details are shown in **Appendix – VII**.

We reported the matter to the Government (June 2013). The Government replied (July 2013) that MGQ of CL was assessed according to the provision of excise policy by Government. It is not possible to assess the MGQ on the basis of actual lifting.

We recommend that the Government may consider making a provision to recover the differential Basic licence fees at the end of the year or the adjust this differential amount from the security deposit of retailers at the end of the year. This procedure would be in line with the excise policy (for

²² DEO - Aligarh, Allahabad, Bareilly, Badaun, Bijnore, Ghazipur, Gorakhpur, Jaunpur, Kanpur, Kaushambi, Lakhimpur Kheri, Lucknow, Saharanpur, Unnao and Varanasi.

²³ G-12 – Details of settled shops.

²⁴ DEO - Allahabad, Badaun, Baghpat, Bareilly, Bijnore, Ghaziabad, Ghazipur, Gorakhpur, Kaushambi, Meerut, Moradabad, Muzaffarnagar and Rampur.

the year 2012-13) for recovery of bottling fees of Foreign Liquor bottled on the estimate, wherein the differential renewal fees based on actual bottling are deposited before the end of April of the subsequent financial year.

3.8.10 Loss of revenue due to low recovery of alcohol from molasses

As per Government order No 192/thirteen-18-91 dated 5 April 1991, the national standard and prescribed norms for recovery of alcohol from per quintal of molasses is 22.5 A.L. (94% v/v). The cost of country liquor is calculated on the basis of the above norms* by the EC at the time of fixation of MRP of CL. The EC as Controller of molasses under section 8 (1) of the UP *Sheera Niyamtran Adhiniyam* 1964 allots the reserved molasses to distillers who manufacture the CL. Under rule 21 of Uttar Pradesh *Sheera Niyamtran Niyamawali* 1974, no molasses supplied to an allottee shall be used for a purpose other than that for which it has been allotted, except with the prior permission of Controller. The norms of recovery of 22.5 AL (94% v/v) per quintal of molasses forms the basis of fixation of MRP of CL as well as that of the excise duty levied.

The norms of recovery of 22.5 AL (94% v/v) from per quintal of molasses forms the basis of fixation of MRP of CL as well as that of the excise duty levied. Hence we examined the adherence to norms by the distilleries and action taken by the Department in cases of non adherence.

We examined records like continuous out turn (COT)²⁵ registers of 19 Distilleries²⁶ and observed that between August 2012 and May 2013, these Distilleries²⁷ did not maintain the minimum recovery of alcohol²⁸ from molasses as per norms. During April 2007 to March 2013, 5071.49 lakh AL of alcohol should have been produced from 239.79 lakh quintal of molasses consumed by these distilleries against which actual production of alcohol was 4781.07 lakh AL. This resulted in short production of 290.42 lakh AL alcohol. After bifurcating this in the same ratio as that of the total production of potable and industrial alcohol by these distilleries, we found 174.85 lakh AL of potable alcohol involving excise revenue of ₹ 736.49 crore as shown in **Appendix-VIII** was short produced.

We also noticed that distilleries did not maintain separate inventory of alcohol produced from reserved²⁹ molasses. As a result Department could not assess

²⁵ COT – The officer Incharge of then Distillery shall draw composite sample of molasses consumed in three successive out turns and divide it into three equal parts which shall be sealed by the Officer In charge with his seal.

²⁶ Wave Distillery (Aligarh), Kesar Enterprises and Superior Distillery (Bareilly), Simbholi Distillery, Mohan Meakins Distillery and Modi Distillery (Ghaziabad), Lords Distillery (Ghaziipur), Saraya Distillery and IGL Distillery (Gorakhpur), Pallia Distillery (LakhimpurKheri), Daurala Distillery (Meerut), NICL Distillery (Moradabad), Shamli Distillery and Sir Shadilal Distillery (Muzaffarnagar), Rampur Distillery (Rampur), Shakumbhari Distillery and cooperative Distillery, Tapari (Saharanpur), Rosa Distillery (Shahjehanpur) and Unnao Distillery (Unnao).

²⁷ Distilleries having PD-2 licence granted by EC for manufacturer of potable and non potable liquor.

²⁸ Rectified spirit (RS) or Extra neutral alcohol (ENA).

* Formula adapted for calculation of manufacturing cost of 94% v/v alcohol

$$= \frac{\text{cost of reserved molasses (in quintals)}}{22.5} = \text{cost of one litre alcohol of 94\% v/v}$$

conversion costs, labour costs, wastage etc. are added to this cost to arrive at the cost of alcohol of the required strength i.e. 25%, 36% or 42.8% . To this bottling, labeling, capsuling, packing costs, hologram costs are added. Then the ED is added. Further components like freight, godown exp., wastage (0.5%), incidence of licence fee at whole sellers profit of wholesales, incidence of retailers licence fee, retailers profit and expenses etc. are added to calculate the final fixed MRP of CL.

²⁹ As per Sheera Policy of Uttar Pradesh certain percentage of molasses for year to year produced by Sugar Mill are reserved for production of country liquor and the price of this reserve molasses is fixed by the Excise Commissioner/Molasses Controller.

the actual production of alcohol from reserve molasses, issued at a fixed price, which are to be used only for production of country liquor.

We reported the matter to the Government (June 2013). The Government replied (July 2013) that the Department fixed the norms for recovery of alcohol from every quintal of fermentable sugar content present in molasses to yield 52.5 AL alcohol. Action as per rules had been taken against distillers when they fail to maintain the minimum yield of alcohol in batch. The Government reply shows that it is ignoring its own GO of 1991, regarding norms of recovery of 22.5 AL (94 per cent v/v) per quintal of molasses based on which the cost of one litre of (94 per cent v/v) alcohol is calculated by the pricing committee. This cost is the basis of fixation of MWP and MRP of alcohol. Moreover the adjustment of reserved molasses in case of purchase of ENA by a distillery is also done on the same norms. Hence it follows that these are the norms which the distillers are required to adhere to in production of alcohol. Failure to maintain the minimum yield of alcohol from molasses consumed entails cancellation of licence and forfeiture of security deposit besides other penalties which was not done in the instant cases.

3.8.11 Short-levy of licence fee

We examined the implementation of the excise policy with respect to levy of licence fees on the sale of all kinds of liquor and noticed cases of non/short levy of licence fees of wholesale and retail shops of all three kinds of liquor³⁰. Our observations are enumerated below:

3.8.11.1 Non/Short-levy of licence fee of wholesale supply of beer

As per Rule 4(c) of Uttar Pradesh Excise (Settlement of licences for wholesale supply of foreign liquor) Rule, 2002 (as amended) the settlement of wholesale supply of foreign liquor, beer and wine can be made by the FL-2 licensees.

As per Excise Policy 2011-12 and 2012-13, the licence fee for FL-2 licence was to be fixed on the basis of estimated number of bottles sold by retail shops during previous year as detailed below:

Sl. No.	Estimated number of bottles sold by retailers during previous years in district	Licence fee (₹ in lakh)
1	Up to 7 lakh bottles	05.00
2	Between 7 lakh to 15 lakh bottles	10.00
3	Between 15 lakh to 25 lakh bottles	20.00
4	Between 25 lakh to 30 lakh bottles	30.00
5	More than 30 lakh bottles	40.00

The wholesale sale of beer was also governed by the same rules. Further as per Rule 4 (E) of the Rules *ibid*, for the wholesale supply of beer only, licences in form FL-2B shall be granted on payment of ₹ 5 lakh as licence fee.

During test check (August 2012 to May 2013) of records³¹ in the offices of 20 DEOs³² and information collected from office of the Excise Commissioner, we observed that during the year 2011-12 and 2012-13, in 17 and 20 districts respectively, FL-2 licensees were also permitted to supply beer along with IMFL to retail shops. The licence fees for FL-2 licensees were recovered on the basis of estimated number of bottles of

³⁰ Country liquor, IMFL and beer.

³¹ Files of settlement of licences, sale, consumption statement, and G-6.

³² DEO –Badaun, Baghpat, Bareilly, Bijnore, Etawah, Faizabad, Fatehpur, Firozabad, Ghazipur, Gorakhpur, Jaunpur, Kaushambi, Lakhimpur Kheri, Mainpuri, Moradabad, Muzaffarnagar, Rampur, Saharanpur, Shahjahanpur and Unnao.

IMFL alone sold during previous year, without taking into account the total number of beer bottles sold by the licensees. Also no separate FL-2B licences were granted in these districts. This resulted in short realization of revenue of ₹ 5.35 crore as detailed in **Appendix – IX**.

We reported the matter to the Government (June 2013). The Government in its reply (July 2013) stated that only numbers of bottles of IMFL sold were to be taken as basis of fixing the licence fee. The Government further stated that from 2013-14 the sale of beer will be regulated through FL 2B licence. The reply of Government is silent on the lapse of DEOs to take in the account the para 4(5)(6) of the policy of 2011-12 and 2012-13, that determination of licence fees for wholesale sale of beer is to be governed by the same rules as per sale of IMFL. Since the shops mentioned by us were selling both beer and IMFL, as per the policy the total number of bottles of IMFL and beer sold, were to be taken as basis of fixing the licence fee. This lapse has led to short realisation of revenue.

Similar issue was pointed out in Paragraph No. 3.15 of Audit Report (Revenue Sector) for the year ending 31 March 2012. The Government/Department has not taken total number of bottles of IMFL and beer actually sold as base of fixing the licence fees.

3.8.11.2 Retail licence shops of beer

Under the provisions of the Uttar Pradesh Excise (Settlement of Licences of Retail Sale of Beer) Rule 2001 (as amended) annual licence fee in respect of the retail shops of beer is leviable on the basis of number of bottles sold out in the current year. As per the new excise policy 2009-10 and 2010-11 the number of bottles was to be calculated on the basis of actual sale of 10 months i.e. from April to January and calculated sale of February and March by 1/5 of April to January. Similarly as per the State Excise Policy notified on 12 March 2011 for the year 2011-12, the number of bottles was to be calculated on the basis of actual sale of 11 months i.e. from April to February and calculated sale of March by 1/11 of April to February.

We observed (between August 2012 and April 2013) from the records of 20 DEOs³³ that annual licence fee of all the retail shops of beer of the State was fixed on the basis of actual sale of bottles of 10 months i.e. April to January of preceding year plus the calculated sale of February and March of that year, for the years 2009-10 and 2010-11. Similarly for 2011-12, the

licence fee was based on actual sale of April 2010 to February 2011 plus calculated sale of March 2011.

The licence fee based on the number of bottles actually sold during previous 12 calendar months (which included sale in month of previous March) at the time of settlement of beer shops, worked out to ₹ 1.03 crore, ₹ 2.11 crore and ₹ 11.70 crore for the year 2009-10, 2010-11 and 2011-12 respectively as against the ₹ 0.81 crore, ₹ 2.02 crore and ₹ 11.16 crore for the respective years

³³ DEO – Aligarh, Allahabad, Badaun, Bijnore, Firozabad, GB Nagar, Ghazipur, Gorakhpur, Jaunpur, Kanpur, Kaushambi, Lakhimpur Kheri, Lucknow, Meerut, Moradabad, Muzaffarnagar, Rampur, Shahjahanpur, Unnao and Varanasi.

licence fee fixed by Department. We noticed that the information regarding actual sale of bottles for previous calendar year was available with the Department at the time of fixing the basis of the calculation. Though the sale in month of March of the previous year was 51.73 to 75.39 *per cent* higher³⁴ than average sale of other 11 months, this higher sale (of 0.71 lakh bottles , 2.05 lakh bottles , 8.10 lakh bottles respectively) was ignored while fixing the license fee by Department and calculated sale for the month for 2009-10, 2010-11 and 2011-12 was taken as a basis for calculation. By excluding the March sale from calculations, Government was deprived of revenue ₹ 85 lakh (₹ 22 lakh + ₹ 9 lakh + ₹ 54 lakh) by way of licence fee during 2009-10 to 2011-12 as shown in **Appendix-X**.

3.8.11.3 Retail licence shops of foreign liquor

Under the provisions of the Uttar Pradesh Excise (Settlement of Licences of Retail Sale of Foreign Liquor) Rule 2001 (as amended) annual licence fee in respect of the retail shops of foreign liquor is leviable on the basis of number of bottles sold out in the current year. As per the new excise policy 2011-12, the number of bottles was to be calculated on the basis of actual sale of 11 months i.e. from April to February and calculated sale of March by 1/11 of April to February.

We observed the records of 24 DEOs³⁵ that annual licence fees of all the retail shops of foreign liquor was fixed on the basis of actual sale of bottles of 11 months i.e. April to February of the preceding year plus the calculated

sale³⁶ of March of that year for the year 2012-13. The licence fees based on the number of bottles actually sold during previous 12 calendar months at the time of settlement of liquor shops, worked out to ₹ 97.12 crore for the year 2012-13. The information regarding actual sale of bottles for a calendar year was available with the Department at the time of fixing the basis of calculation. Though the sale in month of previous March was 47.87 *per cent* higher³⁷ than average sale of other 11 months, this higher sale (of 11.64 lakh bottles) was ignored while fixing the license fee by Department and calculated sale for one month for 2011-12 was taken as a basis for calculation. Due to this, Government was deprived of revenue of ₹ 5.24 crore by way of licence fee during 2012-13 as shown in **Appendix-XI**.

We reported the matter of fixing of licence fee of retail licence shops of beer and foreign liquor to the Government (June 2013). The Government replied (July 2013) that the allotment and licence fee was fixed as per the policy and they had considered the issue in 2013-14, in which they settled the shops by increasing 15 *per cent* on the licence fee of 2012-13. The reply is silent on the issue of non inclusion of higher March figures in the licence fee of the earlier year, which will impact on the new method also.

³⁴ Sale in March 2008 was 1.66 lakh bottles when compared to 0.95 lakh bottles being the average sale of 11 months taken in calculation for policy of 2009-10. Similarly for policy of 2010-11, sale in March 2009 was 5.47 lakh bottles compared to monthly average of 3.42 lakh bottles , and for policy of 2011-12 sale in March 2010 was 23.76 lakh bottles compared to monthly average of 15.66 lakh bottles (For the DEOs mentioned in Appendix X)

³⁵ DEO –Aligarh, Allahabad, Badaun, Baghpat, Bareilly, Bijnore, Firozabad, GB Nagar, Ghaziabad, Ghazipur, Gorakhpur, Jaunpur, Kanpur, Kaushambi, LakhimpurKheri, Lucknow, Meerut, Moradabad, Muzaffarnagar, Rampur Saharanpur, Shahjahanpur, Unnao and Varanasi.

³⁶ Calculated sale for 2012-13 fixed on the basis of formula: Actual sale of 11 months (April to February) + Average monthly sale calculated on actual sale of 11 months.

³⁷ Sale in March 2011 was 35.96 lakh bottles when compared to 24.32 lakh bottles being the average sale of 11 months taken in calculation for policy of 2012-13. (For the DEOs mentioned in Appendix XI)

3.8.11.4 Sale of beer without depositing the beer bar licence fees

Foreign liquor as defined in UP Excise settlement of licences for retail sale of foreign liquor (Excluding beer and wines) (Third Amendment) Rules 2002 includes Malt spirit, Whisky, Rum, Brandy, Gin, Vodka and Liquor. Beer is not included in the definition. As per Rules 647 and 648 of the United Provinces Excise Act, 1910 and Rules made there under the UP Excise (Wholesale and retail vend of Foreign Liquor) (Thirteenth Amendment) Rules 2002 state that Beer bar licence in form FL 7B is required for retail sale of beer on premises of hotels, dak bungalows or restaurants. Rule 10 provides for issue of licence of FL 6A composite for retail sale of foreign liquor by four and five star hotels and issue of FL 6 licence for hotel other than the above. FL 7 licence is required for retail sale of foreign liquor by Restaurants. FL 6A composite and FL 7 will also cover sale of draft beer only and not bottled beer.

We observed from records of bar licences and G-6 register between August 2012 and May 2013 that 19 DEOs³⁸ settled or renewed 1370 licences of the hotels/restaurant bars under FL 6, FL 6A (composite) and FL 7 category between the period April 2007 to March 2013 where consumption of bottled beer was also shown. These hotels/restaurant bars were not issued the FL 7B licence required for retail sale of bottled beer.

We noticed that only 11 hotels/restaurant bars³⁹ were issued FL 7B licences and licence fees of ₹ 15.50 lakh collected during 2011-12. As a result of non levy of FL 7B licence fees, the Government was deprived of revenue ₹ 16.80 crore shown in **Appendix – XII**.

We reported the matter to the Government (June 2013). The Government replied (July 2013), the Notification⁴⁰ dated 20 December 1980 is to be considered for definition of foreign liquor, where beer is included in definition of foreign liquor. Government reply is not as per UP Excise Settlement of Retail Sale of Foreign Liquor (excluding beer and wine) (third amendment) Rules 2002 where beer is not covered in definition of foreign liquor. Further, the U P Excise (Wholesale and Retail vend of Foreign Liquor) Rules 2002⁴¹ also specify the licences required for the retail sale of beer.

³⁸ DEO-Aligarh, Allahabad, Badaun, Bareilly, Bijnore, Firozabad, Ghaziabad, Gorakhpur, G B Nagar, Kanpur, Lakhimpur Kheri, Lucknow, Merrut, Moradabad, Muzaffarnagar, Rampur, Saharanpur, Unnao and Varanasi.

³⁹ DEO-Firozabad (2), DEO- Ghaziabad (1) and DEO Varanasi (8).

⁴⁰ No.8272-E/XIII-656-79 dated 20 December 1980.

⁴¹ Notification No. 17882/X-Licence-9/New Beer-Bar Policy-2002 dated 24 November 2002

3.8.11.5 Loss of licence fee for the Model Shop

As per State Excise Policies notified on 11 February 2009, 26 February 2010 and 12 March 2011, the licence fee for setting up a model shop for the year 2009-10, 2010-11, 2011-12 and 2012-13 or part thereof was fixed as ₹ eight lakh for the year 2009-10 and 2010-11 or part thereof and similarly ₹ nine lakh for the year 2011-12 and 2012-13, or the highest licence fee among the settled retail shops in the city /town for the same year for both foreign liquor and beer whichever was higher, but it could not be more than ₹ 22 lakh and ₹ 25 lakh respectively in those year.

- We observed from the records⁴² of 26 DEOs⁴³ between August 2012 to March 2013 that licence fee of 393 model shops⁴⁴ of foreign liquor and beer was fixed and realised as ₹ 87.90 crore for the year 2009-10 to 2012-13, whereas it comes to ₹ 95.41 crore as per excise policy. The DEOs

have ignored the actual sale by these model shops in preceding year while calculating the highest sale by settled retail shops in the city/town. They have taken into account the sale by other shops of the city/town to fix the licence fee. However these model shops are also settled as retail shops, hence sale by model shops was required to be taken into account while fixing the licence fee prior to regulating it with ceiling. Thus, the Government was deprived of revenue of ₹ 7.51 crore.

- We also observed from the records⁴⁵ of 26 Districts Excise Offices (DEOs) between August 2012 to March 2013 that licence fee of 393 model shops⁴⁶ of foreign liquor and beer was fixed and realised as ₹ 87.90 crore for the years 2009-10 to 2012-13. The licence fee realisable on actual sale of these model shops alone was ₹ 150.72 crore. Due to the ceiling of ₹ 22 lakh and ₹ 25 lakh imposed on upper limit of the licence fee of model shops, the Department has been deprived of licence fee of ₹ 62.82 crore, as the actual sales and the licence fee realisable ranged from 0.06 per cent to 505.34 per cent above the actual fee realised from the model shops.

We also observed that the imposition of ceiling was a part of the proposal sent to the Government by the Department. The ceiling was initially revised⁴⁷ from ₹ 20 lakh to ₹ 22 lakh in 2009-10 and to ₹ 25 lakh in 2011-12 and 2012-13. The Department did not examine the loss of revenue due to imposition of this ceiling despite having all the data available with them. The proposal sent by the Department was approved as such by the Government.

We reported the matter to the Government (June 2013). The Government replied (July 2013) that the allotment and licence fee was fixed as per the

⁴² Model shops settlement files, excise policies and sales/returns

⁴³ DEO –Aligarh, Allahabad, Badaun, Baghpat, Bareilly, Bijnore, Bulandshahar, Firozabad, GB Nagar, Ghaziabad, Ghazipur, Gorakhpur, Jalaun, Jaunpur, JP Nagar, Kanpur, Lakhimpur Kheri, Lucknow, Meerut, Moradabad, Muzaffarnagar, Rampur Saharanpur, Shahjahanpur, Unnao and Varanasi.

⁴⁴ Model shop is a licenced shop situated in the commercially approved area of the corporation, city or municipality having at least 600 sq. ft. carpet area and consumption facility also.

⁴⁵ Model shops settlement files, excise policies and sales/returns.

⁴⁶ Model shop is a licenced shop situated in the commercially approved area of the corporation, city or municipality having at least 600 sq. ft. carpet area and consumption facility also.

⁴⁷ On the grounds that there is a regular annual increase in licence fees of all retail shops, hence licence fees of model shops should periodically be revised.

policy, they had considered the issue in 2013-14, and revised the minimum licence fee for model shops from ₹ 9 lakh to ₹ 11 lakh and revised the ceiling from ₹ 25 to ₹ 30 lakh.

Our examination shows that this increase of 20 percent in the ceiling of licence fees of model shops was inadequate, as 241 shops out of 393 mentioned in our observations have already had⁴⁸ sales ranging from ₹ 30 lakh to ₹ 1.57 crore⁴⁹.

3.8.12 Non-forfeiture of security deposit

Para 13, 14 and 16 of the Uttar Pradesh Excise (Settlement of retail licences for Model shop of foreign liquor) Rules 2003, Uttar Pradesh Excise settlement of licences for retail sale of foreign liquor (excluding beer and wine) Rules 2001 and Uttar Pradesh (Settlement of licences for retail sale of country liquor) Rules 2002 respectively, provide that the MRP as fixed by Excise Commissioner on sanction of the State Government, shall be printed on the labels of bottles or containers of Foreign liquor/Beer/Country liquor, and the licensee shall not charge from consumers more than MRP printed on labels of bottles. The conditions of grant of licence under these Rules state that the retail licences shall not charge more than printed MRP, violation of terms and conditions of retail licence or a conviction for any offence under the United Provinces Excise (UPE) Act, 1910 or Narcotic Drugs and Psychotropic substances Act, 1985 shall make the licensee liable for cancellation of the licence and forfeiture of security deposit, in addition to any penalties imposed under the relevant laws.

We observed between August 2012 and April 2013 from breach registers and G-6⁵⁰ for the period April 2007 to March 2012 in respect of 19 DEOs⁵¹, that 1610 cases were registered under breach⁵² by the Department against 1,333 retailers, where liquor was found to be sold over the MRP, and penalty at the rate of ₹ 50 to ₹ 10,000⁵³ only was imposed on these shops. We noticed that while 277 of these shops had repeatedly violated the Rules, no action as defined under the Rules and Acts such as cancellation of the licence and forfeiture of security deposit, in addition to penalty

imposed was taken against them. The non forfeiture of security deposit alone for violation comes ₹ 47.74 crore as shown in **Appendix – XIII**.

We reported the matter to the Government (June 2013). The Government in its reply (July 2013) stated that under Section 64/74 of United Provinces Excise Act 1910, violation of terms and conditions of licence cases are to be closed after imposition of penalty upto ₹ 5000. After compounding of such cases there is no legal base for suspension and cancellation of licences. The Government reply is not as per the Act. The breach of the conditions by the

⁴⁸ Between 2009-10 to 2012-13.

⁴⁹ In model shop at *CTI Chauraha* (Crossing), Kanpur.

⁵⁰ A register of excise receipts shall be maintained in the Collectors office in form G-6.

⁵¹ DEO-Aligarh, Badaun, Baghpat, Bareilly, Bijnore, Firozabad, GB Nagar, Ghaziabad, Jaunpur, Kanpur, Lakhimpur Kheri, Meerut, Moradabad, Muzaffarnagar, Rampur, Saharanpur, Shahjahanpur, Unnao and Varanasi.

⁵² Breach: breaching of conditions of licence.

⁵³ Penalty of ₹ 10,000 imposed only in one case.

holder are dealt with Section 34 of the Act wherein the EC has the power to cancel/suspend the licence. Moreover the general and special conditions of the licence clearly state that the licensee is liable for forfeiture of security deposit as well as payment of penalties/compounding in case of breach of conditions. In all the cases including those of repeated violation the Department has merely imposed compounding penalty but has not taken action to cancel licence/forfeit the security deposit as deterrence.

3.8.13 Non-levy of interest on belated payment of excise revenue

Under the provisions of the United Provinces Excise Act, 1910, where any excise revenue is not paid within three months from the date on which it becomes payable, interest at the rate of 18 per cent per annum is recoverable from the date on such excise revenue becomes due.

From the records of three offices of excise Department, that excise revenue⁵⁴ of ₹ 63.15 lakh pertaining to the period from 2003-04 to 2008-09 was deposited between

April 2007 and December 2011 i.e. with delay of 126 to 2823 days. However, interest amounting to ₹ 19.47 lakh on the belated payment was not levied by the Department, as detailed in the table no. 3.8:

Table No. 3.8

(₹ in lakh)

Sl. No.	Name of office	Period	Amount	Period of delay in days	Amount of Interest
1	District Excise Office, Allahabad	2008-09	30.76	126 – 513	1.84
2	Assistant Commissioner, Daurala Distillery, Daurala, Meerut	2003-04 to 2006-07	24.00	398 – 1493	11.19
3	District Excise Office, Mau	2003-04 to 2008-09	8.39	828-2823	6.44
Total			63.15	126 - 2823	19.47

We reported the matter to the Government (June 2013). The Government accepted (July 2013) the observation and stated that notice for recovery in cases mentioned at Sl. No. 2 and 3 have been issued. Regarding Sl. No. 1, the reply stated that the security deposit was deposited in treasury and no interest was leviable. We do not agree with this part of the reply as our observation was on non levy of interest due on delayed deposit of excise duty while the Department has responded that the security deposit was deposited in treasury. The two⁵⁵ are different items and the reply of the Department does not address our observation.

⁵⁴ Excise duty ₹ 30.76 lakh , Licence fees ₹ 32.39 lakh

⁵⁵ Security deposit and excise duty.

3.8.14 Short-levy of rent and non-levy of stamp duty on warehouses

Under Rule 5(2) and (3) of the Uttar Pradesh Excise (Settlement of licences for country liquor bonded warehouse) Rules 2003, the licensee shall be allowed to run warehouse at the district headquarters in the existing warehouse buildings of the Excise Department on payment of rent approved by the District Magistrate (DM). As per Rule 4 of the U. P. Stamp (valuation of property) Rules 1997, market rates for rent for commercial properties are fixed biennially by the DM and are called circle rates. When there is no Government warehouse in the district or there is no adequate space in Government warehouse it may be opened in private premises situated at District headquarters, that shall be approved by the collector of concerned district. Under the provisions of the section 18 of the Registration Act 1908 leases of immovable property for any terms not exceeding one year is optional for registration. As per Article 35 of Schedule 1B of Indian Stamp Act (IS Act) 1899, however stamp duty on lease upto one year is chargeable as conveyance for a consideration equal to whole amount payable. As per section 33(i) of IS Act every person in charge of a public office (except an officer of police) before whom any instrument chargeable with duty is produced or comes in the performance of his duties, if it appear to him that such instrument is not duly stamped shall impound the same and refer to the Collector for valuation.

During the audit between August 2012 and April 2013 of seven DEOs,⁵⁶ we noticed that the Departmental warehouses/godowns were leased on rent to the licenced wholesalers of country liquor. In two districts⁵⁷ permission for establishment of the wholesale warehouses on private premises was granted. We observed the following irregularities in these cases:

- These wholesale licensees of CL during 2007-08 to 2012-13 were not charged the correct rent as per the approved circle rate for the lease of these warehouses. This led to short recovery of rent

of ₹ 66.79 lakh.

- In eight cases of three districts⁵⁸ we noticed during 2009-10 to 2012-13 that the lease agreement was executed⁵⁹ on ₹ 10 and ₹ 100 stamp paper but not registered. Thus, there was short levy of stamp duty of ₹ 1.62 lakh in these cases.

In 29 cases of six districts⁶⁰ during 2007-08 to 2011-12 while the DEOs had awarded the warehouse on rent to the wholesalers, the lease deeds were not executed and no stamp duty was paid. As a result of ₹ 3.45 lakh of stamp duty was not levied on the lease agreements.

The DEOs of the districts did not exercise due diligence in levying the correct lease rent and also did not ensure the payment of the stamp duty on the agreements. As a result the Government was deprived of revenue of ₹ 71.86 lakh (₹ 66.79 lakh short rent and ₹ 5.07 lakh stamp duty).

⁵⁶ Aligarh, Allahabad, Bareilly, Jaunpur, Rampur, Unnao and Varanasi.

⁵⁷ Bareilly and Lucknow.

⁵⁸ Bareilly, Lakhimpur Kheri and Lucknow.

⁵⁹ Bareilly and Lucknow (Private premises), Lakhimpur kheri (Government warehouse)

⁶⁰ DEO – Aligarh, Bareilly, Jaunpur, Rampur, Unnao and Varanasi.

We reported the matter to the Government (June 2013). The Government accepted (July 2013) our observation and stated that instructions for recovery have been issued. The details of recovery are awaited.

3.8.15 Lack of documentation of Godown expenses allowed to wholesalers of country liquor

At the time of fixation of MRP of country liquor for the year 2007-08 to 2011-12 godown expenses are allowed to the wholesalers and included in the MRP of country liquor at the rate ₹ 1.30 per BL for the year 2007-08, ₹ 1.39 per BL for the year 2008-09 to 2010-11 and ₹ 1.53 per BL for the year 2011-12.

Under sub Rule 3 of Rule 7 of Uttar Pradesh excise (settlement of licences for country liquor bonded warehouses) Rules 2003, the licensee shall furnish to the officer in charge a list of agent and all employees, whose services are required in warehouse. Godown expenses include rent, payment of salaries of employees, water and electricity charges.

From the records⁶¹ of nine DEOs⁶² we noticed that the seven DEOs⁶³ had allotted Departmental warehouse and two DEOs⁶⁴ had details of private used warehouses by the licenced wholesalers of CL. The lists of employees of the respective wholesalers⁶⁵ were available with all the nine DEOs. We observed that the number of employees

ranged from two to four⁶⁶ and the actual rent expenses ranged from 0.28 to 6.99 per cent only of the godown expenses being allotted to the wholesalers of CL, as part of their wholesalers margin. In these nine districts alone the godown expenses allowed to the wholesalers between 2007-08 and 2011-12 were ₹ 29.74 crore. The same appear to very high when compared to the actual expenses as available⁶⁷. Details are as shown in **Appendix– XIV**.

When we pointed this out, the Government agreed that there was no calculation sheet for computation of godown expenses and stated that rent, water and electricity charges, computer, stationary and salary of employees/labourers are taken into consideration for deciding godown expenses allowable. It is clear from the Government reply that the actual expenses are not calculated by the pricing committee.

We recommend that godown expenses may be estimated on proper documentation such as actual rent, salary/wages paid in previous years etc.

3.8.16 Conclusion

Our audit revealed inconsistencies in fixation of maximum retail price of IMFL and CL and several deficiencies in implementation of New Excise Policy such as absence of provisions to deposit excess collection of wholesale licence fee on actual estimates. There was non-compliance of Rules on issues such as non-forfeiture of basic licence fees, late security deposit, short lifting of MGQ, low recovery of alcohol from molasses and cases of non/short levy of licence fee on wholesale and retail shops.

⁶¹ lease deeds of warehouses.

⁶² DEO – Aligarh, Allahabad, Bareilly, Jaunpur, Lakhimpur Kheri, Lucknow, Rampur, Unnao and Varanasi.

⁶³ DEO – Aligarh, Allahabad, Jaunpur, Lakhimpur Kheri, Rampur, Unnao and Varanasi.

⁶⁴ DEO – Bareilly and Lucknow.

⁶⁵ In the CL 1C (wholesale licence) details.

⁶⁶ With exception of nine for 2007-08 in Bareilly.

⁶⁷ and taking into account the routine water and electricity charges for average 223.09 sq. mts. warehouse.

3.9 Non-imposition of penalty

Rule 27 of Uttar Pradesh *Sheera Niyamtran Niyamavali*, 1974 provides the officer-in-charge or any other officer authorised by the Controller under Rule 26 shall determine the quantity and the quality of the molasses immediately on receipt of each consignment with the help of the laboratory of the distillery and record the result of the verification and test done by him on the reverse of the gate-pass in Form MF -4 received in duplicate from the occupier of the sugar factory alongwith consignment. One copy of the gate-pass shall be retained by the distillery and the other copy thereof shall be sent to the occupier of the sugar factory by the officer-in-charge so as to reach the latter within one week of the arrival of the consignment at the gate of the distillery. The receipt back of MF -4 gate pass should be monitored by the Excise Department officials at the sugar factory to ensure that the molasses was received by the authorised distillery and the quantity & quality was as mentioned in the MF -4 gate pass. As per Section 11 of *UP Sheera Niyamtran Adhinyam*, any contravention of the Rules or orders made or the directions issued there under shall be punishable with imprisonment or with fine which may extend to two thousand rupees and continuing contravention attracts, an additional fine which may extend to one hundred rupees for every day during which the contravention continues.

During audit between January 2011 and December 2012 of 15 Sugar Mills⁶⁸, we examined the MF -4 gate passes⁶⁹ issued to 40 distilleries during the period 2007-08 to 2011-12. We noticed that out of 26,554 MF -4 gate passes, 3241 MF -4 gate passes (12.21 per cent) were received back by these sugar mills from the respective distilleries with an average delay of 71 days. Distilleries were responsible for timely return of these gate passes. However we noticed that in all the cases the delays were many, persistent and ranged over one to three years. The Departmental officers at the sugar factories did not take cognizance of this delay

in return of gate passes by the distilleries and failed to initiate action for imposition of penalty to the extent of ₹ 1.51 crore.

After we pointed this out (between June 2011 and January 2013) the Government accepted our observation in August 2013 and stated that MF -4 passes should be received back in sugar mill within 7 days of issue of molasses. Action regarding prosecution/penalty against defaulters will be initiated under Section 16 of *Sheera Niyamtran Adhinyam*.

⁶⁸ Kisan Sahkari Chini Mill Ltd. Satha Aligarh, Wave Distillery & Breweries Ltd Aligarh, JK Sugar Mill Bareilly, Kisan Sahkari Chini mill Anooahar Bulandshahar, Simbhawali Sugar Mill Ltd. Ghaziabad, The United Province Sugar Mill Sewarahi, Kushinagar, Kanoria Sugar Mills Ltd. Kaptanganj Kushinagar, Ganga Kisan Cooperative Sugar Corporation Ltd. Morna Muzaffarnagar, Titabi Sugar mill Titabi, Muzaffarnagar, Bajaj Hindustan Sugar Mill Ltd. Pilibhit, LH Sugar Factory Pilibhit, Rana Sugar Mills Rampur, Shakumbhri Sugar Todarpur Saharanpur, Bajaj Hindustan Sugar Mills Ltd. Maksudanpur Shahjahanpur, The Kisan Sahakari Sugar Mills Ltd. Tilhar, Shahjahanpur.

⁶⁹ Rule 25 defines MF 4 as gate passes through which molasses is dispatched by the sugar factories to distilleries.

3.10 Avoidable expenditure due to non-compliance of the provisions of the Acts

Under the provision of UPTT Act and VAT Act, sale of tender forms attracts tax liability at such rates as are prescribed in these Acts. The person selling the tender forms is liable to charge and collect the tax on sale of such forms from the purchasing persons and deposit it to the Treasury.

We noticed during cross check of records⁷⁰ of 29 DEOs⁷¹ (April 2011 to January 2012) that 1,25,664 tender forms were sold and processing fees of ₹ 3,864.66 lakh was collected during the

year 2007-08 to 2010-11. Trade Tax/VAT amounting to ₹ 1.69 crore leviable on this sale was not collected from purchasers of the forms by DEOs.

After we pointed this out (between June 2011 and February 2012) the Government replied in August 2013 that a grant of ₹ 5.92 crore has been allotted by the Government in July 2012 against the demand raised by Excise Commissioner for payment of VAT on sale of these forms to Commercial Tax Department. The reply of the Government confirms our objection that the Department did not collect the tax from the purchasing dealers and has imposed this burden on the Government which had to sanction a grant for the same. We also noticed that the reason for raising a demand of ₹ 5.92 crore was stated as inability to recover the amount from applicants as addresses of the applicants not being available. On our examination of the application records we have noticed that the names and addresses of the applicants were clearly mentioned on the forms. Hence, our audit establishes that the basis of raising a demand for the grant was not factually correct.

Thus, non-compliance of provisions of Act and lack of timely action for realisation of tax from the applicants resulted in an unavoidable burden to the state exchequer.

⁷⁰ Sale of tender forms register, Receipt book and Cash book.

⁷¹ DEO: Aligarh, Ambedkar Nagar, Auraiya, Baghpat, Bahraich, Ballia, Banda, Bijnore, Bulandshahar, Chandauli, Etah, Ghaziabad, Gorakhpur, Hamirpur, Hardoi, Hathrus, Jalaun, Jaunpur, Kushinagar, Lalitpur, Mahoba, Mau, Meerut, Ramabai Nagar (Kanpur Dehat), Saharanpur, Shravasti, Siddharthnagar, Sitapur and Sonbhadra.