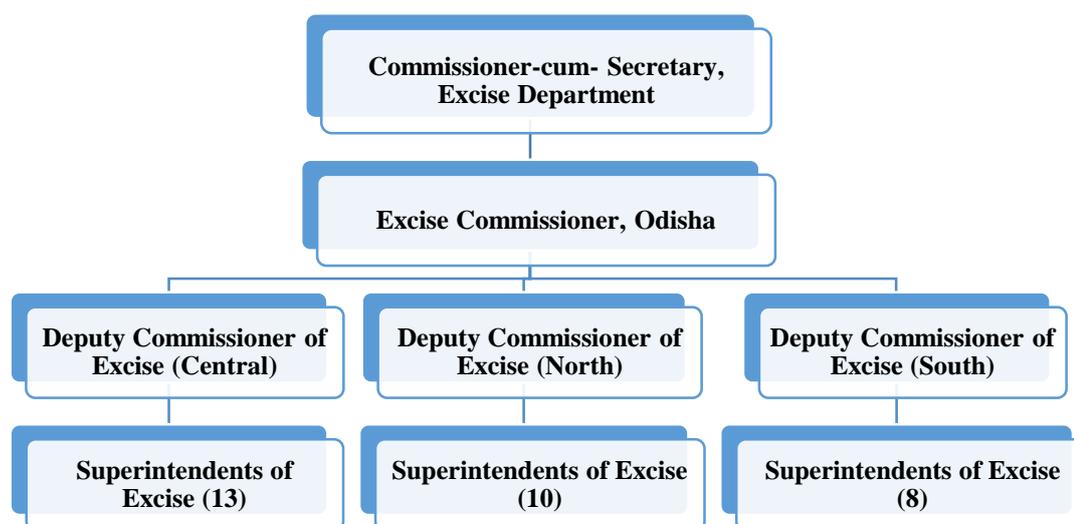


## CHAPTER III STATE EXCISE

### 3.1 Tax Administration

Levy and collection of Excise Duty is regulated under the Odisha Excise Act, 2008 and Rules made thereunder by the Government. The organisational setup for administration of excise revenue is as under:



### 3.2 Internal Audit

Internal Audit Wing (IAW), which is responsible for evaluating the Internal Control measures in the department and its field offices, was functioning since June 2010. During 2017-18, the IAW covered nine units out of 16 units planned for audit. The shortfall in conducting audit was attributed to shortage of manpower by the Department. It was observed that 505 paragraphs of Internal Audit Reports having money value of ₹ 137.31 crore issued during 2011-12 to 2017-18 were pending for want of disposal as on 31 March 2018.

### 3.3 Results of Audit

During 2017-18, audit was conducted in 18 out of 37 State Excise units (48.65 per cent). Revenue collected in the test checked 18 units was ₹ 2,502.88 crore, which was 89.83 per cent of revenue collected in 37 units of ₹ 2,786.23 crore. Audit observed non-realisation/ short-realisation of excise duty and non/ short recovery of license fee/ interest, fine and other irregularities involving ₹ 71.01 crore in 638 cases as indicated in the **Table 3.1** as follows.

**Table 3.1**  
**Category of Audit observations on revenue receipts**

Sl. No.	Categories	Number of cases	Amount (₹ in crore)
1	Non realisation/ short-realisation of excise duty	317	66.29
2	Non/ short recovery of licence fee/ interest and fine	11	0.22
3	Other irregularities	310	4.50
<b>Total</b>		<b>638</b>	<b>71.01</b>

Results of Audit includes a detailed compliance audit on “Regulation of Mohua Flower Utilisation and Production of Out Still Liquor”.

Department accepted the under assessments and other deficiencies worth ₹ 62.25 crore in 388 cases pointed out during the year and realised ₹ 16.15 crore in 70 cases pointed out in earlier years.

There are two broad categories of audit observations which are detailed below. There may be similar irregularities, errors/ omissions in other State Excise Units under the department but not covered in the test audit. Department may, therefore, like to internally examine all the other units not test checked in audit with a view to ensure that excise duty/ fees are levied as per provisions of the Act and rules.

### **3.4 Detailed Compliance Audit on “Regulation of Mohua Flower Utilisation and Production of Out Still Liquor”**

#### **3.4.1 Introduction**

*Bassia latifolia* or *Bassia longifolia* (Mohua tree) is largely found in the Central and North Indian plains and forests. It is commonly known as mahua or mohwa. The Mohua Flower (MF) is the base material for production of Out Still<sup>1</sup> (OS) liquor. OS liquor is produced and sold in 21<sup>2</sup> out of 30 districts in Odisha. The Excise Department regulates the import<sup>3</sup>, export<sup>4</sup>, transport<sup>5</sup> and utilisation of MF and production and sale of OS liquor. The Department earns revenue by levying storage licence fee, transport fee, import fee, export fee and utilisation fee on MF and realisation of consideration money from OS licensees<sup>6</sup>. No Excise duty or Value Added Tax is levied on manufacture and sale of OS liquor. The Exclusive Privilege (EP) holders<sup>7</sup> who were engaged in production of OS liquor, purchase MF directly from the people of the local areas. They also purchase MFs from other districts. MF has been declared as a minor forest produce since the year 2000. The minimum sale price for sale and purchase of MF was regulated by the Gram Panchayats of Panchayati Raj & Drinking Water Department.

The possession and storage of MF was regulated under Odisha Excise (Mohua flower) Rules, 1976. The production and sale of OS liquor was regulated by the Instructions framed by the Board of Revenue, Odisha which was substituted by Odisha Excise Rules, 2017.

<sup>1</sup> Out Still means a Still in a licensed premises, other than a distillery, in which country liquor is manufactured out of fermented Mohua Flower

<sup>2</sup> Angul, Bargarh, Berhampur, Balangir, Boudh, Deogarh, Dhenkanal, Gajapati, Ganjam, Jharsuguda, Kalahandi Keonjhar, Koraput, Malkangiri, Mayurbhanj, Nabarangpur, Nuapada, Rayagada, Sambalpur, Subarnpur and Sundargarh

<sup>3</sup> To bring into State from any other State or Country

<sup>4</sup> To take out of the State to any other State or Country

<sup>5</sup> To remove from one place to another within the State

<sup>6</sup> Authorised to manufacture OS liquor in their premises called Main shops and sale of liquor in Branch shops and also in Main shops. They also purchase and store Mohua Flower and utilise it in manufacture of OS liquor on obtaining Storage licence for the purpose

<sup>7</sup> Persons having exclusive license to produce and sale OS liquor

Further, after occurrence of liquor tragedies in the State in 2006 and 2009, executive instructions were issued by the Government to ensure effective control over illicit manufacture and sale of OS liquor also. The production of OS liquor witnessed an increasing trend during 2015-16 to 2017-18. It increased from 602.72 LPL<sup>8</sup> in 2015-16 to 692.29 LPL in 2017-18 in the entire State of Odisha.

Similarly, excise revenue increased from ₹ 135.59 crore in 2015-16 to ₹ 188.80 crore in 2017-18 in eight test checked districts.

### 3.4.2 Audit objectives

Audit was carried out with the objective of assessing:

- Compliance to the Act/ Rule provisions and guidelines issued for production and sale of OS liquor.
- If the enforcement measures were adequate to ensure that the conditions of the license granted to OS liquor shops were complied;
- If internal control measures existed to provide oversight over the production of OS liquor by the licensees; and
- Mechanism existed to ensure that Mohua Flower was purchased by the licensees as per the minimum sale price notified.

### 3.4.3 Audit Criteria

Following are the Audit criteria:

- Bihar and Orissa Excise Act, 1915 substituted by Odisha Excise Act, 2008;
- Boards Excise Rules, 1965 substituted by Odisha Excise Rules, 2017;
- Orissa Excise (Mohua Flower) Rules, 1976 substituted by Odisha Excise Rules, 2017;
- Annual Excise Policies (AEPs) of the Government (2015-16 to 2017-18); and
- Instructions issued by Board of Revenue, Odisha.

### 3.4.4 Scope of Audit and Audit Methodology

Audit was conducted between April and July 2018 in eight<sup>9</sup> out of 21 District Excise Offices (DEOs) for the audit period 2015-16 to 2017-18. Duly taking into account the Mohua Flower utilised and OS liquor produced under their jurisdiction, the DEOs were selected on the basis of stratified random sampling. Audit also collected and collated available data and information on utilisation of MF and production of OS liquor from the Excise Commissioner (EC) office and Excise Department. Further, audit party conducted joint verifications in 83 OS liquor main shops out of 264 shops to test check the compliances of the provisions of the Act and Rules.

## Audit findings

### 3.4.5 Enforcement Activities

Audit test checked enforcement activities of the Department relating to purchase of MF, production and sale of OS liquor and found the following deficiencies:

<sup>8</sup> London Proof Litre (LPL): Strength of liquor as ascertained by means of the sykes' hydrometer or any other instrument prescribed for the purpose by the Commissioner and denotes that spirit which at the temperature of 10.55 degrees centigrade weighs exactly 12/13 part of an equal measure of distilled water. It is an imaginary standard which provides a basis for calculation of the alcoholic content of any spirit for the purpose of levying duty

<sup>9</sup> Bargarh, Ganjam, Kalahandi, Keonjhar, Mayurbhanj, Nuapada, Sambalpur and Sundargarh

**3.4.5.1 Weak enforcement led to violation of licence condition**

**Although Serious Irregularity Reports were drawn for violations of various license condition committed by the licensees, the fine levied was arbitrary, was not commensurate with the violations and failed to prevent repeated violations. This indicated ineffective enforcement measures.**

As per clause (c) of Section 64 of the Odisha Excise Act, 2008, if any holder of a license, permit or pass granted under this Act, or any person in his employment and acting on his behalf wilfully does any act in breach of any of the condition of the license, permit or pass, for which a penalty is not prescribed elsewhere in this Act, he shall be liable to fine which may extend up to fifty thousand rupees. The fine is levied on the basis of Serious Irregularity Report (SIR) drawn against the licensee for offence committed by him.

Audit scrutinised enforcement related records in all the selected eight Superintendents of Excise (SEs). It was noticed that seven SEs (except SE, Nuapada) had drawn 32 SIRs against 28 OS liquor licensees during the years 2015-16 to 2017-18 and fines were levied and realised. The fine levied, however, was arbitrary, was not commensurate with the violations, ranged from ₹ 1,000 to ₹ 50,000, was too less to act as a deterrent and failed to prevent repeated violations. It was further noticed that 4 out of 28 licensees repeatedly committed violation of license conditions although SIRs were drawn during previous years as shown in **Table No.1**.

**Table No.1**

**Repeated violations in the OS shops during 2015-16 to 2017-18**

Sl. No.	Name of the OS Licensee/ District/No. of SIRs	Year	Type of Irregularities	Penalty levied (in ₹)
1	Kakbhata/ Kalahandi/2	1) 2016-17	<ul style="list-style-type: none"> <li>• Adulteration - mixing two bags of Gur of 30 kg</li> <li>• Irregular purchase of Mohua flower 258 quintals</li> </ul>	5,200
		2) 2017-18	<ul style="list-style-type: none"> <li>• Adulteration - mixing unknown materials in MF wash like plants , roots and leaves</li> <li>• Non -display of sign board</li> <li>• MF wash room not neat and clean</li> <li>• No mandatory information on poly packs</li> <li>• No code number</li> <li>• Not ensuring approved strength</li> </ul>	5,000
2	Tikira/ Keonjhar/2	1) 2015-16	<ul style="list-style-type: none"> <li>• Discrepancy in book balance of MF stock</li> <li>• Non display of sign board</li> </ul>	2,000
		2) 2016-17	<ul style="list-style-type: none"> <li>• Discrepancy in book balance of MF stock</li> <li>• No packing machine</li> </ul>	2,000
3	Anandpur/ Keonjhar/2	1) 2015-16	<ul style="list-style-type: none"> <li>• Distillation of OS liquor after sun set</li> <li>• MF stock discrepancy and loose liquor</li> </ul>	50,000
		2) 2017-18	<ul style="list-style-type: none"> <li>• Distillation of OS liquor after sun set</li> </ul>	50,000
4	Kuarmunda/ Sundergarh/2	1) 2016-17	<ul style="list-style-type: none"> <li>• No manufacturing date on poly pack</li> </ul>	50,000
		2) 2017-18	<ul style="list-style-type: none"> <li>• Shortage of OS liquor</li> <li>• Poly packs contained 180 ml strength of liquor</li> </ul>	50,000

During joint verification of premises of the 83 OS liquor shop licensees under selected eight SEs, it was noticed that there was violation of license conditions by all the licensees and not restricted to the 28 licensees against whom SIRs were drawn. The penalty amount varied from district to district for similar violations by the licensees. In the absence of specific penalty amount for each violation, the SEs had used the penalty provision arbitrarily. As observed from the table above, the number of violations committed by licensee at Sl. No. 1 increased in the subsequent years as the penalty levied was very less and decreased every year. Also, there was also no provision prescribed in the Odisha Excise Act to levy increased penalty in case of repeated violations of license conditions.

No specific reply in this regard was furnished by the Department.

### 3.4.5.2 Guidelines issued not implemented

**The guidelines issued by the Excise Commissioner, Odisha in 2009 and the directions of Hon'ble High Court of Odisha in November 2011 were not adhered to by the licensees of Out Still liquor. Thus, the guidelines largely remained on paper.**

Excise Commissioner, Odisha issued guidelines (August 2009) on sale of OS liquor. Hon'ble High Court of Odisha while disposing one writ petition (November 2011) also expressed their displeasure for non-implementation of these guidelines and directed to take necessary action for strict implementation of the prescribed guidelines and to initiate criminal proceedings for violation. Excise Commissioner reiterated the guidelines in March 2014. The instructions were also reiterated in each AEPs for its compliance.

The details of non-adherence of the guidelines issued and provisions of AEPs were as under:

#### i) Unauthorised use of identification mark and secret code

The guidelines of the EC (August 2009) provided that Poly packs shall contain code number and identification mark of the shop approved by the concerned SEs, net content, strength of the liquor, manufacturing date of liquor and name of the manufacturer in order to regulate and standardise the OS Liquor.

It was noticed that, in 27 out of 83 OS shops (32.53 *per cent*) under three DEOs<sup>10</sup>, the SEs had not approved the identification mark and unique codes. In the absence of the approvals, 22 OS shops used their own identification mark and unique codes. Out of the remaining 56 shops, to whom identification marks and unique codes were allotted, seven OS shops (8.43 *per cent*) under two DEOs<sup>11</sup> used different identification marks.

This defeated the purpose of allotment of unique code and identification marks which was to ensure secured supply of unadulterated and quality liquor. The DEOs had, however, failed to enforce the guidelines and to initiate criminal proceedings against the violating licensees.

In reply, Department stated (December 2018) that most of the manufacturing units were complying with the stipulation. The fact, however, remained that licensees were either using identification marks other than the approved ones or were selling liquor pouches without unique code and identification marks.

<sup>10</sup> SE, Ganjam, Keonjhar and Mayurbhanj

<sup>11</sup> SE, Nuapada and Sambalpur

## ii) Sale of liquor after expiry date

The guidelines of the EC (August 2009) further provided that liquor shall be destroyed by the licensee after the expiry of 15 days from the date of manufacture of the liquor and the excise officer in charge of the OS shop will ensure this and give a certificate to that effect.

- It was noticed in Audit that one shop<sup>12</sup> was closed since 03 July 2016 due to non-payment of monthly consideration money<sup>13</sup>. The balance stock of 3,500 liters of the said shop was sold after closure of the shop. Out of this, 1,570 liters of liquor was sold after 17 July 2016, by when the complete stock would have expired. No action was taken by the concerned Charge Officer<sup>14</sup> to destroy the expired liquor and furnish a certificate to that effect. Further, the concerned SE also did not ensure that the expired liquor was destroyed.

In reply, Department stated (December 2018) that instructions were complied by the manufacturing units and when deviation was noticed, action as deemed proper was initiated by the SEs. The SEs too had replied that inspections at all levels were carried out regularly. No specific reply to the irregularity pointed out by audit was furnished. Further, no Serious Irregularity Report (SIR) for sale of liquor after expiry date was drawn during last three years, with the exception of five SIRs, though inspections at all levels were carried out regularly.

- In 56 out of 83 OS shops (67.46 per cent) under all the eight selected DEOs OS liquor poly packs did not bear the manufacturing date. In the absence of manufacturing date, sale of expired liquor could not be ruled out. Required action, however, was not taken by the concerned SEs during their routine inspection of shops to ensure manufacturing date on the poly packs.

In reply, Department stated (December 2018) that SIRs were being drawn by concerned SEs where irregularities were noticed. Audit, however, noted that only five SIRs were drawn in this regard during last three years as verified in audit.

### **3.4.5.3 Adulteration of OS liquor**

MF is the base material for production of OS liquor. As per para 4.2.6 of Annual Excise Policies 2015-16 to 2017-18, use of Gur (Jaggery) or any substitute in place of MF have been strictly prohibited. Further, Annual Excise Policies stipulated that the EP holders shall be held guilty of violation of legal provisions and shall be imposed with penalty if found to be using any substance in place of Mohua for making OS liquor. Under Section 64 (b) of the Act, for breach of any of the condition of the licence, for which a penalty is not prescribed elsewhere in this Act, the licensee shall be liable to fine which may extend to fifty thousand rupees.

Audit conducted Joint Verification in 83 OS Shops under eight DEOs. It was noticed that 26 licensees under four SEs<sup>15</sup> were using Gur either with MF (before fermentation) or with MF wash<sup>16</sup> (during and after fermentation) for production of OS liquor. Out of the 26 licensees, three licensees under two SEs<sup>17</sup> were using Gur in MF and 23 licensees under all the four SEs were using Gur in MF wash. Also, 40 licensees under seven SEs (except SE, Keonjhar) were using other substances like leaves of Neem, Sahaj, Bakhar and ladies

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<sup>12</sup> Thakurani OS shop

<sup>13</sup> Consideration money: Monthly licence fee fixed by the State Government for OS Liquor shop by auction, e-auction, e-tender or otherwise

<sup>14</sup> Officer in the rank of Sub-Inspector in charge of OS shop

<sup>15</sup> Ganjam, Kalahandi, Mayurbhanj and Nuapada

<sup>16</sup> MF wash is the fermenting or fermented liquid of MF before distillation

<sup>17</sup> Pastipada under SE, Kalahandi, PurunaBaripada and Rasgobindopur under SE, Mayurbhanj

finger. It was also noticed that seven licensees under three SEs<sup>18</sup> were using both Gur and other substances like Neem, Sahaj, Bakhar and ladies finger.

SEs, however, failed to take effective steps to enforce the stipulation contained in the AEPs and strict implementation of the prescribed guidelines as directed by Hon'ble High Court of Odisha by initiating legal action. The deficiency persisted despite six SIRs being drawn against five licensees during 2015-16 to 2017-18. Further, fine up to a maximum of ₹ 13.00 lakh (26 licensees\*₹ 50,000) in respect of licensees mixing Gur and ₹ 20.00 lakh (40 licensees\*₹ 50,000) in respect of licensees mixing other substances was also not levied.

Mixing of Gur and other prohibited substances<sup>19</sup> in preparation of OS liquor resulted in higher amounts of fermentable sugar in the yield.

In reply, Department stated (December 2018) that penal provisions for such violation have been introduced in the Excise Policy for the year 2018-19. In the absence of penalty provision, SEs also failed to levy fine under Section 64 (b) of the Act.

#### **3.4.5.4 Maximum Retail Price of OS liquor not fixed by the Department**

As per instruction No.122 framed by the Board of Revenue, Odisha, maximum, minimum or a fixed price was required to be fixed by the Board for the retail sale of any intoxicant and opium. In such areas a licensee is prohibited from selling at prices in contravention of the prices so fixed. As per Annual Excise Policy of 2017-18 notified by Government, the MRP of OS liquor is to be decided by the department adopting the prescribed procedure and displayed on pouches sold.

It was noticed in Audit that MRP of OS Liquor was not fixed by the Department. During test check of poly packs, it was noticed that 16 out of 83 shops (19.28 per cent) only had printed the sale price on the OS pouches. There was no display of sale price on pouches of OS liquor in the remaining 67 shops (80.72 per cent). In the absence of MRP notified by the Government, there was no uniformity in sale prices. OS pouches were sold at various rates which ranged between ₹ 16 to ₹ 45 per 200 ml Poly pack during 2018 as verified from the sale prices printed on the pouches in respect of 16 shops. In the absence of MRP, the poor consumers were impacted and left to the vagaries of the OS Liquor shops.

In reply, Department stated (December 2018) that the absence of uniformity in sale of OS liquor was on account of varying price of Consideration money<sup>20</sup> and also because, no price list has been cited in the Annual Excise Policies. The fact, however, remained that while Department had fixed MRP in case of sale of IMFL and Beer irrespective of Consideration money, it had failed to do so in the case of OS Liquor. As admitted, Department also failed to notify the price list in the AEPs. This denotes that the Department allowed OS liquor sector to remain unregulated.

#### **3.4.5.5 Potassium Ferro cyanide test not conducted by Inspecting Officers**

As per Rule 230 (9) of the Odisha Excise Rules 2017, Potassium Ferro cyanide test for excess copper should be applied during inspection by all Inspecting Officers. Potassium Ferro cyanide test is applied to freshly distilled spirit to test presence of excess copper and presence of iron. If iron is found to be present in the spirit, the sample shall be sent to chemical laboratory for analysis.

<sup>18</sup> SE, Mayurbhanj, Nuapada and Ganjam

<sup>19</sup> As per Licence condition, use of Gur or any substitute in place of Mohua flower is strictly prohibited

<sup>20</sup> Consideration money: Monthly licence fee fixed by the State Government for OS Liquor shop by auction, e-auction, e-tender or otherwise

It was noticed that the Inspecting Officers had not conducted any Potassium Ferro cyanide test in any of the 83 OS main shops test checked in audit during 2015-16 to 2017-18.

In the absence of Potassium Ferro cyanide test, it could not be ascertained whether the liquor produced and sold during the period contained iron or excess copper thereby rendering the liquor unfit for human consumption.

In reply, Department stated (December 2018) that the SEs shall be instructed to follow the guidelines issued.

### **3.4.6 Review of provisions for purchase and storage of Mohua flower**

Audit reviewed the provisions for purchase and storage of Mohua Flower and found the following deficiencies:

#### **3.4.6.1 Purchase of MF below minimum sale price**

**The purchase of Mohua Flower was made at a rate ranging between ₹ 1,200 to ₹ 1,800 per quintal by 15 out of 62 licensees which was below the minimum sale price of ₹ 2,000 per quintal prescribed by the Panchayati Raj & Drinking Water Department. This deprived rural producers of ₹ 663.04 lakhs on sale of Mohua Flower.**

The minimum sale price of MF was fixed (November 2015) by the Panchayati Raj & Drinking Water Department, Government of Odisha. As per the said notification, the minimum sale price of MF was ₹ 2,000 per quintal during 2015-16 to 2017-18.

Audit conducted joint verification of 62 OS liquor shops under five<sup>21</sup> out of eight DEOs to ascertain the purchase price of MF. It was noticed that the purchase of MF by 15 licensees under three DEOs<sup>22</sup> was made at a rate ranging between ₹ 1,200 to ₹ 1,800 per quintal which was below the minimum sale price notified by Government. It was noticed that the licensees purchased 1,42,774 quintal of MFs from local areas during 2015-16 to 2017-18. Purchase of MF at price lower than the minimum sale price was clearly a distress sale for the primary gatherers affecting their economic condition. During the period 2015-16 to 2017-18, there was loss of revenue for the rural producers of ₹ 663.04 lakhs<sup>23</sup> from sale of MF, while there was undue benefit for the licensees. Details in **Appendix-I**.

Department failed to take required steps to ensure payment of minimum sale price to the producers as notified by the Panchayati Raj & Drinking Water Department.

In reply, Department stated (December 2018) that the rate of MF varies depending upon production as it is a seasonal forest produce. The rate of MF was ₹ 2,000 to ₹ 4,500 per quintal during last year. The fact, however, remained that the rate of purchase of MF by the licensees was between ₹ 1,200 to ₹ 1,800 per quintal during 2015-18, which resulted in undue benefit to the licensees.

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<sup>21</sup> Bargarh, Ganjam, Keonjhor, Nuapada and Sundargarh

<sup>22</sup> Bargarh, Ganjam, and Sundargarh

<sup>23</sup> Purchase price 1,42,774 quintal @ ₹ 20 per kg = ₹ 2,855.48 lakh

Purchase price paid by the licensees @ ₹ 12 to ₹ 18 = ₹ 2,192.43 lakh

Price paid less = ₹ 663.04 lakh

### 3.4.6.2 Deficient Storage license fee structure for Mohua Flower

**The Department had not fixed any license fee slabs for storage of higher quantity of Mohua Flower. This denied the opportunity for State to realise additional excise revenue from Mohua Flower storage license fee.**

As per Rule 207 of the Odisha Excise Rules, 2017, any firm, person or Co-operative society can store MFs on obtaining a permit from the Collector on payment of the prescribed fees as determined by the Government. As such, the AEP prescribes the storage license fee for storage of MF every year. There was regular revision in this storage license fee and the fee structure was last revised in AEP of 2017-18. The storage categories were fixed in 1976 and did not undergo any revision since then. As per AEP of 2017-18, the category wise license fee for storage of MF for OS licensees were as follows **Table No.2**.

**Table No.2**

#### Storage license fee during 2015-18

Sl. No	Storage category (in quintals)	Storage license fee 2015-16 ( in ₹ )	Storage license fee 2016-17 ( in ₹ )	Storage license fee 2017-18 ( in ₹ )
1	Up to 500	6,600	7,590	8,730
2	501 to 1,000	13,200	15,180	17,460
3	1,001 to 2,001	26,400	30,360	35,000
4	2,001 to 5,000	52,400	60,260	69,300
5	More than 5,000	66,000	75,900	87,290

In this regard, it was noticed in audit that in three<sup>24</sup> out of eight DEOs, 57 out of 139 licensees purchased and stored MFs with quantities more than 5,000 quintals up to 30,000 quintals during 2015-16 to 2017-18 as shown in **Table No.3**.

**Table No.3**

#### Licensee-wise storage details during 2015-18

Sl. No	Storage category (in quintals)	No of licensees	Storage during three years 2015-18 (in quintals)
1	Up to 500	82	--
2	501 to 1,000		
3	1,001 to 2,001		
4	2,001 to 5,000		
5	5,001 to 10,000	39	2,92,544
6	10,001 to 15,000	11	1,32,808
7	15,001 to 20,000	03	51,643
8	20,001 to 25,000	02	43,123
9	25,001 to 30,000	02	55,332

In the absence of a rationalised rate structure for quantities above 5000, it was observed that these licensees paid an additional storage license fee amount ranging between ₹ 13,600<sup>25</sup> to ₹ 17,990<sup>26</sup> only for the period 2015-16 to 2017-18. This was an increase from the fee slab at Sl. No.4 by 20.6 *per cent* to 26.95 *per cent* for three years. During the same period, however, the licensees had stored MFs ranging from 5,053 quintals<sup>27</sup> up to 30,034

<sup>24</sup> SEs of Bargarh, Kalahandi and Sambalpur

<sup>25</sup> 66,000-52,400=13,600; Difference in Sl. No. 4 and 5 of Storage licence fees in 2015-16

<sup>26</sup> 87,290-69,300=17,990; Difference in Sl. No. 4 and 5 of Storage licence fees in 2017-18

<sup>27</sup> Prakashpur OS shop under SE, Bargarh

quintals.<sup>28</sup> Since the Department had not fixed storage licence fees commensurate with the slabs for storage of MF higher than 5,000 quintals, it lost the opportunity to earn additional excise revenue in storage licence fee of MFs.

Accepting the audit observation, Department stated (December 2018) that they have suggested to Government to include Sl. No.5 storage category (5001 to 10000 quintals) with storage fee of ₹ 1,00,000 and one new storage category, Sl. No.6 above 10,000 quintals) with storage fee of ₹ 1,20,000.

### **3.4.7 Internal Control**

Audit test checked the internal control mechanism of the Department and found the following deficiencies.

#### **3.4.7.1 Production reported of OS liquor from MF not realistic**

**The out turn of OS liquor from fermentation of Mohua Flower was exactly 0.42 London Proof Litre per Kg every year. The out turn did not register any increase or decrease from the threshold limit of 0.42 London Proof Litre per Kg of material in any case indicating possible false reporting.**

Under the explanation to Rule 230 (5) of Odisha Excise Rules, 2017, fermentation of MF is usually completed within 48 hours at the average of Indian temperature of 85°F and the out turn per Kg of materials exceeds 0.42 LPL. Further, if the vendor's account shows that the period of fermentation exceeds three days and the out turn is lower than 0.42 LPL per Kg, an enquiry should be made into the cause and the entire process of fermentation and distillation closely watched. Where substantial evidence is available about the falsification of the account by the licensee, a serious irregularity report should be made against him.

As seen from the Annual Review Meeting reports for the years 2015-2018, the out turn from fermentation of MF was exactly 0.42 LPL every year in all the test checked 83 OS shops under selected eight DEOs. The out turn did not register any increase or decrease from the threshold limit of 0.42 LPL per Kg of material in any case. This indicated possible false reporting of out-turn from MF as shown in the **Appendix-II**. Though this reporting of out-turn was persisting from long time, no action was taken to cross check the actual out turn.

In reply, Department stated (December 2018) that the concerned Excise Officers are being instructed to ensure reflection of actual outturn of liquor in their accounts.

### **Conclusion and Recommendations**

Serious Irregularity Reports were drawn for violations of various license conditions committed by the licensees. The fine levied was, however arbitrary, was not commensurate with the violations and failed to prevent repeated violations indicating in ineffective enforcement measures. Guidelines issued (August 2009) by the Excise Commissioner, Odisha to prevent sale of illicit OS liquor could not be effectively implemented.

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<sup>28</sup> Ambapali OS shop under SE, Bargarh

**Recommendation**

**Department may consider strengthening the enforcement and internal control mechanism. The Department may also consider amending rules for imposition of specific penalty amount for each violation.**

Maximum Retail Price (MRP) of OS liquor pouches sold was not fixed by the Department. In the absence of MRP, the consumers were impacted and left to the vagaries of the OS Liquor shops. Thus, the Department allowed OS liquor sector to remain unregulated.

**Recommendation**

**Department may fix the MRP of OS liquor sold in pouches for regulation of price.**

Purchase of Mohua Flower was made below the minimum sale price notified by Government. The primary producers of MF are the losers while the middlemen (traders) make the benefits. This was due to lack of ensuring compliance with provision by the Department.

**Recommendation**

**Department may take required steps to ensure payment of minimum sale price to the vendors as notified by the Panchayati Raj & Drinking Water Department.**

Department had not fixed storage licence fees commensurate with the slabs for storage of MF higher than 5,000 quintals. As a result, it lost the opportunity to earn additional excise revenue in storage licence fee of MFs.

**Recommendation**

**Department may conduct review of storage licence fee commensurate with storage capacity of the licensees.**

### 3.5 Other Audit observations

Audit scrutinised the assessment records on State Excise Duty and associated fees in the District Excise Offices (DEOs) and found several cases of non-observance of the provisions of the Act/ Rules/ Annual Excise Policies (AEPs). There was non-levy/ short levy and non-realisation of ED, fees and fines, *etc.*, as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on a test check carried out by Audit. Such omissions on the part of the Superintendents of Excise (SE) are pointed out by Audit each year. The irregularities, however, persisted and remained undetected until the next audit was conducted. There was need for the Department to improve the internal control system including strengthening of internal audit to avoid recurrence of such irregularities.

### 3.6 Provisions of the Acts/ Rules/ Annual Excise Policies and instructions of Government not observed

*The Bihar and Odisha Excise (B&OE) Act, 1915 and Rules made thereunder by the Government as well as by the Board of Revenue (BoR) read with the Excise Manual, AEPs and notifications of Government provide for levy and collection of ED and charges like establishment cost and extra hour operation charge, etc., at the prescribed rates.*

*The SEs, while finalising the assessments, did not observe the above provisions in some cases which resulted in non-levy and non-realisation of ED/ fees, fines, penalty, etc. as follows:*

### 3.6.1 Excise Duty short/ non-levied for short lifting of IMFL/ Beer

**Excise duty and fine of ₹ 1.40 crore was short demanded against short lifting of India Made Foreign Liquor and Beer by four licensees during 2016-17. Similarly, Excise duty of ₹ 8.83 crore was not assessed and levied for short lifting of India Made Foreign Liquor and Beer by 38 licensees.**

Rule 6A of Odisha Excise Exclusive Privilege (Foreign Liquor) Rules, 1989 provides that every successful bidder of foreign liquor 'OFF' shop<sup>29</sup> shall, before obtaining licence, guarantee the sale of the Minimum Guaranteed Quantity (MGQ) of foreign liquor as fixed by the EC. In case of failure on the part of the licensee to lift the stock from Odisha State Beverage Corporation (OSBC) Ltd. as guaranteed, action may be taken to make good the loss of ED which shall be recovered from the bank guarantee obtained by the Collector. In case bank guarantee is not sufficient, ED will be recovered on demand along with fine at the rate of 10 *per cent* from the licensee.

In terms of Annual Excise Policy (AEP) 2016-17, ED on IMFL worked out to ₹ 292 per LPL taking into account the specific component prescribed (₹ 260) and the *ad valorem* component of ED<sup>30</sup> for the lowest priced IMFL. Similarly, ED on Beer was ₹ 59 per BL<sup>31</sup> as clarified by Government in March 2017.

#### (A) Non levy of Excise Duty

As per instruction of Government (May 2015), Exclusive Privilege holders<sup>32</sup> retailing IMFL/Beer were given option to lift IMFL in LPL involving equal amount of ED as that of the MGQ of the Beer in BL fixed in respect of their respective shops. Government, however, decided (March 2016) to discontinue the interchangeability of MGQ in lifting of Beer and IMFL from 01 April 2016 which was again allowed from 29 November 2016 for the remaining period of the financial year 2016-17.

It was noticed that 38 licensees under ten<sup>33</sup> Excise Offices short lifted 10.36 lakh BL of Beer and 1.27 lakh LPL of IMFL from OSBC Ltd. during 2016-17. Concerned SEs, however, did not assess and levy the ED payable along with fine for such short lifting. ED payable on such short lifting worked out to ₹ 4.34 crore and ₹ 3.69 crore respectively, totaling to ₹ 8.03 crore after allowing interchangeability of MGQ in lifting of Beer and IMFL involving equal amount of ED during November 2016 to March 2017. Fine of ₹ 0.80 crore was also leviable.

The SEs had failed to raise demand in respect of short lifted quantity despite maintaining the MGQ records that contains shop-wise lifting position of Beer and IMFL.

In reply, SEs stated (May to December 2017) that demand for short lifting of Beer and IMFL would be made as per AEP of 2016-17. The matter was intimated to the EC Odisha, Cuttack (April 2018) and Government (May 2018). The reply is awaited.

#### (B) Short levy of Excise Duty

Audit scrutinised the records relating to MGQ and lifting of IMFL and Beer. It was observed that four licensees under SE, Sundargarh did not lift the MGQ fixed against their

<sup>29</sup> A shop where alcoholic beverages in bottles or cans are sold for consumption off the premises

<sup>30</sup> The minimum landing cost of 6.75 LPL of IMFL was ₹ 431.90. The landing cost per LPL of IMFL was ₹ 63.99 = ₹ 64. *Ad valorem* 50 *per cent* thereon amounts to ₹ 32. Hence, ED on IMFL is ₹ 292 per LPL (fix component ₹ 260 + ₹ 32)

<sup>31</sup> Bulk Litre

<sup>32</sup> Persons having exclusive licence to sell liquor

<sup>33</sup> Balasore, Bargarh, Berhampur, Balangir, Cuttack, Dhenkanal, Ganjam, Khordha, Rayagada and Sundargarh

shops for 2016-17. The licensees lifted 2.48 lakh LPL of IMFL against MGQ of 3.08 lakh LPL and 1.82 lakh BL of Beer against MGQ of 4.54 lakh BL from OSBC Ltd. This resulted in short lifting of 0.60 lakh LPL of IMFL and 2.72 lakh BL of Beer. The ED leviable for such short lifting was ₹ 3.69 crore<sup>34</sup> including the fine. ED of ₹ 2.29 crore, however, was demanded, which was worked out without taking into account the *ad valorem* component of duty. This resulted in short levy of ED and fine of ₹ 1.40 crore.

In reply, SE, Sundargarh stated (November 2017) that the demand for ED & fine on short lifting of Beer and IMFL will be raised as per AEP 2016-17.

The matter was intimated to the Excise Commissioner (EC), Odisha, Cuttack (April 2018) and to Government (May 2018). The reply is awaited.

### 3.6.2 Short realisation of Excise Duty on short lifting of Country Spirit

**Failure to recover the *ad valorem* component on lifting of Country Spirit less than the Minimum Guaranteed Quantity led to revenue loss of ₹ 22.97 lakh.**

Rule 6A of the Odisha Excise Exclusive Privilege Rules, 1970, prescribes that every successful bidder of Country Spirit (CS) shop shall, before obtaining licenses, guarantee the sale of the Minimum Guaranteed Quantity (MGQ) of CS as fixed by the Collector. Sub Rule 2 (ii) & (iii) prescribed that the Commissioner may, wherever if he deems it necessary, permit the licensee to lift the short drawn MGQ of any month other than the month of March in any subsequent month or months. If any quantity of CS remains un-lifted permission to lift is not accorded if it is beyond the last day of February. Further, under Sub Rule 3(1), no licensee shall lift less than the specified MGQ of CS in any month. In case of failure on the part of the licensee to lift the stock as guaranteed, ED shall be recovered from the bank guarantee obtained by the Collector. The minimum ED on Country Spirit was fixed as ₹ 66.10 per LPL for the year 2016-17.

Audit scrutinised the records relating to lifting of MGQ of CS in District Excise Office, Balasore. It was observed that CS shops<sup>35</sup> pertaining to three licensees did not lift their MGQ fixed by the Collector during 2016-17. The shops lifted from OSBC Ltd. 0.30 lakh LPL against MGQ of 0.71 lakh LPL which resulted in short lifting of 0.41 lakh LPL. The ED for such short lifting worked out to ₹ 27.39 lakh. The licensees had deposited ED worth ₹ 4.42 lakh at the rate of ₹ 10 per LPL, including fine<sup>36</sup>, without including the *ad valorem* component<sup>37</sup> of duty. This resulted in short realisation of ED on short lifting of MGQ worth ₹ 22.97 lakh. Superintendent of Excise did not demand the balance ED on such short lifting of MGQ although the ED paid was without inclusion of *ad valorem* component.

In reply, SE, Balasore stated (March 2018) that demand would be raised for realisation of differential ED. Subsequently, demand notice was issued in March 2018.

The matter was intimated to the EC, Odisha, Cuttack (May 2018) and to Government (May 2018). The reply is awaited.

<sup>34</sup> The four licensees had short lifted both IMFL and Beer and hence no interchangeability was applicable

<sup>35</sup> Motiganj, Bhoisahi and Fuladi

<sup>36</sup> Fine at the rate of 10 *per cent* was collected along with duty on short lifted MGQ although no provision for such fine existed for Country Spirit Liquor under the Excise Act/ Rules

<sup>37</sup> Landing cost of one case (3 LPL) of CS = ₹ 336.58, Landing cost of one LPL = ₹ 112.19, *Ad valorem* component = 50% of landing cost = ₹ 56.10

### **3.6.3 Charges for extra hour operations not realised**

**Extra hour operation charges of ₹ 21.54 lakh for carrying out 2,154 hour operations beyond the scheduled hours during 2016-17 was not realised from one distillery.**

Rule 20 of Board's Excise Rules, 1965 provides that all operations in a distillery, bottling unit and brewery which require the presence of an Excise Officer shall be stopped on Sundays and other Holidays. Further, the Unit may function for more than one shift with prior permission of the EC and additional staff shall be posted as determined by the EC. As per the amended (2005) provision, the licensee shall pay ₹ 1,000 per each extra hour of operation of their Unit beyond the scheduled hours in addition to the overtime fees payable to the Excise staff.

Mention was made in earlier Audit Reports<sup>38</sup> regarding non-realisation of charges for extra hour operations in one distillery<sup>39</sup> under SE, Ganjam. Scrutiny of relevant records (July 2017) relating to the same distillery for the year 2016-17 showed that the irregularity persisted. The licensee carried out 2,154 hours of operation beyond scheduled hours during 2016-17. The licensee, however, did not pay the required charges of ₹ 21.54 lakh towards extra hour operations beyond the scheduled hours. SE, Ganjam failed to raise demand for realisation of extra hour operation charges despite maintaining the records containing the days of extra hour operation for each month.

In reply, SE, Ganjam stated (July 2017) that the demand would be raised for realisation of charges towards extra hour operations. Subsequently, SE, Ganjam raised the demand (September 2017) to realise the above dues. The demanded amount, however, was yet to be realised (April 2018).

The matter was intimated to the EC, Odisha, Cuttack and to Government (May 2018). The reply was awaited.

### **3.6.4 Fees towards cost of establishment not realised**

**Superintendent of Excise did not raise demand for realisation of the cost of establishment of ₹ 12.35 lakh for the year 2016-17 relating to one Bottling unit and one Distillery.**

As per Rule 33(3) of the Board's Excise Rules 1965, potable foreign liquor shall not be stored either in shape of bottles or bulk or compounded, blended, reduced, bottled in the warehouse or store-room in bond and issued or sold therefrom otherwise than in the presence of an Excise Officer. Further, as per Rule 34(1) and 34(2) of the Rules *ibid*, the EC shall appoint the Excise Officers for proper supervision of the operations carried out in each warehouse or storeroom mentioned in Rule 33(3). The licensee shall pay to the State Government, at the end of each calendar month, such fees which shall not exceed the whole of the cost of the excise staff employed for the purpose.

Audit test checked records on realisation of cost of establishment of Excise Officers posted in Bottling/ Distillery units in two SE offices<sup>40</sup>. It was observed that five excise officials were posted in one Bottling unit and in one Distillery during 2016-17 for supervision of operations of those units. The units did not deposit the gross salary paid to the excise staff

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<sup>38</sup> Audit Reports for the year ending March 2015, March 2016 and March 2017

<sup>39</sup> M/s. Aska Co-operative Sugar Industries Ltd.

<sup>40</sup> Ganjam and Khordha

as fees towards cost of establishment at the end of each calendar month. The SEs did not raise demand for realisation of the same. Thus, the cost of establishment of ₹ 12.35 lakh remained un-realised.

In reply, the SEs, stated (July 2017) to raise demand for realisation of the establishment cost.

The matter was intimated to the EC, Odisha, Cuttack (April 2018) and to Government (June 2018). The reply was awaited.