

## CHAPTER-V OTHER TAX RECEIPTS

### A- STATE EXCISE

#### 5.1 Tax administration

The Additional Chief Secretary to the Government (Taxes) is the administrative head of the Excise Department at Government level. The Department is headed by the Excise Commissioner (EC). The Department has been divided into three<sup>1</sup> zones which are headed by the Joint Excise Commissioners (JEC), South, Central and North zone. The divisions at the district level are working under the Deputy Excise Commissioners (DEC). Besides, Excise Circle Inspectors (ECI) and Excise Inspectors (EI) under the control of the DEC of the respective districts are deputed to oversee collection of excise duties, licence fee etc.

#### 5.2 Internal audit

The Internal Audit Wing (IAW) in the State Excise Department is monitored by the EC. The Wing consists of one JEC assisted by one Assistant Excise Commissioner (AEC), three superintendents, three EIs and six preventive officers. The priority for internal audit is given to auditee districts in which more vehicles have been seized, huge collectable arrears are pending and undue delay in collection was noticed in auditee offices.

The wing had to conduct inspections in the 310 sub offices annually. Out of the total 310 units to be audited, the wing planned and audited 118 units during 2015-16 as against 101 units audited during 2014-15. The details of outstanding paras and the clearance made during the year were not furnished by the Department.

#### 5.3 Results of audit

In 2015-16, test check of the records relating to excise duty, license fee receipts etc., of 34 offices under Excise Department showed non/short realisation of excise duty/license fee/interest/ penalty and other irregularities involving ₹ 70.74 crore in 30 cases which fall under the following categories as given in **Table – 5.1**.

---

<sup>1</sup> South zone (Alappuzha, Kollam, Kottayam, Pathanamthitta and Thiruvananthapuram), Central zone (Ernakulam, Idukki, Palakkad and Thrissur) and North zone (Kannur, Kasargod, Kozhikode, Malappuram and Wayanad).

**Table – 5.1**

(₹ in crore)

<b>Sl. No.</b>	<b>Categories</b>	<b>Number of cases</b>	<b>Amount</b>
1.	Issue of licenses and enforcement of license conditions by the Excise Department	1	67.67
2.	Non realisation of enhanced fee	6	1.96
3.	Others	23	1.11
	<b>Total</b>	<b>30</b>	<b>70.74</b>

During the course of the year, the Department accepted underassessment and other deficiencies involving ₹ 70.74 crore in 30 cases pointed out by Audit. The Department realised an amount of ₹ 25.52 crore in 18 cases during the year 2015-16.

The results of audit on :Issues of licences and enforcement of licence conditions by the Excise Department ~ involving money value of ₹ 67.67 crore is discussed in the succeeding paragraph.

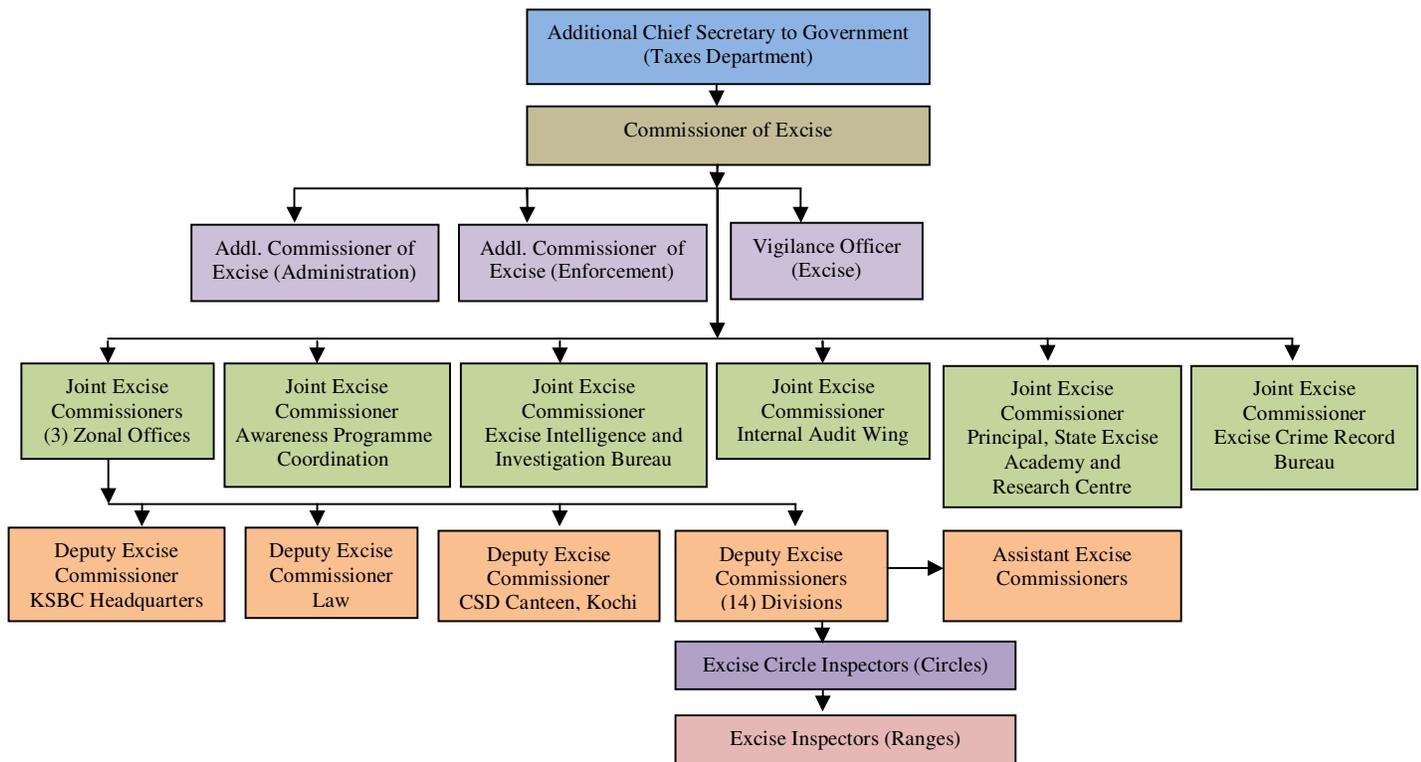
## 5.4 Issue of licences and enforcement of licence conditions by the Excise Department

### 5.4.1. Introduction

The State has the exclusive privilege in the manufacture, storage, and sale of liquor and intoxicating drugs as per the Abkari Act and Narcotic Drugs & Psychotropic Substances (NDPS) Act, 1985. Section 18 A of the Abkari Act, provides for the grant of such privilege by issuing licences to any person or persons on payment of rentals. Section 8(c) of the NDPS Act, 1985 provides for the grant of licence for manufacture, possession and sale of any narcotic drug or psychotropic substances. The State Excise Department issues licences to the hotels, restaurants and clubs that serve alcoholic drinks *i.e.* beer, wine, liquor for consumption 'on the premises' to the visitors. The licence to vend toddy is also issued by the Excise Department.

The Kerala State Beverages (Manufacturing and Marketing) Corporation Ltd. (KSBC) is the sole wholesale distributor of Indian Made Foreign Liquor (IMFL) and beer (FL9 Licence). The licence to vend foreign liquor in sealed bottles to the public (FL1 licence) is granted exclusively to the KSBC and Kerala State Cooperative Consumer Federation (CONSUMERFED). Licences for manufacturing units, for selling spirituous preparations etc., were also issued/renewed by the Excise Department.

Organogram of the Department is given below:



#### **5.4.2. Audit Objective and scope**

The objectives of Audit were to assess whether

- the licences are issued in a fair and transparent manner and in accordance with the provisions of the Acts & Rules,
- effective enforcement system exists for detection of violation of licence condition.

The audit was conducted between May 2016 and July 2016 covering the period from 2013-14 to 2015-2016. The scope of Audit was confined mainly to the office of the EC and DECs. Audit selected 119 out of 503<sup>2</sup> FL-3 /FL-11<sup>3</sup> licences. Audit also selected four<sup>4</sup> out of the 18 IMFL bottling units licencees, two<sup>5</sup> out of three brewery licencees and five<sup>6</sup> out of 22 FL-9<sup>7</sup> licencees of KSBC in the selected five<sup>8</sup> Offices of DEC. An entry meeting was held on 26 May 2016 with the Additional Secretary, Taxes Department to discuss the audit objectives, criteria and the audit plan. An exit conference was held on 7 October 2016 with Additional Secretary (Taxes) and EC.

#### **5.4.3. Audit findings**

##### **5.4.3.1. Lack of transparency in issue of bar and beer/wine parlour licences**

In terms of Rule 13 of the Foreign Liquor Rules (FL Rules), FL-3 licences (bar licence) and FL-11 licences (beer/wine parlour licence) can be issued by EC with the sanction of the Government subject to the fulfillment of terms and conditions prescribed. Further, Rule 13B (1) of FL Rules, stipulates that persons desirous of obtaining a licence may apply to the EC in writing through the DEC of the district concerned. Applications thus received by the DEC are routed through the JEC of the zone to the EC for issue of licences after getting Government sanction. Seven fresh bar licences and 78 fresh beer/wine parlour licences were issued during the period from 2013-14 to 2015-16. Audit observed defects in issue of licences which are discussed in the succeeding paragraphs.

---

<sup>2</sup> 45 FL-3/ FL-11 licences out of 85 issued by the EC, 74 out of 418 FL-11 licences issued by DEC to non-standard bar hotels functioned as on 31 March 2014.

<sup>3</sup> FL-3 hotel (restaurant) licences (bar licence) and FL-11 beer/wine parlour licence

<sup>4</sup> M/s. Amrut Distilleries, Pvt. Ltd, Palakkad, M/s Empee Distilleries Ltd, Palakkad, M/s. Devicolam Distilleries Ltd, Ernakulam and M/s. United Spirits Ltd, Alappuzha.

<sup>5</sup> United Breweries Ltd at Palakkad and Alappuzha.

<sup>6</sup> Balaramapuram, Alapuzha, Perumbavoor, Palakkad and Wayanad.

<sup>7</sup> Foreign Liquor 9<sup>7</sup> Licence for possession and supply of foreign liquor on wholesale.

<sup>8</sup> Thiruvananthapuram, Alapuzha, Ernakulam, Palakkad and Wayanad.

- **Control Mechanism**

The FL Rules did not prescribe a register for watching the receipt and disposal of applications for grant of bar and beer/wine parlour licences. Audit also noticed that the Department did not have Management Information System (MIS) reports on the status of applications for bar and beer/wine parlour. As such, the total number of applications received and disposed of and reason for pendency in respect of licences for bar and beer/wine parlour in the State could not be ascertained which indicates lack of control over the applications.

For ensuring transparency, control over receipt and disposal of applications for bar and beer/wine parlour licences, it is essential to have a provision of register and MIS reports.

In the exit conference, the Department assured (October 2016) that this would be examined and reply would be furnished. Further reply would be awaited in Audit.

- **Timeliness**

The FL Rules did not prescribe a time line for the disposal of applications received for grant of bar and beer/wine parlour licenses. However, under the Kerala State Right to Service Act, 2012, the EC stipulated<sup>9</sup> time limit for issue of bar and beer/wine parlour as within 90 working days from the date of receipt of application. Under Rule 14 of FL Rules, if the licences are granted in the course of a financial year, the full annual fee shall be paid.

On a scrutiny of the register of licences maintained at EC, it was noticed that time taken ranged from 54 days to 139 days for issue of bar licences and 11 days to 722 days for issue of beer/wine (B/W) parlour licences as detailed in **Table – 5.2**.

**Table – 5.2**

Nature of licence	Bar	B/W Parlour	Bar	B/W Parlour	Bar	B/W Parlour	Bar	B/W Parlour	Bar	B/W Parlour	Bar	B/W Parlour
No. of licences	--	4	2	5	2	17	--	10	1	10	--	24
Time taken in days	11-31		32-60		61-90		91-120		121-150		151-722	

In 45 cases i.e. 60 *per cent*, the licenses were issued after a delay of 90 days.

Out of the above 45 cases, in 15 beer/wine parlour licences the Department did not issue licence in the financial year of the application itself, which deprived the Department of revenue in the form of annual licence fee for that financial year. A few illustrative cases are detailed in **Table – 5.3**.

<sup>9</sup> Notification No. XA1-22847/2012 dated 5 December 2012

**Table – 5.3**

Sl. No.	Name of applicant	Date of application	Date of forwarding by DEC	Date of forwarding by JEC	Date of forwarding by EC	Date of sanction by Govt.	Date of issue of licences
1	M/s. Rohini Hills, Kunnikkode, Kollam	16/12/2014	26/12/2014	13/1/2015	13/2/2015	6/4/2015	24/4/2015
2	Spice Grove Hotels & Resorts (Pvt.) Ltd., Anakkara, Idukki	18/6/2013	11/9/2013	26/9/2013	4/10/2013	19/2/2015	26/2/2015
3	Hotel Vakkom Palazzo, Vakkom, Thiruvananthapuram	14/1/2014	28/1/2014	1/2/2014	14/2/2014	4/3/2014	21/5/2014

Source : Relevant files.

The Department (October 2016) assured that this would be examined and reply will be furnished. Further reply would be awaited in Audit.

#### **5.4.3.2 Issue of beer/wine parlour licences without proper hygiene verification**

Government decided<sup>10</sup> (April 2014) provisionally not to renew the licences of 418 non-standard hotels which had poor hygiene standards as reported in the Report of CAG of India on Performance of State Excise Department for the year ended 31 March 2011 and in the judgment of Hon<sup>ble</sup> Supreme Court<sup>11</sup>.

The Government issued<sup>12</sup> directions for physical inspection in assessing the facilities available in the 418 non standard hotels and the facilities were to be measured against the standard specification for classification of hotels issued by the Government of India (for the year 2013). It was also directed to complete the detailed check list in the presence of the hoteliers in a professional and objective manner.

Before completion of this exercise Government issued Abkari policy<sup>13</sup> 2014-15 by which issue of bar licenses were confined to hotels with five star and above classifications. Subsequently, the Government revised<sup>14</sup> Abkari Policy for 2014-15 and decided to issue beer/wine parlour licences to the hotels where a bar licence granted was in force as on 31 March 2014 subject to the condition that the standards of hygiene were to be certified by the DEC's concerned by amending<sup>15</sup> Rule 13(11) of FL Rules.

<sup>10</sup> G.O (MS) No.56/2014/TD dated 02.04.2014.

<sup>11</sup> C.A.No.3196-3198/2014 dated 3 March 2014.

<sup>12</sup> No. 19929/G1/2014/TD dated 18 August 2014 of Secretary, Taxes Department.

<sup>13</sup> GO(MS) No.139/2014/TD dated 22 August 2014.

<sup>14</sup> GO (MS) No.205/2014/TD dated 20 December 2014.

<sup>15</sup> GO(P) No.211/2014/TD dated 30 December 2014.

In the five selected offices of the DECs, beer/wine parlour licences were issued to 166 hotels included in the list of 418 non-standard hotels during January 2015. Audit test checked 74 licence files and noticed that in all the test checked cases, the DECs did not record or document the method adopted or checks made by them as prescribed in the directions issued in August 2014 for certifying the hygiene. Thus, it cannot be ruled out that hygiene was certified by the DECs without completing the detailed checks prescribed by Government.

The case was pointed out to Department and reported to Government (August 2014). The Department stated (October 2016) that detailed reply would be furnished without delay. Further reply would be awaited in Audit.

#### **5.4.3.3 Issue of licences to liquor vendors along National Highways**

Government of India issued instructions<sup>16</sup> to remove liquor shops along the National Highways (NH) and to ensure that no licences are issued to liquor vendors along NH in order to prevent drunken driving and thereby reducing the occurrence of road accidents.

As on 31 March 2016, there were four<sup>17</sup> bar hotels and 182 beer/wine parlours functioning along the NHs. Audit noticed that during 2013-14 to 2015-16, 10 fresh bar and beer/wine parlour licences were issued to the hotels located along the NHs.

Thus, the State Government had not followed the instructions of Government of India for not issuing fresh licences to liquor vendors.

The Department stated (October 2016) that the matter would be looked into. Further reply would be awaited in Audit.

#### **5.4.3.4 Non-identification of individuals/institutions who are required to take licence for spirituous preparations**

Any medicinal or toilet preparation containing alcohol, whether self generated or otherwise or any intoxicating drug is a spirituous preparation vide definition 3(k) of the Kerala Spirituous Preparations (Control) Rules, 1969. According to Section 15 of Abkari Act, no liquor or intoxicating drug shall be sold without licence issued by the EC. Rule 11 of the Kerala Spirituous Preparation (Control) Rules 1969 prescribes licence in Form SP VI (for wholesale) and SPVII (for retail sale) for allopathic medicinal preparations, homoeopathic preparations and preparations coming under the indigenous system of medicines and licence fee recoverable as detailed in **Table – 5.4**.

---

<sup>16</sup> DO letter No. RT-25035/70/12-RS dated 11 March 2013 of the Secretary, Ministry of Road Transport and Highways.

<sup>17</sup> Air Link Castle, Athani, Le Meridian, Ernakulam, Crowne Plaza, Ernakulam and Diana Heights, Aluva.

**Table – 5.4**

<b>Licence Form</b>	<b>Licence fee</b>
Wholesale licence in Form SP VI	₹ 5,000 for a year or part thereof
Retail licence in Form SP VII for Homoeopathic & Ayurvedic preparations	₹ 1,000 for a year or part thereof
Retail licence in Form SP VII for Allopathic preparations	₹ 300 for a year or part thereof

Audit verified data of persons dealing with wholesale and retail sale of medicines in the selected districts, obtained from the official website of Drugs Controller, with the licence issue register kept in the five selected offices of the DEC's and it was noticed that out of 6,965 persons, dealing with wholesale and retail business of allopathy and homoeopathy medicines, only 49 persons have taken the licence as detailed in **Table – 5.5**.

**Table – 5.5**

<b>District</b>	<b>Allopathy-Retail</b>		<b>Allopathy-Wholesale</b>		<b>Homoeopathy (Wholesale &amp; retail)</b>	
	<b>Total no. of shops</b>	<b>No. of shops for which licence issued</b>	<b>Total no. of shops</b>	<b>No of shops for which licence issued</b>	<b>Total no. of shops</b>	<b>No. of shops for which licence issued</b>
Thiruvananthapuram	1,472	1	563	1	22	1
Alappuzha	944	4	249	6	32	4
Palakkad	904	2	320	4	20	3
Eranakulam	1,403	8	673	4	62	11
Wayanad	234	0	49	0	18	0
<b>Total</b>	<b>4,957</b>	<b>15</b>	<b>1,854</b>	<b>15</b>	<b>154</b>	<b>19</b>

[Total No. of shops- 6,965 Total Licences issued - 49]

Source: Website of Controller of Drugs, Kerala as on 1 June 2016.

Audit observed that the licences are issued only to those who approached for licences and no system existed in the Department for identifying the persons engaged in the trade of spirituous preparation by conducting survey or by collecting data available with other licensing agencies such as Drugs Controller functioning under Health Department/ Directorate of Homoeopathy, etc.

Failure to identify such persons resulted in non issue of licences to all persons engaged in trade of spirituous preparations and may lead to misuse of spirituous preparations. Had they been identified and issued licences, an additional revenue

of ₹ 1.08 crore<sup>18</sup> per year would also have been realized in the selected five districts alone. When applied to the whole State, additional potential revenue would be manifolds.

The EC stated (October 2016) that there was practical difficulty in conducting inspections in all the shops due to limited number of Drug Inspectors. The reply is not acceptable as data in respect of unlicensed drug dealers can be collected from Office of the Drugs Controller. Further reply would be awaited in Audit.

#### **5.4.4. Non-observance of provisions of Abkari Act and Rules**

The Abkari Act and Rules made thereunder and the notification by the Government provides for levy and collection of Abkari and other revenue from the licencees. But the departmental authorities did not observe the provisions in many cases which resulted in short/non levy and non-realisation of revenue. Illustrative cases are given in following paragraphs.

##### **5.4.4.1 Non-realisation of stamp duty on licences**

Under Section 18 A of the Abkari Act, the Government can grant exclusive or other privilege of (i) manufacturing or supplying by wholesale or (ii) selling by retail or (iii) of manufacturing or supplying by wholesale and selling by retail, any liquor or intoxicating drugs within any local area on his or their payment to the Government of an amount as rental in consideration for the grant of such privilege. Stamp duty at the rate of ₹ five for every ₹ 100 or part thereof is chargeable on all the licenses to let including any agreement to let or sublet for rent or fee under Article 35 A of the schedule to the Kerala Stamp Act as inserted by Section 4(5) of the Finance Act, 2015 with effect from 1 April 2015.

Scrutiny of the registers and the information furnished by the selected DECs revealed that licence fee amounting to ₹ 84.72 crore was collected for the year 2015-16 and 2016-17.

However, while issuing these licences, the Department did not collect the stamp duty. The stamp duty leviable worked out to ₹ 4.24 crore. Audit also pointed out the case to the Department of Registration. Reply from the Government had not been received (November 2016).

##### **5.4.4.2 Non-levy of differential excise duty from brewery**

Under Section 18 of the Abkari Act, excise duty may be collected in the case of spirit or beer, either on the quantity produced in or passed out of a distillery, brewery, winery or other manufactory or in accordance with such scale of equivalents, calculated on the quantity of materials used or by the degree of

<sup>18</sup>  $(4,942 \times ₹ 300) + (1,839 \times ₹ 5,000) + (135 \times ₹ 1,000) = ₹ 1,08,12,600.$

attenuation of the wash or wort or on the value of liquor, as the case may be, as the Government may prescribe. The excise duty or countervailing duty shall be payable by manufacturer or importer of the liquor. In respect of beer, excise duty is being collected from the manufacturer on the quantity of production at the end of each quarter as provided in Rule 19 Part I of Brewery Rules, 1967. Under proviso to Section 18 of the Abkari Act, where there is a difference of duty of excise, countervailing duty or luxury tax between two licence periods, such difference may be collected in respect of all stocks of foreign liquor or intoxicating drugs held by licencees at the close of the former period. The duty of excise on beer is enhanced to ₹ five per Bulk Litre (BL) from ₹ three per BL with effect from 1 April 2015<sup>19</sup>.

Audit found from the assessment records of the two breweries<sup>20</sup> that the difference of excise duty at the rate of ₹ two per BL was not collected in respect of 31.56 lakh BL of beer held by the licencees as on 31 March 2015, at the close of the former period. This resulted in non-levy of differential excise duty of ₹ 63.12 lakh. Interest at 12 *per cent per annum* under Rule 20 of Brewery Rules, 1967 was also leviable which comes to ₹ 6.94 lakh<sup>21</sup>.

On this being pointed out, it was stated that an amount of ₹ 59.58 lakh being differential excise duty with interest was remitted by M/s. United Breweries, Palakkad on 14 November 2016. Further reply would be awaited in Audit.

#### **5.4.4.3 Non-remittance of collected excise duty by licencees consequent on enhancement of duty**

Under Section 18 of the Abkari Act, where any liquor is chargeable with duty of excise or countervailing duty at a rate depending on the value of the liquor, such value shall be the value at which the KSBC purchases such liquor from the supplier. The rate of excise duty on IMFL/Beer was enhanced from 1 April 2015.

Audit noticed that the KSBC/CONSUMERFED revised sales prices incorporating the enhanced excise duty and collected the same from the retailer/consumers on the closing stock as on 31 March 2015. However, the excess excise duty so collected was neither paid by the licencees nor demanded by the DEC's concerned.

The closing stock of IMFL and beer as on 31 March 2015 held by KSBC (sole wholesale licencee - FL-9 and retail licencee - FL-1) were as detailed in **Table – 5.6.**

---

<sup>19</sup> SRO 186/2015 dated 30.3.2015

<sup>20</sup> M/s. United Breweries Limited at Palakkad and Alappuzha.

<sup>21</sup> At 11 *per cent* from July 2015 to May 2016

Table – 5.6

	IMFL (No. of cases in lakh)	Beer (No. of cases in lakh)
FL-9 Warehouses of KSBC	14.81	7.11
Retail shops of KSBC (FL-1)	5.78	1.57

Out of the 14.81 lakh cases of IMFL held as closing stock in the KSBC Warehouses, audit test checked 8.83 lakh cases of IMFL (from the 60 items where the closing stock was more than 5,000 cases) and found that the differential excise duty on the selected cases would come to ₹ 23.56 crore. In respect of beer, 57.14 lakh BL was the closing stock as on 31 March 2015 and excise duty payable on it at the differential rate would come to ₹ 1.14 crore.

- In the retail shops of KSBC, Audit test checked 3.53 lakh cases of IMFL where closing stock was more than 1,000 cases and found that the differential excise duty payable would come to ₹ 9.82 crore. In respect of beer, closing stock was 12.62 lakh BL and the excise duty at the differential rate of ₹ two per BL would come to ₹ 25.25 lakh.
- Out of the 511 brands of IMFL held as closing stock in the retail shops of CONSUMERFED audit checked 357 brands (by adopting the price list of KSBC) and the differential excise duty on the selected cases would come to ₹ 70.89 lakh. In respect of beer, closing stock was 89,319.39 BL as on 31 March 2015 and excise duty payable at the differential rate would come to ₹ 1.79 lakh.

On this being pointed out, an amount of ₹ 67.45 crore being excise duty was remitted by the KSBC on 22 July 2016. However, interest on the delayed payment has not been remitted at the prescribed rate of 18 *per cent per annum* by the KSBC. CONSUMERFED has not remitted the excise duty at the differential rate.

The Department stated (October 2016) that there is only one rate for a particular litre of any brand and excise duty cannot be collected from FL1, FL3 licencees as per Supreme Court order. The reply is not acceptable since this is not a matter of non-collection but of non-remittance of collected amount. Further report had not been received.

#### 5.4.4.4. Unauthorised reconstitution of companies/firms holding FL licences

As per Section 67(2) read with 67(3) of the Abkari Act, the EC may impose a fine of ₹ three lakh each on any person or persons holding a licence or permit for violation by reconstitution, alteration or modification without the permission of the EC of any deed on the strength of which any licence is granted and the EC

may regularise such irregular reconstitution on payment of fine and on application from the licensee. Under Rule 19(iii) of FL Rules, reconstitution of partnership/directors of a company may be allowed on payment of ₹ one lakh. In the office of the EC, no separate register other than the general inward register for recording the reconstitution of companies/partnership firms was maintained.

Audit collected the data on reconstitution of director board of 49 companies and 56 partnership firms of the five selected districts during 2013-14 to 2015-16 from the Registrar of Companies, Ernakulam/Website of Ministry of Corporate Affairs, Government of India which discloses the master data and signatory/director details of companies and from the Inspector General of Registration (Firms) and found that in 18 companies and four firms, reconstitution/ modification of director board of companies/partnership were done in 39 occasions by addition/deletion of directors/partners as detailed in the **Appendix XXXVI**.

On a cross verification of the personal register (general inward register) at the office of the EC, it was noticed that all the 18 companies and four firms as given in Appendix XXXVI neither applied for permission nor for regularisation of unauthorised reconstitution/modification/ alteration.

Audit noticed that there was no system in the Department to verify the reconstitution/ modification/alteration by periodical verification of the deed on the strength of which the licences were granted, which may result in ineligible person<sup>22</sup> joining as directors/partners of companies/firms which hold licences.

The revenue realisable from the 18 companies and four partnership firms due to the unauthorised reconstitution during the period from 2013-14 to 2015-16 would come to ₹ 1.56 crore<sup>23</sup>.

Names of firms/companies who defaulted maximum number of times are detailed in **Table – 5.7**.

**Table – 5.7**

<b>Sl. No.</b>	<b>Name of Company</b>	<b>District in which licensee operates</b>	<b>No. of occasions of default</b>
1	Marari Beach Resorts Private Limited	Alappuzha	3
2	Eih Associated Hotels Limited Unit Trident Cochin	Ernakulam	4
3	Intercontinental Hotels Group (India) Private Limited (Holiday Inn)	Ernakulam	5

The EC stated (October 2016) that the matter would be verified. Reply from Government had not been received (November 2016).

---

<sup>22</sup> Rule 13 B and 13 C of FL Rules.

<sup>23</sup> 39 occasions- Fee ₹ 1 lakh each and Fine ₹ 3 lakh each.

#### 5.4.4.5 Non realisation of differential excise duty on production of IMFL with higher strength

Rule 11(2) of the Kerala Foreign Liquor (Compounding, Blending & Bottling) Rules, 1975 stipulates that in the case of spirits released for consumption within the State, the strength of Gin shall not be lower than 35 degree under proof (UP) and strength of spirits shall not be lower than 25 degree UP. However, the actual spirit content of IMFL may be one degree proof under or over the declared proof strength under Rule 10 A. Rule 11 also prescribes that the liquor shall be issued from the finished product stores only in bottles and on payment of duty and other taxes for consumption within the State. No liquor processed in a batch shall be issued until a sample thereof has been analysed and certificate of its fitness for human consumption issued by the Chemical Examiner. As per Government notification under Section 18(2) of the Abkari Act excise duty is leviable per proof litre.

KSBC is paying the excise duty based on the purchase value on behalf of the manufacturers/supplier at the time of issue of transport permit. The price list published by the KSBC discloses the price of each brand and the excise duty thereon. The excise duty was calculated based on strength of IMFL as 75 degree proof (25 degree UP) and the minimum strength of IMFL to be sold was 42.86 V/V<sup>24</sup> (per cent of ethyl alcohol per volume).

Audit selected nine brands of IMFL from the selected four<sup>25</sup> manufacturing units and verified the alcohol content as certified by the Chemical Examiner for the year 2015-16 and noticed that out of the 503 batches of IMFL produced, in 167 batches, the alcohol content was more than the minimum strength of 42.86 V/V, but within the allowable variation as detailed in **Table – 5.8**.

**Table – 5.8**

Name of licensee	Name of brand	Total no. of batches of IMFL produced	No. of batches containing strength more than 42.86 V/V
M/s. Empee Distilleries Limited, Palakkad	Aristocrat XXX Rum	26	10
	Brihans Golden Gate Grape Brandy	53	15
	Empee's Nepolian Classic VSOP Brandy	54	23
M/s. Amrut Distilleries Pvt. Limited, Palakkad	Bejoice Premium Brandy	48	21
	Old Port XXX Rum	63	26

<sup>24</sup> Volume by volume.

<sup>25</sup> M/s. Empee Distilleries Limited, Palakkad, M/s. Amrut Distilleries Pvt. Ltd, Palakkad, M/s. Devicolam Distilleries Limited, Ernakulam and M/s. United Spirits Limited, Alappuzha.

Name of licensee	Name of brand	Total no. of batches of IMFL produced	No. of batches containing strength more than 42.86 V/V
M/s. Devicolam Distilleries Limited, Ernakulam	Chief Executive Matured XXX Rum	49	15
	MGM Orange Kiz Vodka	78	17
M/s. United Spirits Limited, Alapuzha	No.1 Mc Dowells Brandy	60	19
	Mc Dowells VSOP Delux Brandy	72	21
	<b>Total</b>	<b>503</b>	<b>167</b>

The higher strength means higher alcoholic content i.e. more extra neutral alcohol was utilised for the manufacture of IMFL. But the duty was paid by the KSBC considering the strength as 75 degree proof (i.e. 42.86 V/V). Audit worked out the differential duty based on the landed cost fixed by the KSBC in respect of the nine brands, which itself comes to ₹ 13.25 lakh.

Thus the differential duty based on the chemical examiner report was not demanded by the officer in charge of the manufacturing unit.

The EC stated (October 2016) that detailed reply would be furnished, reply from Government had not been received (November 2016).

#### **5.4.4.6 Non- disposal of frozen stock of IMFL kept in the warehouses of KSBC**

As per Rule 33 A of the FL Rules, the EC may take steps to dispose the liquor kept in any licenced premises in any manner as he deems fit in the event of any exigency warranting such action.

As on 31 March 2016, the frozen stock of IMFL<sup>26</sup> kept in the five selected warehouses of KSBC was 1.07 lakh litres. Audit noticed that the EC did not dispose the frozen stocks by sale or destruction. Hence, the possibility of misuse of frozen stock of IMFL could not be ruled out.

In the exit conference the EC admitted the observation raised by Audit and stated that the stock can only be destroyed and cannot be reused. Reply from Government had not been received (November 2016).

#### **5.4.5. Lack of control over the licencees**

Section 14 of the Abkari Act enables the EC with the previous approval of the Government (i) to prescribe the mode of supervision that may be necessary in a distillery, brewery, winery or other manufactory where liquor is manufactured under a licence granted under the Act or warehouse wherein liquor is deposited

<sup>26</sup> IMFL frozen by the ECI from the hotels whose bar licences cancelled with effect from 1 April 2015.

and kept without payment of duty under a licence granted under the Act to ensure proper collection of duties, taxes and other dues payable under this Act or the proper utilization of liquor or intoxicating drug. Accordingly, the distilleries/bottling units of IMFL, breweries and warehouses were under the supervision of excise staff and all the transactions including blending were under the supervision of Excise Department.

Audit test checked records of selected four bottling units and two breweries and the following deficiencies were noticed.

#### 5.4.5.1 Production of brandy not conforming to the Indian standard

In the Abkari Policy for 2011-12, Government stated that necessary steps would be taken to make available high quality liquor to the consumers. As per Amendment No. 1 (June 2010) to IS 4450 : 2005 alcoholic drinks brandies - specification (Third Revision), blended grape brandy shall be a mixture of at least two *per cent* pure grape brandy with brandy and brandy shall be made either from neutral spirit conforming to IS 6613 or rectified spirit of grade 1 of IS 323 or a mixture of both.

Audit selected two brands of grape brandy during 2015-16 each from the four selected bottling units and collected the information on the quantity of grape spirit used in the manufacture. In two bottling units<sup>27</sup>, the percentage of grape spirit used in four brands was less than two percentage ranging from 0.75 *per cent* to 1.51 *per cent* and thereby not conforming to the prescribed Indian standard resulting in lack of quality assurance to the consumers as detailed in **Table – 5.9**.

Table – 5.9

Sl. No.	Name of licensee	Name of brands	ENA (BL)	Grape Spirit (BL)	Total ENA + Grape Spirit (BL)	Per centage of Grape Spirit	Non standard production of brandy (cases in lakh)
1	M/s. Amrut Distilleries Pvt. Ltd, Palakkad	Bejois Blended Grape Brandy	6,04,077	4,617	6,08,694	0.75	1.55
		Bejois Premium Brandy	7,38,628	11,353	7,49,981	1.51	1.83
2	M/s. Devicolam Distilleries Limited, Ernakulam	Count Cristo Vintage Brandy	1,32,689	1,892	1,34,581	1.41	0.29
		Scarletts VS Brandy	12,913	105	13,018	0.81	0.02
<b>Total</b>							<b>3.69</b>

<sup>27</sup> M/s. Amrut Distilleries Pvt. Limited, Palakkad, M/s. Devicolam Distilleries Limited, Ernakulam.

Non-prescription of provision in the Kerala Foreign Liquor (Compounding, Blending and Bottling) Rules, 1975 to make available high quality liquor to the consumers as stated in the policy resulted in the production and release of 3.69 lakh cases of non standard brandy to the consumers.

The EC stated (October 2016) that the matter would be examined. Reply from Government had not been received (November 2016).

#### **5.4.5.2 Violation of licence conditions**

- **Irregular transfer of Extra Neutral Alcohol**

In terms of Rule 8 and conditions of Form 4 licence issued under the Kerala Bottling Rules, 1975, the licensee shall utilise the spirit only for blending and compounding of IMFL and only bottled liquor shall be removed from the licenced premises. As per condition 20 in Form 4 (Rule 8(1)) licence, contravention of any of the rules and conditions of the licence shall entail imposition of a fine not exceeding ₹ 10,000 or cancellation of the licence or both.

Scrutiny of the Extra Neutral Alcohol (ENA) import register and transport permits in the Office of the EI, M/s Amrut Distilleries Pvt. Ltd, Palakkad for the period 2014-15 to 2015-16, revealed that 7.2 lakh litre of ENA imported from outside the State for the blending and bottling operations were removed from the licenced premises and transferred to another licensee M/s SDF Industries Limited at Thrissur district based on no objection certificates (NOCs) issued by the EC and transport permits issued by the DEC, Thrissur.

Audit observed that the permission granted by the EC for the removal of ENA was not in accordance with the provision of the Rules. The EC, who is responsible for the execution of the provisions of Abkari Act and Rules, issued NOCs instead of rejecting the application of the licensee.

Department stated that there is no revenue loss in this case. The reply is not acceptable since this helped the licensee to overcome the imposition of fine or cancellation of license or both.

- **Bottling of IMFL for distilleries outside the State**

Under the conditions of licences issued under the Bottling Rules, 1975 and the Kerala Distillery and Warehouse Rules (Distillery Rules), 1968 the licensee shall not lease out, sub-rent or otherwise transfer the privileges granted to him without the prior permission of the EC. The Distillery Rules or Bottling Rules did not prescribe any provision for job work or collection of additional licence fee or bottling fee as prescribed in the Bottling Rules of States like Madhyapradesh and Uttar Pradesh.

Out of the four bottling units test checked, three units<sup>28</sup> had undertaken the job work of blending and bottling of IMFL brands owned by outside the State distilleries. The units did the job work based on the approval of registration of such brands by EC under Rule 3 of the Foreign Liquor (Registration of Brands) Rules, 1995 by paying a fee at a higher rate of ₹ two lakh whereas in other cases the brand registration fee was rupees fifty thousand only.

During the period from 2013-14 to 2015-16, in the three units, a total of 74.67 lakh cases of 88 out side the State brands of IMFL were blended and bottled. Audit found that the additional revenue mobilized through the brand registration fee at the higher rate was ₹ 1.32 crore<sup>29</sup>. Had the distilleries outside the State manufactured the IMFL in their own distilleries and imported into Kerala, a revenue of ₹ 25.16 crore would have been realised as import fee<sup>30</sup>.

The EC stated that there was only brand registration in this case and no separate licenses were issued. The new brand application is submitted by the distillery already existing in the State on behalf of the distillery outside the State. The reply is not acceptable as the job work agreement authorizes the outside distilleries to have storage facilities and adequate number of dedicated spirit storage tanks which amounts to transfer of privilege, a violation of license conditions. Reply from the Government had not been received (November 2016).

#### **5.4.6. Conclusion**

Audit found that the systems in the Department to issue beer and wine parlour licences, identification of persons liable to obtain licenses for spirituous preparations and enforcing of the provisions of the Abkari Act and Rules made thereunder did not function transparently and efficiently.

---

<sup>28</sup> M/s. Empee Distilleries Limited, Palakkad, M/s. Devicolam Distilleries Limited, Ernakulam and M/s. United Spirits Limited, Alappuzha.

<sup>29</sup> 88 x ₹ 1.50 lakh, ₹ two lakh- ₹ 50,000.

<sup>30</sup> Import fee at the rate of ₹ five per proof liter.

## B – STAMP DUTY AND REGISTRATION FEES

### 5.5 Tax administration

Receipts from stamp duty and registration fee are regulated under the Indian Stamp Act, 1899 (IS Act), Indian Registration Act, 1908 (IR Act) and the rules framed there-under as applicable in Kerala and are administered at the Government level by the Additional Chief Secretary to Government, Taxes Department. The Inspector General of Registration (IGR) is the head of the Registration Department who is empowered with the superintendence and administration of registration work. He is assisted by the District Registrars (DR) and Sub Registrars (SR).

### 5.6 Internal audit

Inspector General of Registration (IGR), Kerala monitors the functioning of the Internal Audit Wing (IAW) of the Registration Department. The District Registrar (DR) (Audit) and team do the audit in the district. The sub-registry offices are audited annually. The total number of staff deputed for the internal audit work in this Department is sixty two. There is no separate manual for internal audit in the Department. The auditee offices are selected after giving special preference to those offices where the Registering Officer is due to retire shortly. During 2015-16, IAW audited 258 units out of 276 units planned for audit and pointed out 2,824 observations. During the year 2015-16, 4,434 audit observations could be cleared out of the 10,557 outstanding observations, which was only 42 per cent of the outstanding observations.

### 5.7 Results of audit

The records of 91 offices relating to Registration Department were test checked during 2015-16. Non/short levy of stamp duty and registration fee and other irregularities amounting to ₹ 3.59 crore were detected in 139 cases which fall under the following categories as given in **Table-5.10**.

Table – 5.10

(₹ in crore)

Sl. No.	Categories	No. of cases	Amount
1	Short collection of Stamp duty and Registration fee	83	1.11
2	Other lapses	56	2.48
	<b>Total</b>	<b>139</b>	<b>3.59</b>

During the course of the year, the Department accepted under-valuation and other deficiencies involving ₹ 51.88 lakh in 26 cases. An amount of ₹ 6.89 lakh was realised in 24 cases during the year of which three cases involving ₹ 0.36 lakh pertained to 2015-16.

Two illustrative cases involving ₹ 37.39 lakh are given in the following paragraphs.

## 5.8 Short collection of Stamp duty and Registration fee

Government notified<sup>31</sup> the fair value of land in Kerala by classifying entire land into 15 categories based on usage of land. Government issued instructions<sup>32</sup> that when the instruments were brought for registration, if it was found that fair value has been omitted to be fixed in respect of the survey/resurvey/sub division numbers of the properties, the Sub Registrars should report the same to the District Collector for necessary action. Section 45B of Kerala Stamp Act, 1959 stipulates that if the registration officer while registering any instrument transferring any property has reason to believe that the value of the property or the consideration has not been truly set forth in the instrument transferring any property brought before him for registration, he may after registering such instrument, refer the same to the Collector for determination of the value or consideration and the proper duty payable thereon. As per Section 45B (3) of the KSA, 1959, the District Collector may *suo-motu* within two years from the date of registration of any instruments not already referred to him under sub section (1) above, call for and examine the instrument and if he has reason to believe that the value or consideration has not been truly set forth in the instrument he may determine the value and the duty which shall be payable by the person liable to pay the duty. Government in October 1986<sup>33</sup> appointed District Registrars as Collectors for this purpose.

- *Due to incorrect classification of landed properties*

### (21 Sub Registry Offices<sup>34</sup>)

On a scrutiny (between February 2015 and February 2016) of documents registered in Book I<sup>35</sup>, Audit noticed that in 21 Sub Registry Offices (SROs) out of 83 SROs, the Sub Registrars while registering the documents between 2011-2015 applied incorrect fair value in 39 documents though the nature of land was narrated in the instruments. The value per Are<sup>36</sup> adopted for the land was less than the fair value per Are prescribed for the property with similar classification in the same/nearest block number/survey number. The undervaluation of the documents brought for registration amounted to ₹ 3.86 crore and consequent short levy of

<sup>31</sup> GO (P)/515 dated 06.03.2010.

<sup>32</sup> GO (Ord) No. 77/10/TD dated 27.03.2010.

<sup>33</sup> SRO 1514/86.

<sup>34</sup> Amaravila, Areacode, Chengannur, Karukachal, Kilikolloor, Kochi, Kothamangalam, Kuthiyathode, Mallappally, Manjeri, Nenmara, Nooranadu, Pathanamthitta, Ponnani, SulthanBathery, Thiruvambadi, Thiruvananthapuram Fort, Vadakara, Wadakkancherry, Villiappally, Wandoor.

<sup>35</sup> Register of documents relating to immovable property.

<sup>36</sup> Are is a unit of measurement of land 1 Are = 100 square metre, 100 Are = One hectare, 1 Are = 2.471 cent, 247.1 cent = 1 hectare.

stamp duty and registration fee of ₹ 35.35 lakh as shown in the **Appendix XXXVII**.

Audit found that maximum cases of undervaluation were in SRO Areacode (five cases; ₹ 2.16 lakh). Audit found that the Sub Registrars did not report the matter to District Registrar as suspected cases of undervaluation. The Sub Registrars also failed to report<sup>37</sup> the non fixation of fairvalue of survey/resurvey /sub division numbers of the properties and to bring to the notice of District Registrars the difference between the types of classification of land made in the fairvalue notification and in the instruments brought for registration.

In SRO, Wadakkanchery, out of the differential stamp duty of ₹ 3.84 lakh an amount of ₹ 60,300 was collected in one case<sup>38</sup>.

When the matter was referred to Government in April 2016, the Government stated (September 2016) that directions had been given to IG of Registration to issue a common instruction to the registering officers that if there is clear classification in the document about the land conveyed and there is no fair value for that classification, the Sub Registrars should report such cases for undervaluation.

- ***Due to misclassification of land by splitting up of property***

***(SROs, Edappal and Mulanthuruthy)***

Out of 83 Sub Registry Offices (SROs) test checked, in two Sub Registry Offices, scrutiny of documents (July and December 2015) registered in Book I revealed that two sale deeds<sup>39</sup> were registered conveying 13.91 Are and 26.24 Are of land for ₹ 21.85 lakh and ₹ 2.16 lakh respectively. Though the properties had access to State Highway/private road in one of the boundaries, the Sub Registrars registered the documents showing the properties partly with road access and partly without road access. The Sub Registrars did not adopt the fair value/market value while registering the documents. The Sub Registrars did not report the non-fixation of fair value of land in the survey number as prescribed in the Statutes. On joint physical inspection (December 2015) of the plot conducted by Audit, Sub Registrar and the Village Officer, Mulanthuruthy, it was found that 26.24 Are of land is a continuous stretch of single plot with road access in the eastern boundary. The splitting up of single property into two for the purpose of registration resulted in misclassification of the documents and undue advantage to the owners. This resulted in undervaluation of ₹ 25.44 lakh and consequent short levy of ₹ 2.04 lakh as shown in the **Appendix XXXVIII**. The Sub Registrar did not report the cases as suspected cases of undervaluation to the District Registrar.

---

<sup>37</sup> GO (Ord) No. 77/10/TD dt: 27.03.2010.

<sup>38</sup> Doc. No. 4065/12 dated 6.09.2012.

<sup>39</sup> SRO Edappal Doc. No. 513/13 dated 1.2.2013 and SRO, Mulanthuruthy Doc. No.3033/13 dated 27.11.2013.

The matter was pointed out to the Department in July 2015 and December 2015 and referred to Government in April 2016. The Government stated (September 2016) that in order to make undervaluation procedures more effective an amendment has been brought to Section 45B(3) of the Kerala Stamp Act, 1959, whereby the period for taking *suo motu* action by the District Registrar has been extended to five years. It was also stated that necessary directions were given to the District Registrar (General) concerned to initiate *suo motu* action in the above documents.

**Thiruvananthapuram,  
The**

**(AMAR PATNAIK)  
Principal Accountant General  
(Economic and Revenue Sector Audit)  
Kerala**

**Countersigned**

**New Delhi,  
The**

**(SHASHI KANT SHARMA)  
Comptroller and Auditor General of India**