

CHAPTER-III STATE EXCISE

3.1 Tax administration

The Principal Secretary, Excise Department is the administrative head at Government level. The Department is headed by the Excise Commissioner (EC). The Department has been divided in three Divisions¹ namely North, Central and South which are headed by Excise Deputy Commissioners. Besides, 69 Inspectors of Excise, 211 of Sub-Inspectors and 137 Assistant Sub-Inspectors of Excise under the control of 31 Superintendent of Excise in respective districts are deputed to oversee and regulate levy/collection of excise duties and allied levies.

3.2 Internal Audit

Internal Audit System in Excise Department is functioning since June 2010 consequent upon introduction of Internal Audit Wing (IAW) in accordance with the decision of Government for regular internal audit check of field offices as well as entire organisation, to ensure correct assessment, prompt collection of excise revenue and timely deposit of revenue to Government Account. During 2013-14, out of 15 units planned for audit, the IAW covered 10 units. The shortfall was attributed by the Department to shortage of manpower. Audit noticed that 364 paragraphs of Internal Audit Reports having money value of ₹ 64.28 crore issued during 2011-12 to 2013-14 were pending for disposal as on 31 March 2014.

3.3 Results of audit

In 2013-14, test check of the records of 20 units relating to excise duty, licence fee receipts etc., showed non/short realisation of excise duty / licence fee / interest/ penalty and other irregularities involving ₹ 238.31 crore in 1,498 cases, which fall under the categories as given in the **Table 3.1** below.

Table 3.1

A. REVENUE RECEIPTS

(₹ in crore)			
Sl. No.	Category	No. of cases	Amount
1.	Non/short realisation of excise duty and Non/short recovery of licence fee/ interest/ penalty	1,076	15.81
2.	Other irregularities	422	222.50
Total		1,498	238.31

During the course of the year, the Department accepted underassessment and other deficiencies of ₹ 21.43 crore in 897 cases which were pointed out in

¹ North Division (Angul, Bargarh, Bolangir, Deogarh, Dhenkanal, Jharsuguda, Keonjhar, Sambalpur, Subarnapur and Sundargarh), Central Division (Balasore, Bhadrak, Cuttack, Jagatsinghpur, Jajpur, Kendrapara, Khurda, Mayurbhanj, Nayagarh and Puri) and South Division (Berhampur, Boudh, Gajapati, Ganjam, Kalahandi, Kandhamal, Koraput, Malkangiri, Nabarangpur, Nuapada and Rayagada).

earlier years. An amount of ₹ 7.5 lakh was recovered in 78 cases during the year 2013-14. A few illustrative cases involving ₹ 6.57 crore are discussed in paragraphs 3.5.1 to 3.5.12.

B. EXPENDITURE

During the year, test check of records showed irregular expenditure involving ₹ 30.60 lakh in 35 cases, which fall under categories as given in the **Table 3.2** below.

Table 3.2

(₹ in lakh)			
Sl. No.	Category	No. of Cases	Amount
1	Cash book and management of cash	20	Nil
2	Other Misc. expenditure	15	30.60
Total		35	30.60

The Department accepted objections amounting to ₹ 30.60 lakh in 35 cases which were pointed out during 2013-14.

3.4 Audit observations

Audit scrutinised the assessment records of excise duty and fees in the District Excise Offices (DEOs) and found several cases of non-observance of the provisions of the Act/ Rules/ Annual Excise Policies (AEPs) leading to non/short-levy and realisation of excise duty, fees and fine etc. and other cases as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on a test check carried out by Audit. Such omissions on the part of the Superintendent of Excise (SE) are pointed out by Audit each year, but not only do the irregularities persist; these remain undetected till an audit is conducted. There is need for the Department to improve the internal control system including strengthening of internal audit so as to avoid recurrence of such irregularities.

3.5 Non-observance of provisions of the Acts/Rules/Annual Excise Policies and instructions of Government

The Bihar and Odisha Excise (B&OE) Act, 1915 and Rules made thereunder by the Government as well as by the Board of Revenue (BOR) read with the Excise Manual, AEPs and notifications of Government provide for levy and collection of State Excise Duty (SED), fees like Utilisation Fee (UF), Import Fee (IF), Bottling Fee (BF), Transportation Fee (TF) and charges like Establishment cost and Extra hour operation charges etc. at the prescribed rates.

The SEs, while finalising the assessments did not observe above provisions in some cases as mentioned in subsequent paragraphs which resulted in non/short-levy and non-realisation of SED/ fees, fine etc.

3.5.1 Non-realisation of differential State Excise Duty on annual closing stock of IMFL/Beer

As per Government notification of February 2001, Odisha State Beverage Corporation Ltd. (OSBC) has the exclusive right and privilege of importing, exporting and carrying on the wholesale trade of foreign liquor in the State and sale of liquor to the retailer at the issue price inclusive of SED. In the AEP 2012-13, SED was increased by ₹ 2 to ₹ 30 per Bulk Litre (BL) of Beer/ London Proof Litre (LPL) of India Made Foreign Liquor (IMFL) based on the brands.

During test check of pass issue (FL 16) records and stock taking reports in office of the Superintendent of Excise (SE), Khurda, Audit noticed (October and November 2013) that from 1 April 2012, OSBC issued IMFL/ Beer to retailers at the revised rates as per AEP of 2012-13 and collected enhanced SED on the closing stock² of 2011-12. But, OSBC did not deposit the differential SED of ₹ 4.04 crore so collected during 2012-13 on closing stock of 2011-12 of IMFL/ Beer. The SE, Khurda also did not raise demand for realisation of the amount. This resulted in non-realisation of SED of ₹ 4.04 crore.

After Audit pointed this out, SE, Khurda, accepted the audit observation and raised demand in November 2013.

Audit reported the matter to Excise Commissioner (EC), Odisha in March 2014 and Government in July 2014. Their replies are awaited (November 2014).

3.5.2 Non-realisation of State Excise Duty on short lifting of minimum guaranteed quantity of Country Spirit

As per Rules 6 and 6-A of Odisha Excise Exclusive Privilege (OEEP) Rules, 1970, every successful bidder for Country Spirit (CS) shop shall, before obtaining licences, guarantee the sale of Minimum Guaranteed Quantity (MGQ) of CS as fixed by the Collector of the district concerned. The Collector may permit the licensee to lift the short drawn MGQ of a previous month in the subsequent month except for the month of February; whereas the EC can do so for any month up to the month of January by the end of February. The licensee shall remit the SED on CS in two equal instalments into Government treasury. The Collector may insist on Bank Guarantee (BG) from any bidder upto the extent of Consideration money and SED against the MGQ for the entire year. As per Clause 20(b) of the AEPs for 2011-12 and 2012-13, SED at the rate of ₹ 20 per LPL is payable on CS. Deficit in payment of SED is to be adjusted from the BG.

During test check of MGQ registers and MGQ returns of five SEs³, Audit noticed (between September 2013 and March 2014) that 56 CS licensees short-lifted 2,08,720 LPL⁴ of CS against the monthly MGQ fixed for different

² IMFL (21,36,288.85 LPL) and Beer (17,63,013.97 BL).

³ Balasore, Bhadrak, Jagatsinghpur, Jajpur and Kendrapara.

⁴ **2011-12:** Balasore: 74,928.875 LPL, Jagatsinghpur: 51,312.22 LPL, Jajpur: 13,290.52 LPL, Kendrapara: 45,330.780 LPL and Bhadrak: 6,160 LPL. **2012-13:** Jajpur: 11,989.900 LPL and Kendrapara: 5,707.280 LPL.

months during 2011-12 and 2012-13 for which SED of ₹ 41.74 lakh was realisable. Despite short lifting of MGQ, the SEs did not take any action for realisation of SED of ₹ 41.74 lakh.

After Audit pointed this out, SEs of Balasore, Bhadrak, Jagatsinghpur and Jajpur stated (between September 2013 and March 2014) that compliance would be furnished after verification of records and the SE, Kendrapara stated (February 2014) that demand notices were being issued.

Audit reported the matter to the EC, Odisha, Cuttack in April 2014 and Government in July 2014. Their replies are awaited (November 2014).

3.5.3 Non-realisation of Depot License fee from Odisha State Beverage Corporation

As per Paragraph 89 of the Odisha Excise Manual Vol-III, licences for different kinds of intoxicants should be settled with different licensees and the premises for sale of different intoxicants should be kept separate as far as possible. Further, as per clause 154 of Board's Instructions, licences for sale of foreign liquor do not cover sale of country liquor. The premises licensed for sale of foreign liquor must be separated from those licensed for sale of country liquor. As per clause-13 of AEP, all the depots established by the OSBC will pay an amount of ₹ 10 lakh for each depot per annum towards Depot Licence Fees.

During test check of records relating to Licence Fee (LF) and challan register of SE, Khurda, Audit noticed (November 2013) that licences were issued to OSBC for 11 depots for which Depot Licence fee of ₹ 1.10 crore was payable. However, OSBC deposited ₹ 70 lakh in March 2013 towards annual Depot Licence fee for seven⁵ IMFL depots for the year 2013-14 and did not deposit LF for the remaining three⁶ CS depots and one⁷ Beer depot. The SE did not raise demand for payment of depot licence fee for the CS and Beer depots. This resulted in non-realisation of depot LF of ₹ 40 lakh.

After Audit pointed this out, SE, Khurda issued (November 2013) demand notice to OSBC. Collection particulars are awaited (November 2014).

Audit reported to the matter to the EC, Odisha in May 2014 and Government in June 2014. Their replies are awaited (November 2014).

3.5.4 Non-realisation of establishment cost and overtime fees

As per Rule 34 of BER, 1965, the EC shall appoint Excise Officers (EOs) for proper supervision of the operations carried out in each warehouse or storeroom and the licensee shall pay to the State Government, at the end of each calendar month, such fees which shall not exceed the whole of the cost of the excise staff employed for the purpose. Further, as per the provisions of the Rule *ibid*, the production units of distilleries, bottling units, breweries may function for the second shift with prior permission of the EC and additional staff shall be posted as determined by the EC. The unit shall pay overtime fees

⁵ Angul, Balasore, Berhampur, Cuttack, Khurda, Rayagada and Sambalpur.

⁶ Balasore, Cuttack and Khurda.

⁷ Sambalpur.

at the rate of one seventh of a day's pay of the Officer-In-Charge (OIC) per extra hour of operation.

During test check of records of three District Excise Offices⁸ (DEOs), Audit noticed (between December 2013 and February 2014) that Excise Department staff were posted during different periods of 2012-13 at three liquor manufacturing units as well as liquor warehouses engaged in manufacturing of potable liquors. Thus, the units were liable to deposit the gross salary of Excise Department staff towards cost of establishment at the end of each calendar month. But the DEOs did not demand the establishment cost. This resulted in non-realisation of establishment cost amounting to ₹ 14.40 lakh. Similarly, during test check of records in two DEOs⁹, Audit noticed (November 2013 and February 2014) that the DEOs did not realise overtime fees amounting to ₹ 3.37 lakh from two units.

After Audit pointed this out, SE, Bolangir agreed (December 2013) to raise demand for realisation of establishment cost and SE, Dhenkanal stated that demand would be raised against the unit after receipt of clarification from EC, Odisha. SE, Sundargarh stated (February 2014) that demand would be raised after verification of records. For realisation of overtime fee, SEs, Khurda raised (November 2013) demand and SE, Puri stated that the concerned employee did not claim the over time. The reply of the SE, Puri was not tenable as extra hour operation charges are realisable as per laws.

Audit reported (April and May 2014) the matter to EC, Odisha and Government (July 2014). Their replies are awaited (November 2014).

3.5.5 Non-realisation of Label Registration Fee on liquor stored/sold at OSBC godown

As per Rule 41A of BER, 1965, Foreign Liquor (FL) manufactured in or imported into the State shall not be stored in a warehouse or issued for sale unless the brand names and labels are approved and permits are issued by EC, Odisha on payment of the prescribed fees. The permit once issued shall remain valid until 31 March next. As per Section 4 of Bihar and Odisha Excise (B&OE) Act 1915, Beer is also treated as foreign liquor. As per item-12 (A) of the AEP for 2012-13, the minimum slab rate of Label Registration Fee (LRF) and Application Fee (AF) was fixed at ₹ 50,000 and ₹ 15,000 respectively per label in respect of IMFL supplied to OSBC.

During test check of records of the EC, Odisha and annual stock report of the OSBC Depot at Nirgundi, Audit noticed (November 2013) that in violation of the above provisions, 31 brands of IMFL had been sold/stored during 2012-13 at the above depot without registration of labels of the said brands. The Department failed to detect such non-registered brands. This resulted in non-realisation of LRF of ₹ 15.50 lakh and AF of ₹ 4.65 lakh.

After Audit pointed this out, EC stated (November 2013) that information regarding unregistered labels in OSBC godown was not available in his office.

⁸ Bolangir, Dhenkanal and Sundargarh.

⁹ District Excise Offices: Khurda and Puri.

Audit reported the matter to EC, Odisha in May 2014 and Government in July 2014. Their replies are awaited (November 2014).

3.5.6 Irregular permission for reprocessing of time-expired beer

As per Rule 39A (7) of BER, 1965, if any stock of IMFL/Beer stored becomes unfit for human consumption, the licensee shall be liable to pay fine equal to five times of the SED payable to the Government on the stock so spoiled. Further, as per Liquor Sourcing Policy (LSP) of OSBC, Beer more than six months old from the date of manufacture shall be destroyed under the orders of the Collector /EC depending on the quantity. As per item No. 10 of AEP 2012-13, SED on Beer was ₹ 24 per BL.

During test check of records relating to reprocessing of Beer in DEO, Khurda Audit noticed (November 2013) that during 2012-13, 7,064 cases (55,099.20 BL)¹⁰ of Beer of different brands manufactured between 5 April and 7 May 2012 were lying in warehouse of a brewery beyond six months from the date of manufacture. However, instead of issuing orders for destruction of time-expired Beer and levying fine thereon as per the rules, the EC, Odisha irregularly issued (October 2012) permission for reprocessing of the Beer. This led to non-levy of fine of ₹ 66.12 lakh.

After Audit pointed this out, Government stated (August 2014) that reprocessing of beer was done with approval of EC and the reprocessed beer was chemically tested by State Drugs Testing and Research Laboratory and certified as fit for human consumption. Government further stated that revenue to the tune of ₹ 4.98 lakh had been realised. The reply is not tenable as Beer more than six months old was required to be destroyed as per the LSP and there is no provision in the rules or executive instructions for reprocessing of the same. Further, ₹ 4.98 lakh so realised pertained to fees and other dues for reprocessing and not fines required to be realised on spoilt Beer.

3.5.7 Short-realisation of Licence Fee from distillery and bottling units

As per item (3) of AEP of the State Government, the licensee of a distillery and bottling unit is required to pay Licence Fee (LF) on the basis of annual production capacity of the distillery or bottling unit at the rates prescribed for each year. The LF as per the AEP 2011-12 was ₹ 60.00 lakh for units having annual production capacity of 1,00,00,001 LPL and above. For the distilleries/bottling units having annual production capacity of 30,00,000 to 60,00,000 LPL, the LF was ₹ 42.00 lakh and ₹ 45.00 lakh for the years 2012-13 and 2013-14 respectively as per the AEP.

During test check of records relating to issue/ renewal of licence with reference to the production capacity in the DEO, Berhampur, Audit noticed (January 2014) that licences for the years 2011-14 in respect of two bottling units were renewed for a production capacity of 10 lakh LPL to 30 lakh LPL per annum on realisation of licence fee amounting to ₹ 1.09 crore. But during 2011-12, the production capacity of one unit was enhanced to one crore LPL

¹⁰ 7,064 cases = $9,360 \times 7,064 / 1,200$ BL = 55,099.20 BL.

and above, whereas during 2012-14, production capacity of another unit was enhanced to the higher slab of 30 lakh to 60 lakh LPL. As such, the above two units were required to pay LF at the rate prescribed for higher slabs during the corresponding years. But, neither did the units pay LF at the applicable rate nor did the SE demand the differential LF. This resulted in short realisation of ₹ 38 lakh.

After Audit pointed this out, SE, Berhampur stated that demand would be raised against the distillery/bottling unit for realisation of differential LF.

Audit reported the matter to the EC, Odisha in May 2014 and Government in July 2014. Their replies are awaited (November 2014).

3.5.8 Non-realisation of revenue on trading of Molasses without licence for trading

Molasses is an intoxicant as per Section 2(12-a) of B&OE Act, 1915. As per Section 20 of the Act *ibid*, no intoxicant shall be sold except under the authority and subject to the terms and conditions of a licence granted by the Collector of the District. As per the AEP 2010-11, licence fee for trading of molasses was fixed at ₹ 1 lakh. In the AEPs for the years 2011-12 and 2012-13, licence fee and application fee were fixed at ₹ 3 lakh and ₹ 20,000 respectively. As per the guidelines issued in January 2000, Excise Deputy Commissioner (EDC) shall inspect the sugar factories at least once in a year. Under Section 47(g)(i) of the Act, in case of unlawful import, export, transport, manufacture and sale of intoxicant¹¹, penalty of ₹ 20,000 to ₹ 50,000 per case is leviable against the offenders.

During test check of records of four SEs¹², Audit noticed (November and December 2013) that four sugar factories sold molasses during the years 2010-11 to 2012-13 without obtaining licences for trading from the SEs of concerned districts. The SEs failed to detect such irregular sale of molasses without licences. This resulted in non-realisation of licence fee of ₹ 13 lakh and application fee of ₹ 80,000. Besides, minimum penalty of ₹ 1 lakh was also leviable.

After Audit pointed this out, SEs, Ganjam and Nayagarh replied (November and December 2013) that demand would be raised against the licensees while SE, Bargarh replied (December 2013) that demand would be raised after verification of the case. SE, Bolangir replied (December 2013) that action would be taken after getting clarification from the EC, Odisha. Further, compliance is yet to be received.

Audit reported the matter to EC, Odisha in April 2014 and Government in July 2014. Their replies are awaited (November 2014).

3.5.9 Non-realisation of State Excise Duty for short lifting of MGQ of IMFL and Beer by 'ON' shops

As per Rule 6A (1) of Odisha Excise Exclusive Privilege (Foreign Liquor) (FL), Rules, 1989, the licensee of FL 'ON' shop shall guarantee for lifting of

¹¹ 'Molasses' is an intoxicant as per Section 2(12-a) of the B&OE Act, 1915.

¹² Bargarh, Bolangir, Ganjam (Chatrapur) and Nayagarh.

monthly MGQ of foreign liquor. Further, as per Rule 6(3), no licensee shall lift less than the specified MGQ in any month as approved in the distribution statement. In case of failure on the part of the licensee to lift the monthly MGQ, action may be taken to make good the loss of excise duty which shall be collected with the licence fee of the succeeding months. In case of further deficit, the amount will be collected at the end of the year with fine of 10 per cent on the deficit SED. As per AEP, the minimum excise duty (ED) on IMFL and Beer was fixed at the rate of ₹ 150 per LPL and ₹ 20 per BL respectively for 2011-12 and ₹ 165 per LPL on IMFL and ₹ 22 per BL on Beer for the year 2012-13.

During test check of LF registers and MGQ registers of two SEs¹³, Audit noticed (between September 2013 and February 2014) that nine 'ON' Shop licensees short-lifted 1,962 LPL of IMFL and 2,702 BL of beer during 2010-11 to 2012-13. The SEs did not realise SED and fine for short-lifting of IMFL and Beer as per the provisions. This resulted in non-realisation of SED of ₹ 3.51 lakh and fine of ₹ 0.35 lakh thereon.

After Audit pointed this out, SE, Keonjhar stated that demand would be raised after verification of records. He further added that six licensees had lifted the shortfall MGQ in the succeeding months after obtaining permission from EC/Collector; but no such permission obtained from EC/Collector could be furnished to Audit. SE, Jajpur stated that steps were being taken to instruct the licensees to lift the short lifted MGQ in future.

Audit reported the matter to the EC, Odisha in May 2014 and Government in July 2014. Their replies are awaited (November 2014).

3.5.10 Non-realisation of Composite Label Registration Fee, Application fee and User Charges

As per the provisions of AEPs, retail licensees have to register the labels of different brands of IMFL/Beer at the District level on payment of Composite Label Registration Fee (LRF) at the rate of ₹ 10,000 for each shop per annum. The licensees of IMFL shops were also required to pay a non-refundable User Charges (UC) of ₹ 5,000 per annum per shop. Further, persons interested to renew IMFL 'Off' shop have to deposit ₹ 20,000 towards non-refundable Application Fee (AF).

During test check of Licence Fee (LF) Register, Challan Register and Licence Renewal files of five SEs¹⁴, Audit noticed (between December 2013 and March 2014) that 13 retail licensees did not pay the composite label registration fee, application fee and user charges for the years 2011-13 although these fees/ charges are required to be paid at the time of issue/renewal of licences. However, the SEs did not notice such non payment while issuing/renewing licences resulting in non-realisation of revenue amounting to ₹ 5.45 lakh¹⁵.

After Audit pointed this out, while the SEs of Balasore, Bolangir and Keonjhar stated (between January and March 2014) that demand notices would be

¹³ Jajpur and Keonjhar.

¹⁴ Balasore, Berhampur, Bolangir, Keonjhar and Sundargarh.

¹⁵ Application Fee: ₹ 2.60 lakh, Composite Label Registration Fee: ₹ 1.90 lakh and User Charges: ₹ 0.95 lakh.

issued for realisation of the dues, the SEs of Berhampur and Sundargarh stated (January and February 2014) that demand would be raised after verification of records.

Audit reported the matter to EC, Odisha in April 2014 and Government in July 2014. Their replies are awaited (November 2014).

3.5.11 Non-realisation of Consideration Money on IMFL shops

As per AEP of 2012-13, the licensees are required to pay advance Consideration Money (C Money) for four months by 31 March 2012 while applying for renewal of licence and deposit the monthly C Money by 1st of each succeeding month subsequently.

During test check of LF and Challan Registers of SE, Khurda, Audit noticed (November 2013) that two Off Shops did not deposit the C Money for one month each during 2012-13. This resulted in non-realisation of C Money of ₹ 2.74 lakh. The SE also did not raise demand for the unpaid amount.

After Audit pointed this out, the SE stated (November 2013) that challan towards C Money of the above two shops were not reflected in the treasury schedule and the treasury officer had been requested to reconcile the deposit made in the treasury. Audit further sought for (October 2014) the details of reconciliation of the deposits made against C Money from SE, Khurda. The details are awaited (November 2014).

Audit reported the matter to the EC, Odisha in May 2014 and Government in July 2014. Their replies are awaited (November 2014).

3.5.12 Short-realisation of State Excise Duty on excess wastage of spirit

As per Rule 16 of BER, 1965, the SE shall take an account of the distiller's stock of spirit at least once in every quarter and wastage upto two *per cent* of all spirits in the process of re-distillation shall be allowed. In case of wastage in excess of the above allowable quantity, the distiller shall pay to the Government, duty on such excess wastage at the rate prescribed. Extra Neutral Alcohol (ENA) is a purified spirit obtained by re-distillation of rectified spirit through ENA columns and categorised as foreign liquor under Section-2 of Bihar and Odisha Excise Act. The minimum SED was ₹ 165 per LPL on IMFL and ₹ 20 per LPL on country spirits as per AEP 2012-13.

During test check of stock position of a distillery in the DEO, Sundargarh, Audit noticed (February 2014) that during the months from May 2012 to October 2012, the distillery re-distilled 2,09,286.2 LPL of Rectified Spirit (RS) and 52,008.5 LPL of ENA. However, it exhibited processing loss of 6,677.5 LPL against the wastage allowance of 5,225.894 LPL (two *per cent* of quantity re-distilled), thus exhibiting excess wastage of 1,451.606 LPL of spirit. SE accepted the same. This resulted in non-realisation of SED amounting to ₹ 2.18 lakh.

After Audit pointed this out, SE, Sundargarh replied (February 2014) that demand would be raised after verification of records.

Audit reported the matter to the EC, Odisha in May 2014 and Government in July 2014. Their replies are awaited (November 2014).