

CHAPTER-VII

CHAPTER VII

STATE EXCISE

7.1 Tax administration

State Excise revenue mainly comprises receipts from country spirit, foreign liquor, malt liquor, other spirits, fees and fines. The assessment and collection of excise revenue is governed by the Bengal Excise Act, 1909, the West Bengal Excise (Foreign Liquor) Rules, 1998, the Narcotic Drug and Psychotropic Substances Act, 1985, the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 and the West Bengal Molasses Control Act, 1973. During 2015-16, the Excise Department was headed by the Principal Secretary who was assisted by the Excise Commissioner, Additional Excise Commissioner, Collectors of Excise and Superintendents of Excise.

7.2 Internal audit

During 2015-16, the Department had an Internal Audit Wing (IAW) under the charge of the Deputy Commissioner (Audit & Accounts). This Wing was to conduct scrutiny and detect irregularities in the levy and collection of cases of Excise Duty as well as to check different records and registers to ascertain whether internal control system as envisaged in the Acts and Rules made thereunder were properly followed. In conducting the activities of IAW during 2015-16, the Deputy Commissioner (Audit & Accounts) was assisted by one Assistant Commissioner (Audit & Accounts) against the sanctioned strength of three. No Auditor was posted in the IAW against the sanctioned strength of three.

The wing planned to audit 10 units and audited eight of 10 auditable units during the year 2015-16. IAW stated that Audit was conducted in accordance with the plan.

7.3 Results of audit

In 2015-16, test check of the records of 13 units relating to excise receipts showed underassessment of tax and other irregularities involving ₹ 4.67 crore in 99 cases which fell under the categories given in **Table 7.1**.

Table 7.1
Results of audit

(₹ in crore)

Sl. No.	Categories	No. of cases	Amount
1.	Non/short levy of excise duty/wastage fee on chargeable wastage of Rectified Spirit/India Made Foreign Liquor	26	2.31
2.	Non/short realisation of licence fee/renewal fee/initial grant fee/pass fee etc.	6	0.31
3.	Non-realisation of fees for change in management	10	1.04
4.	Non-realisation of composition money	6	0.29
5.	Non-realisation of regulatory fees	11	0.32
6.	Other cases	40	0.40
Total		99	4.67

During the course of the year, the Departments accepted underassessment and other deficiencies of ₹ 2.11 crore in 73 cases, of which 22 cases involving ₹ 24.20 lakh were pointed out in the year 2015-16 and the rest in the earlier years. An amount of ₹ 1.24 crore was realised in 51 cases during the year 2015-16.

A Performance Audit on “**Assessment, Levy and Collection of Excise Revenue**”, having money value of ₹ 271.00 crore, is discussed in the following paragraphs.

7.4 Performance Audit on “Assessment, Levy and Collection of Excise Revenue”

Highlights

- Absence of any departmental norms to identify the category of a hotel and non-verification of facilities/amenities available within the hotel premises in accordance with the norms prescribed by Indian Tourism Department, Government of India resulted in short realisation of revenue of ₹ 24.83 lakh.

(Paragraph 7.4.11)

- In the absence of any mechanism to cross verify utilisation of way bills shown for import of intoxicants from outside West Bengal with that shown to have been utilised to the Directorate of Commercial Taxes, West Bengal, there was evasion of excise duty of ₹ 23.89 crore.

(Paragraph 7.4.12)

- There was short disclosure of production of beer as per norms prescribed under Excise Manual, resulting in non-realisation of excise revenue of ₹ 116.04 crore.

(Paragraph 7.4.14)

- In two breweries, export passes were issued to the licensees without realisation of excise duty of ₹ 42.05 crore.

(Paragraph 7.4.15)

- Due to non-application of higher rate of excise duty prevailing in West Bengal on export of beer for civil consumption in two States, there was short realisation of excise revenue of ₹ 66.16 crore.

(Paragraph 7.4.16.1)

7.4.1. Introduction

State Excise duty is one of the most important sources of revenue of the State. Assessment, levy and collection of excise duty and other excise receipts on production, possession, sale, export, import and transport of liquor or intoxicating drugs are governed by the Bengal Excise (BE) Act, 1909, rules made thereunder and notifications issued by the Government from time to time.

In West Bengal, spirit is produced from molasses and grains. Control of production, distribution/transport, supply and storage of molasses in the State is regulated by West Bengal Molasses Control (WBMC) Act, 1973 and orders issued thereunder.

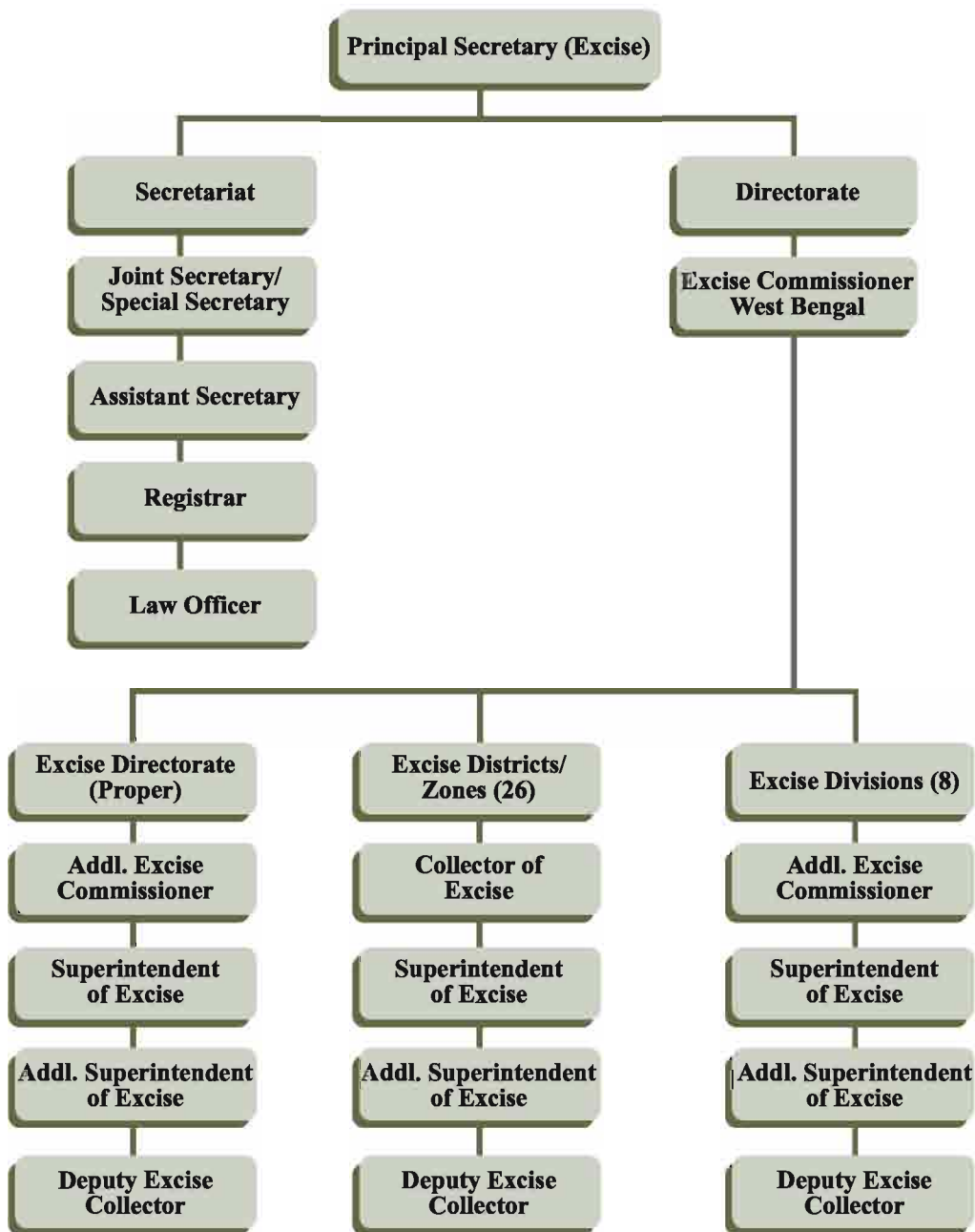
There is one distillery company⁹⁶ in the State producing rectified spirit (RS) from molasses and grains, 16 foreign liquor (FL) manufactories, 154 FL warehouses, two breweries, 30 country spirit (CS) manufactories and their 24 warehouses. There is also one chemical examination laboratory to analyse samples of intoxicants, narcotic drugs etc. Preventive divisions of the Department assist the Government in curbing excise crimes throughout the State.

7.4.2. Organisational set up

Assessment, levy and collection of excise revenue is administered by Principal Secretary, Excise Department. Excise Commissioner (EC), the head of the Excise Directorate, is assisted by Additional Commissioners of Excise, Deputy Commissioners of Excise, Superintendents of Excise (SE) and Additional SEs. At the district level, SE functions under the Collector of the concerned district except in Kolkata where the Collector of Excise is the district excise authority. Deputy Excise Collectors (DEC) under the control of SEs are posted at distilleries, bottling plants, manufactories, bonded warehouses and other units for supervision, levy and collection of excise duties and fees etc. Structure of the Excise Department is depicted in the following chart:

⁹⁶ M/s IFB Agro Industries Ltd., Noorpur, South 24 Parganas.

Organisational Chart



7.4.3 Audit Objectives

Performance Audit (PA) was conducted with a view to ascertaining:

- adequacy and sufficiency of provisions of rules to safeguard revenue;
- compliance with provisions of the acts, rules and notifications and adequacy of follow up actions in case of default; and
- efficiency and effectiveness of the internal control system of the Department.

7.4.4 Audit scope and methodology

Audit conducted the PA during the period from January 2016 to July 2016. Out of 26 Excise Districts/Zones, nine Excise Districts were selected for audit through stratified sampling, stratification being done on the average collection of revenue during the period from 2010-11 to 2014-15. On the basis of discussions in the Entry Conference, three more excise districts were also selected for the purpose of PA, besides the offices of EC, West Bengal, Deputy Commissioner of Excise (Preventive Divisions) and the Chemical Examiner. In addition to verification of records, Audit cross-verified information and data collected from other Departments / sources as well.

7.4.5 Audit Criteria

The Excise Department administers the following Acts and Rules/Notifications framed thereunder and audit criteria was derived from them:

- Bengal Excise (BE) Act, 1909 (Bengal Act V of 1909)
- West Bengal Excise (Foreign Liquor) (WBEFL) Rules, 1998
- West Bengal Excise (Country Spirit) (WBECS) Rules, 2010
- West Bengal Excise (Tourist Lodge Licensing) Rules, 2005
- West Bengal Molasses Control (WBMC) Act, 1973 (W.B. Act VI of 1973)
- Medicinal and Toilet Preparations (M&TP) (Excise Duties) Act, 1955 (Central Act 60 of 1955).

7.4.6 Trend of revenue

Actual receipts from State Excise during the years 2010-11 and 2014-15 along with the total tax receipts during the period are shown in the following table.

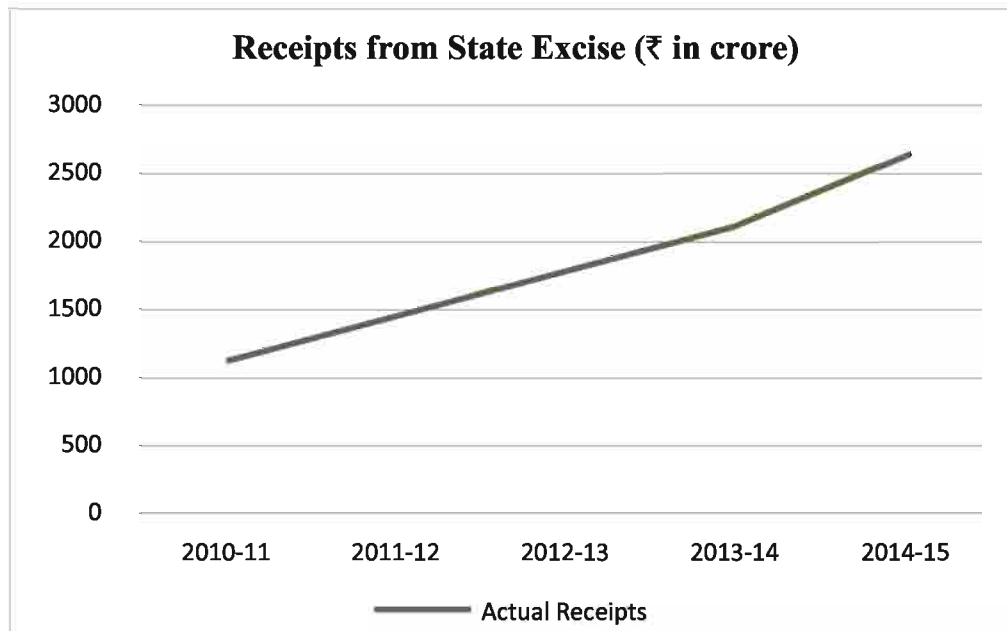
Table 7.2
Trend of revenue

(₹ in crore)						
Financial 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
2010-2011	1,759.78	1,082.94	(+)676.84	(+)38.46	21,128.74	5.13
2011-2012	2,418.83	1,443.81	(+)975.02	(+)40.31	24,938.16	5.79
2012-2013	2,786.47	1,783.34	(+)1,003.13	(+)36.00	32,808.49	5.44
2013-2014	3,202.02	2,117.04	(+)1,084.98	(+)33.88	35,830.56	5.91
2014-2015	3,810.40	2,621.43	(+)1,188.97	(+)31.20	39,411.98	6.65

*Source: Finance Accounts

Actual receipts fell short of the budget estimates substantially in each of the years during 2010-11 to 2014-15, with the percentage of variation between the budget estimates and actual receipts lying between 31 and 40 *per cent*, indicating that the budget estimates were always on the higher side and rather unrealistic. Contribution of revenues from state excise to the total tax receipts

of the State increased from 5.13 per cent to 6.65 per cent over the period. The tax receipts have been growing at an annual compound average rate of 24.73 per cent.



7.4.7 Acknowledgement

Audit acknowledges the co-operation of EC, West Bengal in providing necessary records and information. Objectives of the audit, scope, criteria and methodology etc., were discussed during an Entry Conference with the Special Secretary, Excise Department, EC, West Bengal and other representatives of the Excise Department held on 20 January 2016. Findings of the Performance Audit were forwarded to the Department in September 2016. Exit conference was held on 18 November 2016 and views of the Department have suitably been incorporated in the relevant paragraphs.

Audit findings

Adequacy and sufficiency of provisions of Rules to safeguard revenue

During test check of records of the offices under the Excise Department, Audit noticed some system deficiencies in the rules governing excise revenue. These are discussed in the succeeding paragraphs.

7.4.8 Absence of provisions for realisation of late fee in Tourist Lodge Licensing Rules

Rule 7 of the West Bengal Excise (Tourist Lodge Licensing) Rules, 2005 provides for renewal of license to the holder of a license of a Tourist Lodge for sale of liquor. The application for grant of license for the next period of settlement should be submitted to the Collector one month before the expiry of the current license along with the requisite fees.

Similarly, Rule 14 of the West Bengal Excise (Selection of New Sites and Grant of License for Retail Sale of Liquor and Certain Other Intoxicants)

Rules, 2003, provides that a licensee of FL shops may apply to the Collector for the grant of a license for the next period of settlement before expiry of the period of validity of the current license, along with requisite fees.

However, there is no provision in the West Bengal Excise (Tourist Lodge Licensing) Rules, 2005 for levy of late fee in case a licensee applies for grant of license for the next period of settlement /pays the renewal fee of FL “ON” or “OFF” shops⁹⁷ with a delay, whereas, the West Bengal Excise (Selection of New Sites and Grant of License for Retail Sale of Liquor and Certain Other Intoxicants) Rules, 2003 provides under Rule 14(5) that the Collector may grant a license for next period of settlement, if the licensee agrees to pay a late fee of ₹ 100 per day counted from the date following the date of expiry of the license.

Audit observed from renewal registers along with other relevant records of seven tourist lodge licenses in SE, Darjeeling that:

- Two licensees had applied for renewal of licenses for the next period of settlement in time but paid their respective renewal fees pertaining to the period 2008-09 to 2010-11 after delays ranging from 1,003 days to 1,747 days. Audit observed that Collector of Excise had renewed the licenses for the next period of settlement without realising renewal fee.
- Two licensees did not pay the renewal fees for the next period of settlement for the period from 2008-09 to 2010-11. Thereafter they paid the requisite renewal fees for the period from 2011-12 to 2014-15 and the Collector of Excise, Darjeeling also granted the license during the same period without realising the licenses for the earlier periods. The license fees pertaining to the period 2008-11 remained unpaid till the date of audit (July 2016).

After the cases were reported (September 2016), the Department stated that demand notices had been issued for realisation of unpaid renewal fee and furnished no specific reply in respect of late fee (November 2016).

7.4.9 Absence of provisions for renewal fee for permission for OFF shop sales of FL by ON shop licensees

Rule 4A of West Bengal Excise (Selection of new sites and grant of License for retail sale of liquor and certain other intoxicants) Rules 2003⁹⁸ provides that FL “ON” shop⁹⁹ licensee may sell FL, in fully corked/sealed/capsuled containers, for consumption “off” the premises on observance of the procedure laid down by the EC, West Bengal by necessary order.

EC, West Bengal had laid down the procedure¹⁰⁰ that Collector of the concerned district is empowered to give permission to the licensee of “ON” shops who wants to perform the sale of packaged FL from his “ON” licensed

⁹⁷ FL ‘ON’ shop means the retail sale of FL for consumption on the premises. FL ‘OFF’ shop means the retail sale of FL for consumption off the premises.

⁹⁸ As inserted vide Notification No. 1175-EX dated 03 December 2012.

⁹⁹ For onsite consumption.

¹⁰⁰ Order no. 2854 (25) E dated 12 December 2012.

premises on receipt of payment of requisite Non-refundable Application Fee (NAF) and Initial Grant Fee (IGF).

Further, Rule 4(e) of West Bengal Excise (Selection of new sites and grant of license for retail sale of liquor and certain other intoxicants) Rules, 2003 read with Rule 4 of the West Bengal Excise (Payment of Fees for the Grant of License for Retail Sale of Certain Intoxicants) Rules, 2005, provides that the licensee, who sells FL for consumption “off” the licensed premises, is required to pay the renewal fee every year.

Audit observed from Shop (License and Renewal) Registers in 10¹⁰¹ SE offices that 296 “ON” shop licensees had applied, after issue of the Notification (December 2012) as mentioned earlier, to the respective Collectors of Excise to get permission to sell fully corked/capsuled/package FL from the premises of the irrespective “ON” sites, for offsite consumption. Collectors of Excise had granted permission to these 296 “ON” shop licensees up to 31 March 2015, after realisation of NAF and IGF.

It was observed that after getting the permission, the 296 licensees above sold packaged FL from their respective premises for offsite consumption; however, they had not paid the renewal fee amounting to ₹ 1.51 crore, which became due after completion of each year till March 2015, on the ground that the sale of packaged FL was on the basis of permission from the Collectors and was not dependent upon issue of licenses from the Excise Department. Since the EC, West Bengal, in the procedure laid down vide order dated 12 December 2012 did not make any provision for renewal of the permission, the Collectors of Excise were unable to insist upon payment of renewal fee from the above licensees. The procedure for grant of permission by the Collectors of Excise was thus not in consonance with the provisions of Rule 4 of the West Bengal Excise (Payment of Fees for the Grant of License for Retail Sale of Certain Intoxicants) Rules, 2005.

On being pointed out by Audit (September 2016), the Department stated that this was not a separate license to the “ON” shop licensees but it was a permission to “OFF” shop licensees to sell sealed bottled FL in addition to their normal business. The reply is not tenable as substituting the “ON” shop licenses with a permission without any provision for renewal was in violation of Section 16 and 20 of the BE Act, 1909, which provides that no intoxicant shall be sold except under the license.

7.4.10 Loss of excise revenue due to absence of provision for time limit for approval of change in management

Rule 5 of West Bengal Excise (Change in Management) Rule, 2009 provides that after getting approval of the State Government or EC, as the case may be, the Collector shall allow change-in-management of a licensee, after realising one and a half times the Initial Grant Fee (IGF). However, the Rules do not prescribe a time limit within which the application for change in management is to be approved by the competent authority after realisation of IGF.

¹⁰¹ SE, Asansol, Alipore Zone, Barrackpore Zone, Darjeeling, Hooghly, Howrah, Jalpaiguri, Malda, Murshidabad and Nadia.

Audit observed from the application for change in management and demand notices that three licensees had applied for change in management of bonded warehouses before, respective Collectors of Excise between November 2011 and November 2013. It was observed that in all these cases, Collectors of Excise had approved the prayers of the licensees for change in management between July 2014 and March 2015, after delays ranging between 14 to 26 months from the month of their applications, as there was no time limit set in the rule for this approval.

Audit observed that the Government had discontinued with bonded warehouses with effect from 1 April 2014, replacing them with trade warehouses where duty paid FL was stored. Although the licensees had applied well before this date, the concerned Collectors did not approve the change in management of the bonded warehouses before the change of the rule, resulting in loss of possible revenue of ₹ 12.75 lakh in respect of IGF, as shown in **Appendix-II**. There could be similar losses in respect of other types of licenses, in respect of which again there was no time limit for giving approval.

After Audit reported the cases (September 2016), the Department *inter-alia* stated that setting of time limit was not possible as lots of processes and documentations etc., were involved in approving change in management, however, there was no loss of Government revenue due to procedural delays (November 2016).

Reply of the Department was not tenable as in the cases pointed out by Audit, time taken for following the procedures was excessive and the Government had suffered losses due to non-disposal of the applications in time.

7.4.11 Short realisation of IGF due to absence of Departmental mechanism to identify the category of hotel

BE Act, 1909 and Rules made thereunder do not provide any norms/basis/criteria for classification/status of hotels for the purpose of collecting application fee and initial grant fee based on classification/status of the hotel.

Rule 4(j) and 4(k) of the West Bengal Excise (Payment of fees for the Grant of License for Retail Sale of certain Intoxicants) Rules, 2005 as amended provide that application fee, IGF or fee for grant of license for the next period of settlement is realisable/payable at the rate as prescribed in these Rules, which prescribed¹⁰² for collection of higher amount of fees in case of “3 or 4 star” and “5 star and above” category of hotels than the “below 3 star” category.

While prescribing these provisions, it had not been clarified how the star category of the hotel would be fixed as obtaining the star category from Tourism Department was voluntary and not mandatory. It was observed that the Department had no mechanism of its own to determine the classification of hotels according to their star categories in cases where the hotel has not obtained such classification.

¹⁰² Table I.

From the relevant registers for the grant/renewal of license for the next period of settlement in the SEs offices at Asansol and Jalpaiguri, Audit observed that three FL “ON” shops licensees in three cases had declared themselves as “3 or 4 star category” of hotel. However, despite this declaration, these hotels were treated as “Below 3-star category” by the Department and hence charged lower rates of fee. Classification of 3 or 4 or 5-star category of hotels depends on the facilities and amenities available within the hotel premises. The Department, however, neither fixed the norms for such categorisation nor verified the facilities/amenities available within the different hotel premises by applying the norms prescribed by the India Tourism Department, Government of India. This resulted in short realisation of revenue of ₹ 24.83 lakh (including late fee ₹ 10.23 lakh) as shown in **Appendix-III**.

After Audit reported the cases, the Department *inter-alia* stated that all the three licensees had paid renewal fees according to their category of licenses and from specific dates (November 2016).

Reply of the Department is not tenable as all the licensees claimed that their facilities and amenities were equivalent to 3 or 4 star category hotels and the Department had no provisions/mechanism to determine their actual classification.

7.4.12 Evasion of excise revenue due to absence of Departmental mechanism to cross verify way bills

BE Act and Rules/Notifications, or executive instructions made thereunder, do not provide any system of verification of way bills with the Directorate of Commercial Taxes (DTC), Government of West Bengal. This is relevant as DTC is responsible for issue of way bills to dealers for import of taxable goods from outside West Bengal.

Audit found from the import permits of FL issued by the Collector, Asansol, that a company was granted 239 import permits for import of intoxicants (beer, whisky etc.) from outside West Bengal between 2010-11 and 2012-13. It was further observed that the licensee had obtained 666 way bills from the DTC for import of intoxicants under these permits and reported utilisation of 516 way bills to the DTC. However, the licensee had shown utilisation of 239 way bills to the Excise Department. As a result, the licensee did not take any permit from the Collector, Asansol on utilisation of 427 way bills issued by DTC for import of intoxicants during the said period, on which excise duty and fee amounting to ₹ 23.89 crore was leviable.

Therefore, the Government had not been able to collect excise revenue due to lack of Departmental mechanism to verify the way bills with the DTC.

After this was pointed out (September 2016) the Department accepted the observation and stated that necessary steps had been taken to verify the facts and figures with the DTC.

Compliance with provisions of Acts, Rules and Notifications thereof and whether follow up action in case of default was adequate

The Legislature of the State established Excise Department to implement provisions of BE Act, 1909 as amended. The duty and responsibility of the Department is to apply provisions of the Act. For clarification/proper implementation of the provisions of this Act, the Department may make Rules/issue notifications to ensure implementation of this Act.

During test check of records of the offices under Excise Department, Audit observed that the Government suffered losses in excise revenue due to incorrect/inconsistent application of rules/notifications. These are discussed in the succeeding paragraphs.

7.4.13 Short realisation of renewal fee due to application of pre-revised rate

Rule 22 of West Bengal Excise (FL) Rules 1998 as amended¹⁰³ with effect from 1 April 2014 provides that the application for renewal of a FL trade license is to be made within March every year, along with payment of renewal fee of ₹ 30,000.

Audit observed from renewal files of 40 FL trade licensees in seven¹⁰⁴ SE offices that all the licensees had applied to the Collector of Excise for renewal of their respective trade licenses along with renewal fee of ₹ 15,000 for the year 2014-15 and 2015-16. However, as per the above Notification, renewal fee of ₹ 30,000 was realisable for 2014-15 and 2015-16. This resulted in short realisation of renewal fee ₹ 11.85 lakh due to application of pre-revised rate.

After this was pointed out (September 2016) the Department accepted the observation and intimated realisation of revenue; however, neither the total amount recovered nor details of licensees was intimated.

7.4.14 Non-realisation of revenue due to short production of beer

Para 677(17) of the Manual of Excise and Salt Department, 1918 prescribes the norms for raw material as 15.42 Kg of malt, 14.52 Kg of rice flakes and 12.70 Kg of sugar for production of 81.823 Bulk Litres (BL) of wort¹⁰⁵. Under WBE(FL) Rules, the minimum yield of beer should be 92 *per cent* of wort.

Audit observed from relevant records of two breweries that these breweries had consumed 401 lakh Kg of malt, 232.92 lakh Kg of rice flakes and 62.23 lakh Kg of sugar and produced 3,343.60 lakh BL of wort during the period from 2010-11 to 2014-15. However, as per norms in the Excise Manual, the yield of wort should have been 3,841.28 lakh BL. Shortfall of wort by 497.68 lakh BL resulted in short yield of 473.50 lakh BL of beer¹⁰⁶. This

¹⁰³ Vide Notification No 36-Ex dated 16.01.2014.

¹⁰⁴ SE, Asansol, Darjeeling, Jalpaiguri, Malda, Murshidabad, Nadia and South 24 Parganas.

¹⁰⁵ Liquid obtained by the smashing of grain or malt or by dissolving saccharine matter intended for fermentation but in which fermentation has not visibly begun.

¹⁰⁶ Considering average distillation efficiency ranging between 94.51 *per cent* and 95.15 *per cent* as per Stock Taking Reports and Production Register.

resulted in non-realisation of excise revenue of ₹ 116.04 crore as detailed in **Appendix-IV**.

After Audit reported the case (September 2016), the Department *inter-alia* cited the judgments of Supreme Court of India in two similar cases pertaining to the years 1962 and 1976 where the Hon'ble Court had opined that since excise duty was leviable on manufacturing of goods and, in this case "the short produced spirit was neither produced nor manufactured in the plant, the excise duty could not be imposed". In their reply the Department also stated that EC WB had requested Excise Departments of 15 other states to equip him with suitable information in this regard (November, 2016).

The reply of the Department was not tenable as the judgments quoted were not applicable to the point raised in the audit observation. With regard to seeking information from other states, the Department had furnished the same reply in 2011, while responding to a similar para appeared in Report No.3 (Government of West Bengal) of Comptroller and Auditor General of India for the year ended March 2011.

7.4.15 Issue of beer under bond/without realisation of duty

Rule 133 to 138 of West Bengal Excise (FL) Rules 1998, as amended, provides that FL may be exported under bond or on payment of duty. For beer, Rule 114(1) of the said rules provides that a brewer shall pay duty on beer manufactured in the brewery only at the time of issue of beer from the brewery.

Scrutiny of two breweries under SE, Hooghly and Nadia showed that the licensees exported their manufactured beer to six states during 2010-11 to 2014-15 through 2,079 export passes. The Excise Officers-in-Charge deployed at these breweries issued export passes for export of 3.63 crore bottles (or 16.56 lakh BL of beer) under bond i.e. without realisation of duty. It was observed that these officers deducted security equivalent to excise duty from Personal Ledger Accounts of these licensees when these licensees exported beer from the brewery. However, the same amount was re-credited to the PLA of the licensees after the Officer-in-Charge of brewery received verification certificates¹⁰⁷ from the importing states of the beer. As such, no duty was realised on such exports. This resulted in non-payment of excise duty of ₹ 42.05 crore as detailed in **Appendix-V**.

After Audit reported the matter (September 2016), the Department stated that export of beer under bond was permissible as per Sub-rule (2) of Rule 132 of West Bengal Excise (FL) Rules 1998. So there was no loss of excise duty. (November 2016).

Reply of the Department was incorrect and misleading as there was no such provision in Rule 132. Department has also not addressed the issue of violation of provisions of Rule 114(1) in their reply.

¹⁰⁷ Actual quantity of beer received by importing states.

7.4.16 Short realisation of excise duty due to issue of FL at concessional rate

Rule 196 of West Bengal Excise (FL) Rules 1998 provides that the duty at the prescribed rate shall be charged on FL when such FL is imported, exported, transported or manufactured under any pass, permit or license, as the case may be, granted for the purpose.

In case of export of FL to other state/union territory, the duty prevailing in the importing state/union territory and the duty prevailing in West Bengal, whichever is higher, is to be charged.

When EC is satisfied that FL reached its destination and such liquor has been charged to requisite excise duty in the importing state/UTs, the duty already paid by exporter in West Bengal shall be refunded.

Further, FL manufactured in India when issued to a military canteen for consumption by defence personnel and/or to a border security force canteen for consumption by border security force personnel deployed in West Bengal, the concessional rate of duty is to be charged as prescribed in the Rule.

7.4.16.1 Audit observed from relevant records of two breweries under SE, Hooghly and Nadia that these breweries exported 7.18 crore bottles of beer (or 4.67 crore BL) through 4,988 export passes issued from 2010-11 to 2014-15 for civil consumption in the two importing states, Bihar and Jharkhand. The beer was exported against 4,988 Import Permits issued by Excise Departments of the two importing States viz. Bihar (3,239 import permit) and Jharkhand (1,749 permits) on realisation of excise duty of ₹ 60.33 crore. Excise Departments of Bihar and Jharkhand issued duty paid Import Permits after collecting the required excise duty as applicable in their states. The rate of excise duty applied by the Excise Departments of Bihar and Jharkhand was much lower than the rate prevailing in West Bengal and, as such, the rate prevailing in West Bengal should have been charged (**Appendix-VI**). Excise duty on the above quantities of beer chargeable at the West Bengal rate would have been ₹ 126.49 crore during the said period, whereas the duty realised from the importing states amounted to ₹ 60.33 crore. This resulted in short realisation of excise duty by ₹ 66.16 crore.

7.4.16.2 Audit observed from relevant records of one FL manufactory in Asansol and one brewery in Nadia that the licensee transported 6.72 lakh BL of FL (beer) and 0.22 lakh BL of FL (other than beer) to BSF Canteen, Kishangarh in Bihar and CSD, Ramgarh in Jharkhand during the period from 2010-11 to 2014-15. The total excise duty realised on the dispatch of the above 6.93 lakh BL of FL was ₹ 40.18 lakh, while the excise duty at the normal rate on the above FL amounted to ₹ 1.27 crore. However, concessional rate of excise duty was not applicable in these cases as the FL was not issued to the defence establishments situated in West Bengal. This resulted in short realisation of excise duty of ₹ 87.49 lakh due to issue of FL at the concessional rate.

After these cases were reported (September 2016), the Department did not furnish any specific reply (October 2016).

7.4.17 Non-realisation of import pass fee from FL manufactories

In terms of Rule 148(1) of West Bengal Excise (FL) Rules, 1998, the pass required under these rules for the transport/import of spirit, which was brought into India, from any place outside India, from a Customs Station/Licensed Warehouse/Licensed place of storage of spirit shall be granted by EC, West Bengal on payment of fees for the services rendered for the issue of such passes. Pass fee is realisable at the rate of ₹ 12 per London Proof Litre¹⁰⁸ (LPL) on the quantity of spirit advised/received, whichever is higher. However, no pass fee is leviable for transport passes issued for India Made Spirit.

Audit observed from relevant records of import permits issued to seven licensees that the licensees imported 29.25 lakh LPL of various kinds of spirits like High Bouquet Spirit (HBS)¹⁰⁹ etc., under bond from distilleries/warehouses situated outside West Bengal. This was imported under bond by the licensees through 236 Import Permits issued to them during the period between April 2010 and March 2015. Since the spirit was not India Made Spirit pass fee, as prescribed under relevant rules, was realisable. However, no such pass fee was realised till date. This resulted in non-realisation of import pass fee of ₹ 3.51 crore (29.25 lakh LPL X ₹ 12) as detailed in **Appendix-VII**.

After these cases were reported (September 2016), the Department did not furnish any specific reply (October 2016).

7.4.18 Non-realisation of fee due to non-application for de-bonding of old stock of IMFL

Sub-rule (2) of Rule 241 of West Bengal Excise (FL) Rules, 1998¹¹⁰ provides that if any bottled FL is lying unsold in any bonded warehouse after expiry of twelve months from the end of the month of manufacture, the licensee shall forthwith apply, on payment of duty, to the excise Officer-in-Charge of the bonded warehouse, for moving such stock to the adjunct trade. It is also stated in these rules that if such application is not submitted forthwith, the licensee shall pay a fee at the rate of ₹ three per BL per diem for such stock for the period from the date of expiry till the date of application to the excise Officer-in-Charge of the bonded warehouse.

Scrutiny of relevant records of five licensees in two SE offices showed that 1.90 lakh BL of FL have been lying in the bonded warehouse of two IMFL manufactories and the three FL bonded warehouses, even after expiry of 12 months from end of the month of manufacture. The above 1.90 lakh BL of FL were manufactured between August 2011 and November 2012; so the licensees were required to apply to the Officer-in-Charge of the manufactory

¹⁰⁸ "London Proof" or "proof" means the strength or proof as ascertained by means Sykes hydrometer and denotes that spirit which at the temperature of 51 degree Fahrenheit weighs exactly 12/13th part of an equal measure of distilled water.

¹⁰⁹ HBS is used for the purpose of blending so as to have typical flavor aroma. The strength of HBS does not generally exceed five degree over proof.

¹¹⁰ as substituted vide Notification No 588-Ex dated 04-05-07 and read with Notification No. 1002- Ex dated 18 July 2007.

and the bonded warehouse for de-bonding of the said FL between September 2012 and December 2013.

Audit observed that three licensees had applied for reprocessing of the above FL and the two licensees de-bonded the same in their respective trade warehouse between January 2013 and March 2014. The excise officers of the manufactories and the bonded warehouses did not realise the fee of ₹ 13.30 crore for the period of delay in application as detailed in **Appendix-VIII**.

The matter was reported (September 2016) to the Department; they did not furnish any specific reply (October 2016).

7.4.19 Non-realisation of fees on exported Beer

Rule 149 of West Bengal Excise (FL) Rules 1998, as amended, provides that fee at the rate of ₹ 0.25 per BL for export of FL (beer) is payable for the service rendered for issuing passes for export.

Scrutiny of relevant records of a licensed brewery, under SE Nadia, showed that the brewer had not paid the required fee for export of beer from brewery during the period from 2010-11 to 2014-15. The Officer-in-Charge deployed at that brewery also did not levy and collect the requisite fee. The total quantity of exported beer was 5.29 crore BL and fee ₹ 1.32 crore was realisable. However, Officer-in-Charge at the brewery did not realise the same, which resulted in non-realisation of fee amounting to ₹ 1.32 crore.

After this was reported (September 2016), the Department stated that the matter of payment of export pass fee was sub-judice in the Hon'ble Calcutta High Court and in the Hon'ble Supreme Court of India. No action could be taken until the judgment was received (November 2016).

The reply of the Department was not relevant as no details of the case were provided by the Department. Further, it was seen that despite this, the required pass fee on export of beer was collected by SE, Nadia from the said licensee during 2015-16 and from another licensee by SE, Hooghly during the period from 2010-11 to 2014-15.

7.4.20 Non-realisation of excise duty due to non-receipt of verification certificate/ pass

Rule 135, read with rule 139 of West Bengal Excise (FL) Rules 1998 as amended, provides that a pass, in triplicate, shall be prepared by the Officer-in-Charge of the manufactory, when any liquor is transported under bond or for payment of duty. The original copy of the pass shall be delivered to the transporter to accompany the consignment, the second copy shall be forwarded to the Collector of the district to which the liquor is to be taken and the third one shall be retained for record. The original pass or the second copy of the pass shall be returned to the issuing officer of the pass with verification certificate signed by the Officer-in-Charge of the receiving side, within the specified date as mentioned in the pass. If the pass/verification certificate is not received back within a maximum period of four months from the date of issue of the pass, the licensee of the manufactory shall pay the duty in respect of the entire quantity of liquor exported under the said pass.

Scrutiny of the Bond Coverage Register along with other relevant records of a FL manufactory under SE Nadia, showed that seven passes under bond were issued between 5 February 2014 and 6 March 2014 by the Officer-in-Charge of the manufactory. This was for transportation of FL (involving duty ₹ 58.79 lakh) to five bonded warehouses-cum-trade. It was observed that these passes/certificates were not returned back to the issuing officer of the manufactory, though more than 24 months from the date of issue of the pass to date of audit (July 2016), had elapsed.

As per condition of the pass and relevant rules the manufactory was liable to pay excise duty amounting to ₹ 58.79 lakh. However, no such duty was levied and collected by the Officer-in-Charge of the manufactory. This resulted in non-realisation of excise duty of ₹ 58.79 lakh.

After this was pointed out by Audit (September 2016), the Department accepted the observation and stated that out of seven passes the authority had already received five passes. Efforts were being made to collect the remaining two passes as early as possible. However, no copies of the passes were furnished to Audit (November 2016).

7.4.21 Non-realisation of late fee due delay in payment of renewal fee

Rule 14 of West Bengal Excise (Selection of New Sites and Grant of License for Retail Sale of Liquor and certain Other Intoxicants) Rules, 2003 as amended provides that the holder of a license of an existing site may make an apply to the Collector for the grant of a license for the next period of settlement, before expiry of the period of validity of the current license, along with original documents showing payment of requisite fees. Where no application for grant of license for the next period of settlement is made by an existing holder before the expiry of current period of settlement, the holder shall have no right to carry on business after the expiry of the current period of settlement.

The rules also state that the Collector may, at his discretion, grant license to a person whose right to carry on business has ceased, if such person agrees to pay a late fee of ₹ 100 per day, counted from the date following the date of expiry of license.

Audit observed from applications for grant of license for the next period of settlement along with other relevant records under SE, Asansol that the three licensees did not apply along with requisite fee for grant of licenses for the next period of settlement. However, Collector of Excise, Asansol granted the above three licenses for the next period of settlement up to 2015-16.

After Audit reported the case (September 2016) the Department stated that all the three licensees had applied for renewals along with fees within the stipulated time, but there were some shortages of fees which were recovered in latter days. The reply of the Department was not tenable as the licensees did not apply along with requisite renewal fee. Thus the applications were themselves incorrect and invalid. The Collector of the Excise had renewed the licenses on such invalid and incorrect application of the licensees.

7.4.22 Change in management

The Government published various notifications for regularisation of Change in Management of license, indicating the rates at which the application for change in management under any rule made under the Act should be charged. Under the latest such notification issued in February 2010, the rate was revised to one and a half times the initial grant fee similar to the one applicable for grant of new license of same category/area.

Audit observed instances of non/short realisation fee due to improper application of the above Notifications, as discussed in the following paragraphs:

7.4.22.1 Non-realisation of fee due to non-application for change in management

Audit observed from relevant records of a distillery cum FL manufactory and a bonded cum trade warehouse under SE, Asansol that the Board of Directors of the distillery cum FL manufactory had changed two times. The Board of Directors of the bonded warehouse cum trade also changed once during the period 2013-14 to 2014-2015. However, none of the licensees applied to SE Asansol for regularisation of the same.

Collector of Excise, Asansol did not take any action on such change in management of the company though more than two years have elapsed from date of change of directors of the company. This resulted in non-realisation of fee of ₹ 93.30 lakh due to non-application for change in management.

After this was pointed out (September 2016) the Department accepted the observation. Audit, however, found that in the case of the distillery, the Department has charged penalty of only ₹ 2 lakh, which was appealed against by the distillery, while in the other case of bonded warehouse, only an explanation was asked for. No further details were provided by the Department.

7.4.22.2 Non-realisation of fee on change in management cases due to non-sending the same to EC WB

Scrutiny of records in two SE offices¹¹¹ showed that three licensees had applied for change in management to their respective SEs between March 2009 and March 2011. SEs, however, did not send the case to Excise Commissioner, West Bengal for approval. Periods ranging from four to six years from the dates of receipt of application till date of audit, had since elapsed. Since the fee was chargeable after approval of the change in management, non-disposal of the cases resulted in non-realisation of fee amounting to ₹ 46.50 lakh.

After Audit reported the case the Department stated that the fee was realised in one case and action was being taken in the remaining two cases, for recovery. (November, 2016).

¹¹¹ SE, Barrackpur Zone and Darjeeling.

7.4.22.3 Non-realisation of IGF due to irregular disposal of change in management

Audit observed from a show-cause-notice (SCN) and Order Sheet issued in February 2012 and May 2012, respectively, by Collector of Excise, Darjeeling, to an IMFL bonded-cum-trade warehouse in Siliguri Municipal Corporation Area, that license of the IMFL bond-cum-trade warehouse was granted in May 2003 and during the period from 2003 to 2010 change in management took place four times¹¹². No approval for change in management was obtained from the Excise Department. For approval of these four changes in management, the licensee was liable to pay fees amounting to ₹ 35 lakh.

It was observed that the Collector of Excise, Darjeeling, instead of taking note of the change in management and taking action at the time of renewal of license, issued the SCN (February 2012) after nine years of the first incidence (June 2003). The Collector, while disposing of the SCN, had imposed a penalty of only ₹ 0.50 lakh (June 2012), ignoring the actual dues of ₹ 35 lakh due to irregular disposal of change in management cases.

After this was pointed out (September 2016), the Department intimated that the case had been sent to higher authorities for further approval.

7.4.22.4 Non-realisation of fees due to improper action of Collector, Jalpaiguri

Audit observed from the records of SE, Jalpaiguri that a Hotel-cum-Restaurant-Cum-Bar under Siliguri Municipal Corporation had applied in July 2006 to the Collector, Jalpaiguri for change in name and style of their hotel with effect from April 2006. During processing of the application it was noticed by the Department that the management of the hotel had also changed with effect from April 2006. Although the information about change in management was on record, Collector forwarded the application only for change of name and style of the licensee to EC for approval. No further action was found on record.

Audit observed that the licensee was liable to pay fees for the incidence of change in management but Collector, Jalpaiguri did not take any action, though this information was available. Therefore, there was non-realisation of fees amounting to ₹ 15 lakh.

After this was pointed out (September 2016) the Department stated that the proposal was sent to Government for approval in January 2011. The reply was not tenable as the proposal was only for change in name and style of the licensee and the issue of change in management was omitted.

7.4.23 Non-realisation of excise duty due to non-compliance with the rules for destruction of FL

Rule 241(3) of West Bengal Excise FL Rules, 1998 provides that any FL kept in any licensed premises found after necessary examination to be unfit for

¹¹² June 2003, July 2005, March 2010 and November 2010.

human consumption may be destroyed under the orders of the Collector with prior approval of the EC, West Bengal, after realisation of duty, if any.

The concerned records showed that Collector of Excise, Darjeeling had intimated EC, West Bengal in January 2013 for destruction of 0.11 lakh LPL of FL which was lying in the bonded warehouse for more than 12 years, and were found unfit for human consumption. Joint Commissioner of Excise (Foreign Liquor) informed the Collector of Excise, Darjeeling in February 2013 that EC, West Bengal had approved the proposal of destruction of the said old stock of 0.11 lakh LPL FL in accordance with Rule 241(3) of the rules *ibid*.

Audit observed that the said old stock of 0.11 lakh LPL of FL was destroyed in January 2014 without realisation of excise duty amounting to ₹ 20.17 lakh (₹ 186 per LPL on 0.11 lakh LPL). This resulted in non-realisation of excise duty of ₹ 20.17 lakh due to non-compliance with the extant rules.

After this was pointed out (September 2016) the Department did not furnish any specific reply.

7.4.24 Non-compliance to environmental norms

Rules 6 and 11 of West Bengal Excise (CS) Rules, 2010 provide that copy of environment pollution clearance certificate from the appropriate authority is necessary at the time of granting of CS manufactory license and at the time of renewal of manufactory license for the next period of settlement. Under Sections 25 and 26 of the Water (Prevention and Control of Pollution) Act, 1974 and Section 21 of the Air (Prevention and Control of Pollution) Act, 1981, West Bengal Pollution Control Board (PCB) issues the clearance certificate in the form of Letter of Consent to Operate. In order to keep a check on the quantity of liquid and gaseous effluents discharged, PCB fixes in the Letter of Consent, daily or monthly limit of the total quantity to be produced.

Scrutiny of license granting files along with other relevant records of nine CS manufactories in six SE offices¹¹³ showed that during the period covered under audit, eight licensees had submitted Letters of Consent of PCB along with the applications for renewal of their licenses. PCB had prescribed a limit for quantity of CS to be produced per day or per month. From the production registers, Audit observed that these licensees had violated the production limits prescribed by PCB.

In all the nine cases, the excise authorities renewed the licenses for the next period of settlement without taking into consideration the violations of environment norms in eight cases and without insisting upon compliance with WBE (CS) Rules. This action rendered the system for control of pollution caused by these manufactories a failure.

After this was pointed out (September 2016) the Department did not furnish any specific reply.

¹¹³ SEs Asansol, Barrackpore Zone, Darjeeling, Hooghly, Jalpaiguri and Malda.

7.4.25 Non-realisation of revenue due to non-renewal of distillery license

Rule 5 of Consolidated Rules framed under Section 86 of Bengal Excise Act, 1909, as amended vide notifications¹¹⁴, provide that the license for a distillery must be renewed annually. Such renewal will be granted by the Collector, subject to the approval of EC, West Bengal, on an application made before expiry of existing license, along with a deposit of ₹ one lakh per year for the years from 2003-04 to 2012-13 and ₹ 10 lakh per year from the year 2013-14 onwards. The rules also cite that if a licensee applies for renewal after the expiry of the license, the Collector may renew the license on realisation of a late fee at the rate of ₹ 600 per day, calculated from the date of expiry of the previous license in addition to renewal fee prescribed above.

Scrutiny of license renewal file of a distillery-cum-FL manufactory under SE, Asansol showed that the licensee got the distillery license renewed after payment of requisite renewal fee along with other relevant records till the financial year 2008-09. Thereafter, the licensee neither applied nor surrendered the distillery license to the competent authority till the date of audit.

However, from the stock taking report for the year 2011-12, Audit observed that during the year 21.44 lakh LPL of strong spirit was issued to distillery plant for redistillation, which was indicative of functioning of the distillery without getting the distillery license renewed and without payment of renewal fee. The Collector, Asansol did not raise any demand for renewal fee and late fee from the licensee. This resulted in non-realisation of revenue amounting to ₹ 80 lakh (renewal fee ₹ 34 lakh and late fee ₹ 46 lakh) due to non-renewal of distillery license for the period from 2009-10 to 2014-15.

After this was pointed out (September 2016), the Department stated that the licensee had moved the West Bengal Taxation Tribunal against a demand raised by the Department and the Tribunal, in an interim order, had directed the Department not to take any action for realisation of the demanded amount till the disposal of the case. The reply of the Department was not tenable as the appeal case actually pertained to a different demand for ₹ 24.06 lakh, pertaining to the dues of earlier periods (2003-05 and 2006-08), and the interim order (September 2010) did not pertain to the instant case. However, the Department had stopped collecting all dues from the licensee, which was incorrect and not intended by the interim period.

7.4.26 Sale of liquor without license

Sections 16 and 20 of Bengal Excise Act, 1909 provide that no person shall store or keep any intoxicant in any warehouse and no intoxicant shall be sold except under the authority and in accordance with the terms and conditions of a license granted in that behalf by the Collector. Rule 34 of West Bengal Excise (CS) Rules, 2010 with effect from 1 December 2010 provides the procedures to be followed to get the license of Duty paid CS warehouse.

Audit observed that in two "Duty paid CS Warehouses" in SE offices of Darjeeling and South 24 Parganas, the owners had stored and sold CS from

¹¹⁴ No 1013-EX dated 29-11-2002 and No 21-Ex dated 02-01-2013.

their respective warehouses during the years 2010-11 to 2014-15. Both the warehouses had no license for storing and selling of intoxicants during this period. The Department, however, issued transport passes for movement of intoxicants to and from these warehouses. The Department took no action either to stop the illegitimate business nor initiated any penal measures against the above warehouses. In the absence of complete details of sale, capacity of storage etc. loss of revenue could not be quantified in audit.

The Department did not furnish any specific reply to the audit observation (October 2016).

7.4.27 Other cases of non-compliance

Some other cases of non-compliance with Act/rules/notifications observed by Audit are given in **Appendix-IX**. These include instances of non-conducting of Annual Stock Taking, non-sending of samples of CS for chemical analysis, failure to take action on the CEL's report etc.

Whether the internal control system of the Department is efficient and effective

Internal control is an integral component of an organisation's management processes to provide reasonable assurance that its operations are carried out effectively, economically and efficiently. Deficiencies in the internal control mechanism are discussed in the following paragraphs:

7.4.28 Functioning of the Internal Audit Wing (IAW) of the Department

The IAW is a vital internal control mechanism which functions under the control of EC, WB and mainly is responsible for conduct of audit of the offices under the control of the EC, WB.

During test check of records of the IAW, only one Inspection Report pertaining to the year 2012-13 was made available to Audit. It was informed that 33 units were inspected by IAW during the years 2010-11 to 2014-15. In the absence of inspection reports, Audit could not check compliance with the observations made therein. Further, Audit observed that during the period from 2010-11 to 2014-15, the IAW had not inspected offices of Ranges/Divisions performing preventive functions of the Department and the duty paid CS warehouses. It was also observed that SE offices in the districts of Murshidabad, Bankura, Purulia, Purba Medinipur, Malda, Uttar Dinajpur, Dakshin Dinajpur, Coochbehar, Jalpaiguri, Alipurduar and Darjeeling were never selected for inspection by IAW.

Audit also observed that presently the deployment of staff vis-à-vis sanctioned strength of the IAW was 57 per cent.

After this was pointed out (September 2016), the Department accepted the audit observation and stated that efforts were being made for strengthening of IAW by deployment of additional manpower.

7.4.29 Functioning of the Chemical Examination Laboratories

Chemical Examination Laboratory (CEL) is entrusted with analysis of samples of FL, country spirit etc., received from manufactories in addition to seized spirit/intoxicants related to illicit distilled liquor, fake FL, adulterated liquor,

poisoned liquor, death cases due to consumed poisoned liquor, ganja etc., under BE Act.

The reports of such analysis play an important role in prosecution of offenders and are admissible in the court of law. Excise Officers posted at the manufactories, distilleries and warehouses, assess and demand excise duty, fee etc., based on the reports of CEL, as per the provisions of the BE Act and rules made thereunder.

During scrutiny of records of the office of Chemical Examiner, Government of West Bengal (CE), it was observed that deployment of manpower remained between 75 and 67 *per cent* vis-à-vis sanctioned strength of the CEL during the years 2010-11 to 2014-15.

Audit observed that EC, WB¹¹⁵ had instructed the Chemical Examiner to destroy all types of industrial samples lying untested up to December 2013, which was complied with. It was indicative of the fact that CEL could not conduct the tests in time. Further, non-testing of these samples defeated the objectives of analysis by CEL, as the Officers-in-Charge could not determine and demand correct excise duty, fee etc.

After this was being pointed out (September 2016) the Department accepted that the process of analysis of samples suffered in the CEL due to shortage of manpower and inadequate infrastructure.

Conclusion

Audit observed a number of deficiencies in functioning of the Excise Department which impacted revenue collection. There were serious weaknesses in compliance with the extant Act/Rules/Notifications which resulted in short collection of revenue. Absence of provisions in the Acts/ Rules/Notifications, governing the functioning of the Department, adversely affected the collection of revenue and increased the number of excise crimes. The Department's internal control systems were weak, leading to weaknesses in the system for correct assessment and collection of excise revenue.

Recommendations

Government may consider

- introduction of provisions for
 - ✓ imposition of late fee in Tourist Lodge Licensing Rules;
 - ✓ collection of renewal fee from the licensees who have been given permission to sell packaged foreign liquor in uniformity with "OFF" shop licensees;
 - ✓ prescribing a limit in time taken by the Department for processing the applications for approval of change in management;
- instituting a system of its own for identification of the star category of hotels.

¹¹⁵ Memo No 1053 E dated 04.08.14.