

CHAPTER III: STATE EXCISE

3.1 Results of audit

Test check of the records of State Excise conducted during the year 2008-09 revealed non-assessment, under assessment, loss of revenue and non-levy of penalty amounting to Rs. 115.01 crore in 12,489 cases, which can be categorised as under:

(Rupees in crore)

Sl. no.	Category	Number of cases	Amount
1.	Non-levy/recovery of duty on excess wastages.	3,698	21.66
2.	Loss in re-auction/bidding of excise shops.	173	8.67
3.	Non-levy of penalty on non-maintenance of minimum stock of country spirit/rectified spirit.	2,593	6.48
4.	Non-realisation of licence fee from excise shops.	379	4.59
5.	Non-levy of penalty for breach of licence conditions.	2,811	0.31
6.	Others	2,835	73.30
Total		12,489	115.01

During the year 2008-09, the department accepted underassessment of tax of Rs. 99.14 crore involved in 10,677 cases. An amount Rs. 1.58 crore had been recovered in 260 cases.

Few illustrative audit observations involving Rs. 21.68 crore are mentioned in the following paragraphs.

3.2 Audit Observations

Scrutiny of records of various excise offices revealed several cases of non-compliance of the provisions of the Madhya Pradesh Excise Act and Rules made thereunder and Government orders as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on a test check carried out in audit. Such omissions on the part of the departmental officers are pointed out in audit each year but not only the irregularities persist; these remain undetected till an audit is conducted. There is need for Government to improve the internal control system so that such errors can be detected, avoided and prevented in future.

3.3 Non-recovery of excise duty

3.3.1 On unacknowledged export of foreign liquor/beer

The Madhya Pradesh Foreign Liquor Rules, 1996 provide that the export of foreign liquor/beer within India is permissible on payment of duty or on furnishing a bank guarantee or on executing a bond with adequate solvent sureties for the amount of duty involved. The licensee should obtain a verification report from the importing unit and furnish it to the authority who issued the permit within 21 days up to 16 October 2007 and thereafter within 40 days of the expiry of the permit. If the licensee fails to do so, duty leviable on liquor exported shall be recovered from him in addition to any other penalty under the rules.

Test check of records of four distilleries¹ and one brewery² of three districts³ between May and August 2008 revealed that the licensees exported 6,87,375 proof litres (PL) foreign liquor and 10,920 bulk litres (BL) beer on 236 permits between May 2007 and July 2008. Though the verification reports for receipt of quantity of liquor were not received from the destination units within the prescribed time limit, yet action for recovery of duty of Rs. 12.42 crore was not taken by the department even after a lapse of 1 to 12 months. This resulted in non-realisation of excise duty of Rs. 12.42 crore.

The matter was reported to the department and the Government between January and April 2009. The Excise Commissioner (EC) stated (July 2009) that 14 cases are under consideration in different courts for violation of conditions of the permits and in 222 cases the verification reports have been received. However, it was found in audit that in 219 cases, the copies of permits were received and not the excise verification reports. Besides, duty was also recoverable in remaining cases on account of non-receipt of verification reports within prescribed period for which the department did not take any action. The reply from the Government has not been received (October 2009).

¹ (i) M/s United Spirit Ltd., Bhopal.
(ii) M/s Jubilee Beverages, Bhopal.
(iii) M/s Oasis Distillery, Dhar.
(iv) M/s Associated Alcohol and Brewery Limited, Khargone (AABL).
² M/s Lila sons Brewery, Bhopal.
³ Bhopal, Dhar and Khargone.

3.3.2 On unacknowledged transport of foreign liquor

The Madhya Pradesh Excise Act, 1915 provides that no intoxicant shall be transported from any distillery, brewery, warehouse or any other place of storage unless the duty is paid or bond is executed for the payment of duty. Further, as per notification issued by the State Government dated 3 October 2008, the licensee shall deposit the prescribed duty leviable on the full quantity of foreign liquor to be transported or furnish a bank guarantee for an equal amount or execute a bond with adequate solvent sureties for the amount mentioned in form FL-23. Besides, the licensee shall obtain a verification report from the officer-in-charge of the foreign liquor warehouse and furnish it to the authority who issued the transport permit within 40 days of the expiry of period of permit. If the licensee fails to do so, the leviable duty on foreign liquor transported shall be recovered from the deposit made, bank guarantee furnished or the security bond executed by him. This shall be in addition to any other penalty under the rules.

3.3.2.1 Test check of records of M/s Gwalior Distillers Ltd. (Gwalior district) in January 2009 revealed that the licensee transported 23,321.25 PL of foreign liquor to different foreign liquor warehouses in the state on seven permits between October and December 2008 involving excise duty of Rs. 53.80 lakh without depositing the prescribed duty or furnishing bank guarantee or executing a bond with adequate solvent sureties for the amount of duty. The verification reports for receipt of above liquor in the destination units were also not obtained by the licensee and submitted to the permit issuing authority within the prescribed time limit of 40 days. However, the department did not recover the leviable duty of Rs. 53.80 lakh under the rules. This resulted in non-realisation of revenue of Rs. 53.80 lakh.

The matter was reported to the department and the Government in April 2009. The EC stated (August 2009) that the verification reports have been received after expiry of the prescribed period. The fact remains that the duty was to be recovered immediately after expiry of the grace period of 40 days, which was not done. Besides, there is no provision for accepting verification reports after expiry of the time limit. The reply from the Government has not been received (October 2009).

3.3.2.2 Test check of records of District Excise Officer, Dhar (August 2008) revealed that in three cases, 6,866.10 PL of foreign liquor involving excise duty of Rs. 20.80 lakh were transported from bottling units to foreign liquor warehouse in March 2008 without payment of duty or execution of bond. Further, verification reports of these consignments had also not been received from the foreign liquor warehouse even after a lapse of five months. In the absence of verification report, it cannot be ascertained whether the duty of Rs. 20.80 lakh was actually levied and recovered on the transported foreign liquor.

The matter was reported to the department and the Government in February 2009. The EC stated (July 2009) that three cases were pending in Jabalpur Court. Further development in this matter and reply from the Government had not been received (October 2009).

3.3.3 On unacknowledged transport of spirit

According to MP Distillery Rules, the removal of spirit from a distillery to another distillery or liquor warehouse or bottling unit or any other industrial unit within or outside the state of Madhya Pradesh shall be without payment of duty subject to execution of a bond in form D-2 by the seller licensee with adequate solvent sureties for the payment as prescribed by the EC. As per notification of October 2008 the licensee shall obtain a verification report from the officer-in-charge of the destination unit and furnish it to the authority who issued the export/transport permit within 40 days of the expiry of period of permit. If the licensee fails to do so, the amount prescribed by the EC shall be recovered from the security bond executed.

Test check of records in M/s Gwalior Distillers Ltd. (Gwalior district) in January 2009 revealed that the licensee transported 21,825 PL of rectified spirit (RS) on two permits between October and November 2008 involving excise duty of Rs. 30.55 lakh without payment of duty or executing a bond in form D-2 with adequate solvent sureties. However, while issuing the permits no action was taken by the DEO (Distillery) to send the case to EC for fixation of the amount for execution of bond. It was further seen that though the verification reports from the destination units were not obtained and submitted to the permit issuing authority within the prescribed period of 40 days, yet no amount was recovered from the licensee. This resulted in non-realisation of revenue of Rs. 30.55 lakh.

The matter was reported to the department and the Government in April 2009. The EC stated (August 2009) that the verification reports of the transported liquor had been received in April/May 2009. However, the fact remains that the department failed to take any action to recover the duty for non-receipt of the verification reports within the prescribed time limit. Besides, the Rules do not permit acceptance of reports after expiry of prescribed timeframe. The reply from the Government has not been received (October 2009).

3.4 Incorrect fixation of reserve price

As per provisions of the Madhya Pradesh Excise Act, 1915 and executive instructions issued by the EC for settlement of retail liquor shops for the year 2007-08 and 2008-09, the reserve price of a shop shall be calculated by adding 20 *per cent* of annual value (basic licence fee + annual licence fee) of the shops received in the previous year. Further, if the shop was settled for a part of the year during the previous year, the value of the shop for the whole year is to be determined on pro rata basis and then enhanced by 20 *per cent* to arrive at the reserve price.

Test check of records of three DEOs⁴ between October and December 2008 revealed that reserve price of 48 foreign liquor shops for two years between April 2007 and March 2009 was fixed by the department at Rs. 29.94 crore. But as per instructions, it should have been Rs. 32.93 crore after adding 20 *per cent* in the value received for shops for the previous year.

Besides, in Badwani district, the value of Rs. 2.25 crore was obtained for two foreign liquor and one country liquor shops for the period from 27 April 2006

⁴ Badwani, Burhanpur and Khandwa.

to 31 March 2007 (339 days). The reserve price of Rs. 2.70 crore for 2007-08 and Rs. 3.24 crore for 2008-09 was to be arrived at by increasing 20 *per cent* in the value of shops by taking into account the proportionate value for the entire previous year. It was however, seen that the reserve price was fixed by the department at Rs. 2.68 crore and Rs. 3.22 crore for the respective years.

Thus, there was short realisation of revenue of Rs. 3.03 crore due to incorrect fixation of reserve price.

The matter was reported to the department and the Government in February 2009. The EC stated (August 2009) that the reserve price was fixed after addition of 20 *per cent* in the price fixed for previous year. The fact remains that the reserve price of shop had to be calculated by adding 20 *per cent* of annual value of the shops received in the previous year, which was not done. However, the EC did not offer any comments in respect of fixation of reserve price on pro rata basis in case of a shop of Badwani district. The reply from the Government has not been received (October 2009).

3.5 Non-realisation of excise duty due to non-disposal of spirit/foreign liquor

According to MP Country Spirit Rules, country spirit shall be subjected to chemical analysis and if found substandard or unfit for human consumption, it shall be redistilled or rejected and destroyed as the case may be, under the orders of the EC or an officer authorised by him in this behalf. Further, as per *MP Foreign Liquor Rules*, the EC may order cancellation of registration of a label, if liquor sold under any such registered label is found substandard or if he is convinced that the label is obscene, outrageous or hurtful. Consequent upon such cancellation, the EC may also pass suitable orders regarding disposal of stock of the cancelled label held by the licensee. The rules also provide that the licensee shall place the entire stock of spirit and bottled foreign liquor under the control of AEC/DEO after the expiry or cancellation of the licence in form FL-9/FL-9A. However, he can be permitted to dispose of such balances to any other licensee within 30 days of such expiry or cancellation, failing which the EC may ask any other licensee of the state to purchase such stock or may give necessary direction for the disposal of the stock.

Test check of records in four District Excise offices ⁵ including one FL-9 licensee⁶ between June and November 2008 revealed the following:

Name of Unit	Nature of liquor Sprit/Foreign liquor	Audit observations	Revenue involved (Rs. in lakh)
M/s Gold water breweries Ltd., Bhind (FL-9)	Foreign liquor and Spirit	A stock of 36,269.0 PL of bottled foreign liquor which was not saleable after 31 March 2007 was received from different foreign liquor warehouses between May and June 2007. Besides, 3,720.1 PL of foreign liquor in vat and 15,703.94 PL of spirit were also lying undisposed as on 30 June 2007.	70.89
M/s Surya Bottling Ltd., Sagar (FL-9)	Foreign liquor and spirit		40.44
M/s Oasis distillery, Borali district Dhar (FL-9)	Foreign liquor	Consequent upon the provision introduced from the year 2007-08 for manufacture of Indian made foreign liquor from extra neutral alcohol (ENA) only, 4,116.36 PL of bottled foreign liquor of different labels made from RS was returned to the FL-9 licensee of Dhar district by different foreign liquor warehouses during May and June 2007.	7.41
Country liquor warehouse, Mandla	Spirit	In Mandla district, 6,544.0 PL of spirit was lying undisposed in the manufacturing country liquor warehouse.	9.16
Total			127.90 lakh or 1.28 crore

Audit observed that in all these cases the department had not taken any step for cancellation of registration of the labels containing foreign liquor made from RS and to dispose of the stock even after lapse of one to three years. This resulted in non-realisation of revenue of Rs. 1.28 crore.

After the cases were pointed out, the DEO, Mandla stated (October 2008) that audit would be intimated after taking action for disposal of spirit. The DEO (distillery), Dhar stated (June 2008) that action for redistillation of foreign liquor manufactured from RS was being taken. The DEOs, Bhind and Sagar stated (September and November 2008) that the renewal of licences were under consideration in the office of the EC and the action for disposal of stock would be taken as per rule. The fact remains that action for disposal of the stock had not been taken till it was pointed out in audit. Further report has not been received (October 2009).

The cases were reported to the EC and the Government in February 2009; their replies have not been received (October 2009).

⁵ Bhind, Dhar, Mandla and Sagar.

⁶ FL-9 Licence-manufacturing and bottling of foreign liquor by blending.

3.6 Non-maintenance of minimum stock of spirit at distillery

The Madhya Pradesh Distillery Rules require the licensee to maintain the prescribed minimum stock of spirit at the distillery. In the event of failure, the EC may impose a penalty not exceeding Rs. five per PL on the quantity found short of the minimum prescribed stock. The penalty shall be payable by the licensee irrespective of the fact whether any loss has actually been caused to the Government.

Test check of records in two distilleries⁷ in District Dhar in June 2008 revealed that the distillers did not maintain the prescribed minimum stock of spirit on 23 occasions between January and February 2008. The DEOs, however, failed to initiate any action to take up the matter with the EC. The EC may impose maximum penalty of Rs. 1.16 crore on 23.23 lakh PL of spirit found short of the minimum prescribed stock.

The matter was reported to the department and the Government in February 2009. The EC stated (August 2009) that supply of country liquor to shops was not affected due to non-maintenance of minimum stock. EC further stated that the cases were under process. Further development is awaited. The reply from the Government has not been received (October 2009).

3.7 Non-recovery of excise duty/non-imposition of penalty on inadmissible wastage in transport and export of foreign liquor/beer

The Madhya Pradesh Foreign liquor Rules provide that the maximum wastage allowance for all exports of bottled foreign liquor/beer shall be 0.25 *per cent* irrespective of the distance and for all transports it shall be 0.1 *per cent* if the selling licensee and the purchasing licensee belong to the same district and 0.25 *per cent* if they belong to different districts. If wastages/losses during the export or transport of bottled foreign liquor/beer exceed the permissible limit, the prescribed duty on such excess wastage shall be recovered from the licensee. Further, as per amendment made by the State Government vide notification dated 3 October 2008, on all deficiencies in excess of the limits allowed under rules, licensee shall be liable to pay penalty at the rate exceeding three times but not exceeding four times the maximum duty payable per PL of foreign liquor at that time, as may be imposed by the EC or any officer authorised by him.

Test check of records in five foreign liquor manufacturing units and one brewery in four districts⁸ between May 2008 and March 2009 revealed that during export and transport of foreign liquor, 7,603.985 PL of spirit and 60,556.19 BL of beer was shown as wastage in excess of the admissible limit by the licensees in 1,718 cases during the period between April 2007 and February 2009. As such, duty of Rs. 28.12 lakh on excess wastage of 4,746.995 PL of spirit and 55,211.69 BL of beer upto 2 October 2008 was recoverable from the licensees and on remaining wastage of 2,856.99 PL of spirit and 5,344.5 BL of beer, even the minimum penalty of Rs. 56.24 lakh

⁷ M/s Oasis Distilleries, Borali, Dhar.

M/s Great Galleon, Sejwaya, Dhar.

⁸ Dhar, Gwalior, Khargone and Morena.

was not imposed on the licensees. It was, however, seen that only an amount of Rs. 6.23 lakh was recovered from the licensee in Gwalior district and no action was taken to recover the remaining amount of duty of Rs. 21.89 lakh and to impose the minimum penalty of Rs. 56.24 lakh. This resulted in non-realisation of revenue of Rs. 78.13 lakh.

After this was pointed out, the EC stated in October 2009 that an amount of Rs. 11.49 lakh had been recovered in case of units of Dhar and Gwalior districts and that action for recovery of the remaining amount was in progress.

The matter was reported to the Government between January and April 2009; the reply has not been received (October 2009).

3.8 Non-realisation of revenue due to resale of liquor shops

The conditions of sale of liquor shops through tendering process during 2007-08 provide that if any highest bidder withdraws his offer, fails to pay the basic licence fee/security deposit in time or breaches any condition of sale, shop will be resold. In case of any loss suffered by the Government due to resale, such loss will be recoverable from the defaulter.

Test check of records of DEO, Damoh in August 2008 revealed that a successful bidder failed to pay the prescribed amount of basic licence fee and security deposit of three liquor shops for the year 2007-08. As a result, the shops had to be resold. The Government suffered a loss of Rs. 64.57 lakh due to the resale after taking into account the forfeiture of earnest money deposit (EMD) of Rs. 3.43 lakh. However, no action was taken by the department for recovery of this amount from the defaulter resulting in non-realisation of revenue of Rs. 64.57 lakh.

After the case was pointed out, the EC stated in October 2009 that action for recovery was in progress.

The matter was reported to the Government in January 2009; the reply has not been received (October 2009).

3.9 Short levy of transport fee on poppy straw due to incorrect application of rates

Rule 37-H (2) of Narcotic Drugs & Psychotropic substances (Madhya Pradesh) Rules, 1985 provides for levy of transport fee at the rate of Rs. five per kg for transport of poppy straw from a PS-2⁹ licensee to another PS-2 licensee. Further, transport fee at the rate of Rs. 25 per permit is chargeable when poppy straw is transported from farmers to wholesale licensee or transported from one godown to another godown of the same licensee.

Test check of records of DEOs, Neemuch and Shajapur in June 2008 revealed that 10,05,359 kgs of poppy straw was transported from 22 wholesale licensees to other licensees. It was seen that transport fee of Rs. 9,600 at the rate of Rs. 25 per permit was levied as against Rs. 50.27 lakh leviable at the rate of Rs. five per kg. The incorrect application of rates resulted in short levy of transport fee of Rs. 50.17 lakh.

⁹ Wholesale licensee of poppy straw.

The matter was reported to the department and the Government in January and February 2009. The EC stated (July 2009) that transport fee at Rs. five per kg was leviable for transport of poppy straw from PS-2 production district to any other PS-2/PS-3 licensees. The transport fee in these cases was levied at the rate of Rs. 25 per permit which was chargeable in case of transportation from one godown to other godown of the licensee. The reply is not acceptable as separate licence was issued to each shop of poppy straw and thus it was transported from one PS-2 to another PS-2 licensee. Hence, transport fee was leviable at the rate of Rs. five per kg as per rule 37 (H) of the above rules. The reply from the Government has not been received (October 2009).

3.10 Incorrect allowance of wastage of spirit in re-distillation

Madhya Pradesh Distillery Rules do not provide for any allowance for wastage of rectified spirit (RS) during re-distillation for manufacturing extra neutral alcohol (ENA).

Test check of records of one distillery of Dhar district in June 2008 revealed that 16.28 lakh BL of RS of 66 degree over proof¹⁰ (OP) was redistilled to produce ENA between April 2007 and April 2008 and wastage of 19,100 BL/31,707.6 PL of RS was allowed which was not admissible. This resulted in non-realisation of excise duty of Rs. 44.39 lakh.

The matter was reported to the department and the Government in February 2009. The EC stated (July 2009) that the loss was less than two *per cent* prescribed under the rules. The reply is not acceptable as the provision of wastage of two *per cent* is applicable in the case of re-distillation of liquor not fit for human consumption but it is not applicable in the case of re-distillation of RS for manufacture of ENA. The reply from the Government has not been received (October 2009).

3.11 Incorrect allowance of loss of molasses

The Madhya Pradesh Excise Act and Rules made thereunder do not provide any allowance on wastage of molasses in transit, storage or otherwise.

3.11.1 Test check of records of one distillery¹¹ of Khargone district in May 2008 revealed that the distillery used 4,950 quintals of molasses containing 2,135.43 quintals of fermentable sugar in five setups in May 2008 which according to the norms, was capable to yield 1,96,032 PL of alcohol. However, only 1,76,594.7 PL of alcohol was obtained on account of wastage of 495 quintals molasses used in setup number 32. This resulted in short recovery of alcohol of 19,437.3 PL involving excise duty of Rs. 27.21 lakh at the rate of Rs. 140 per PL of country spirit. The department had not initiated any action to levy/recover duty from the distiller.

The matter was reported to the department and the Government in February 2009. The EC stated (July 2009) that the *panchanama* was prepared on the spot and the case is under consideration. The reply, however, does not explain why proposal for levy of duty was not sent along with the

¹⁰ Means the strength of proof as ascertained by *sikes hydrometer* or by any other instrument approved by the Excise Commissioner.

¹¹ M/s Associated Alcohol and Brewery, Khodigram district Khargone.

panchanama in the case. The reply from the Government has not been received (October 2009).

3.11.2 Test check of records of District Excise Officer (distillery), Chhatarpur in March 2009 revealed that 258 quintals of molasses was shown to have been used in the stock register of molasses (D-5) during 4 to 6 November 2008 by the distiller for production of alcohol. But, the distiller neither recorded the process of production of alcohol from this stock of molasses in the fermentation and distillation register (D-9), nor accounted for any quantity of alcohol produced therefrom. This resulted in non-accountal/production of 10,006 PL alcohol involving excise duty of Rs. 14 lakh. Thus the Government was deprived of the revenue of Rs. 14 lakh.

After the case was pointed out, the DEO (distillery) stated (March 2009) that the entry of molasses was recorded twice in the records due to clerical mistake, which has been rectified. The reply is not acceptable as with each entry shown in the consumption of molasses column in register D-5, the corresponding figures showing closing balance were reduced which were duly authenticated by the DEO at periodic intervals. Hence question of double entry does not arise.

The matter was reported to the EC and the Government in April 2009; their reply has not been received (October 2009).

3.12 Inadmissible wastage of spirit/country liquor

The Madhya Pradesh Distillery Rules allow wastage of 0.1 to 0.2 *per cent* on account of leakage or evaporation of spirit transported or exported in tankers from a distillery/warehouse to another distillery/warehouse. The rules also allow wastage of 1.5 *per cent* per quarter for racking, storage, evaporation and others during the process of distillation and bottling of country liquor in manufacturing warehouse. In case of wastage beyond permissible limit, the EC or the officer authorised for the purpose may impose penalty at Rs. 30 per PL. Further, the MP Country Spirit Rules provide that in case of wastage of bottled country liquor beyond permissible limit of 0.5 *per cent* during transport, duty at the prescribed rates shall be recovered from the licensee.

Test check of records of 10 excise offices¹² between December 2007 and December 2008 revealed that penalty of Rs. 16.17 lakh was leviable on wastage of 53,890.2 PL of spirit beyond the permissible limit during export and transport on 326 permits from the distilleries to manufacturing warehouses of five districts during the period between November 2004 and April 2008. Further, penalty of Rs. 3.33 lakh was also leviable on the distiller on excess wastage of 11,114.26 PL of spirit in racking, storage, evaporation and others during the quarter from October to December 2007 in country liquor warehouse, Bhopal.

Further, in 239 cases of five districts, duty of Rs. three lakh was recoverable for excess wastage of 2,510.833 PL of country liquor beyond the permissible limit during transport of bottled country liquor from manufacturing

¹² Badwani, Bhopal, Burhanpur, Chhindwara, Dhar, Harda, Khargone, Panna, Tikamgarh and Vidisha.

warehouses to storage warehouses during the period between September 2004 to May 2008. It was, however, seen that only an amount of Rs. 9,315 out of Rs. 1.08 lakh was recovered by the department in Panna district and no action was taken for recovery of duty and to impose penalty in the remaining cases.

This resulted in non-realisation of duty/penalty of Rs. 22.41 lakh.

After the cases were pointed out, the EC intimated (October 2009) that an amount of Rs. 2.19 lakh had been recovered in respect of three offices and action was in progress in remaining cases.

The matter was reported to the Government in February 2009; the reply has not been received (October 2009).

3.13 Loss of revenue due to failure in timely disposal of foreign liquor

Madhya Pradesh Excise Act and rules made thereunder provide that bottling shall be done when liquor is required for sale. Further, the samples of every batch of foreign liquor manufactured and ready for bottling shall be analysed in the laboratory before it is bottled. The officer-in-charge of the manufacturing or bottling unit may stop the issue of foreign liquor which he considers not of good quality and may, on every such occasion, take samples at the cost of the licensee for sending them for chemical analysis/test to the departmental laboratory or any other authorised laboratory.

Test check of records of AEC, Bhopal in September 2008 revealed that 11,002.5 PL of foreign liquor involving duty of Rs. 19.80 lakh was bottled in a foreign liquor bottling plant (Raj Breweries Ltd., Bhopal) between February 2001 and November 2006 and was kept in the plant even after lapse of currency of the licence (March 2007). No efforts were made by the licensee/department to dispose of this liquor bottled in excess of requirement during the currency of licence even after a lapse of 4 to 74 months. However, the liquor was destroyed by the department in July 2008 at the request of the licensee on the basis of analysis report of his own laboratory without conducting chemical analysis in the departmental or any other authorised laboratory. As such, bottling of liquor in excess of requirement and failure of the department in timely disposal and irregular destruction thereof, resulted in loss of excise duty of Rs. 19.80 lakh.

The matter was reported to the department and the Government in February 2009. The EC stated (July 2009) that the liquor was destroyed after carrying out chemical analysis which revealed that it was unfit for human consumption. The reply is not in consonance with the provisions of the rules which provide that the destruction should not be carried out without conducting chemical analysis in the departmental or any other authorised laboratory. Besides, the liquor was manufactured long back between February 2001 and November 2006 and the department failed to take any action to dispose of the liquor for more than six years, which ultimately led to the loss of revenue. The reply from the Government has not been received (October 2009).

3.14 Non-levy of penalty on short production of alcohol

Madhya Pradesh Distillery Rules, 1995 require the distillers to maintain minimum fermentable and distillation efficiencies at 84 and 97 *per cent* respectively. Every quintal of fermentable sugar present in molasses as per departmental laboratory reports should yield 91.8 PL of alcohol. For this purpose, composite samples of the molasses are required to be drawn by the officer-in-charge of the distillery and sent for examination to the departmental laboratory. In case the distiller fails to maintain the prescribed efficiencies and recovery of alcohol, the EC may impose maximum penalty of Rs. 30 per PL. Further, as per Indian Standard Specification (ISS) there shall be three grades of molasses with minimum sugar contents of 50, 44 and 40 *per cent*.

3.14.1 Test check of records of one distillery¹³ of Chhatarpur district in March 2008 revealed that the distiller used 4,395.9 quintals of grade-I molasses in eight setups in the months of April 2007 and February 2008, but the composite samples were not sent to the departmental laboratory for examination of fermentable sugar present in molasses. As per ISS norms, 4,395.9 quintals of molasses should yield 1,91,683 PL of alcohol whereas only 1,61,819 PL of alcohol was obtained. The shortfall in recovery of 29,864 PL of alcohol involved duty of Rs. 41.81 lakh. Besides, the DEO (distillery) did not refer these cases to the EC for levy of penalty. This resulted in non-realisation of penalty of Rs. 8.96 lakh.

The matter was reported to the department and the Government in February 2009. The EC stated (July 2009) that the hearing of the case was pending in his court. The reply from the Government has not been received (October 2009).

3.14.2 Test check of records of two distilleries¹⁴ in May and June 2008 revealed that as per analysis reports of departmental laboratory, the production of alcohol should have been 9,91,300.7 PL from 29,700 quintals of molasses used between September 2004 and January 2008 whereas the actual production was 9,69,664.6 PL. Thus, short production of alcohol of 21,636.1 PL due to non-maintenance of minimum efficiency of distillation by the distillers resulted in loss of revenue of Rs. 24.64 lakh in absence of any provision in the rules to recover the same. Besides, the DEO (distillery) did not refer these cases to the EC for levy of penalty. This resulted in non-realisation of penalty of Rs. 6.49 lakh.

After this was pointed out in audit, in case of M/s AABL distillery, the DEO, Khargone stated (May 2008) that show cause notice had been issued to the distiller whereas in case of M/s Agrawal distillery, it was stated (June 2008) that case was under consideration in the EC office and action would be taken after decision of the case. Further report in the matter has not been received (October 2009).

¹³ M/s Cox India Ltd., Nowgaon district Chhatarpur.

¹⁴ M/s Agrawal Distillery, Sabalpura district Khargone.

M/s Associated Alcohol and Brewery, Khodigram district Khargone.

It can be seen from the above cases that the penal measure prescribed by the Government *i.e.* Rs. 30 per PL is not sufficient to cover the revenue loss occurring due to short production of alcohol. Thus, Government needs to revisit the penal measures in the interest of revenue.

The matter was reported to the EC and the Government in January 2009; their replies have not been received (October 2009).

3.15 Non-recovery of Government dues

According to the provisions of the Madhya Pradesh Excise Act and rules made thereunder, any licenced vendor of intoxicants may be required to purchase the intoxicants left by an outgoing licensee after the expiration, suspension or cancellation of his licence, on payment of such price of intoxicant as the excise officer may determine. Further, in the event of enhancement of rates of duty by the Government on intoxicants covered by various licences, the licensees are liable to pay the differential duty within 30 days in respect of the stock held by them at the close of the day immediately preceding the day from which such enhancement was applicable. Government increased the rate of excise duty on country liquor and foreign liquor by Rs. 10 per PL with effect from 1 April 2006.

Test check of records of DEOs, Datia and Damoh in August and November 2008 revealed that 18 country liquor and six foreign liquor shops of Datia district were disposed of in favour of retail vendors after being run departmentally from April to May 2004. Intoxicants valued at Rs. 9.37 lakh were transferred to the new vendors without effecting recovery of the value from them. The department however, failed to take any action against the officers responsible for non-recovery of the revenue.

Further, there was a balance stock of 46,152.5 PL of country liquor and 2,352.7 PL of foreign liquor in possession of licensees of seven retail shops of Damoh district at the close of 31 March 2006 on which the differential duty of Rs. 4.85 lakh was payable by the licensees. It was however, seen that Rs. 38,563 against Rs. 4.85 lakh was paid by the licensees and Rs. 4.46 lakh remained un-recovered. No action was taken by the department to realise the balance amount. This resulted in non-realisation of Government dues of Rs. 13.83 lakh.

After this was pointed out, DEO, Datia stated (November 2008) that required information would be collected from the concerned officers and would be submitted to audit while DEO, Damoh stated (August 2008) that action to recover the balance amount of Rs. 4.46 lakh was being taken. Further replies have not been received (October 2009).

The matter was reported to the EC and the Government in January and February 2009; their replies have not been received (October 2009).

3.16 Absence of provision for recovery of losses suffered during resale of shops under the lottery system

The condition of sale of liquor shops through tendering process provides that if the highest bidder takes back his offer and fails to pay basic licence fee/security deposit in time or breaches any condition of sale, the shop

shall be resold. In case of any loss suffered by the Government due to resale, such loss shall be recoverable from the defaulter. As per conditions for sale of retail liquor shops through lottery system for the year 2005-06, the shop which could not be sold under the lottery system is to be sold through tendering process. Conditions for sale notified by the Government under the lottery system do not provide for such recovery of losses suffered by the Government during resale of shops.

Test check of records of DEO, Tikamgarh in July 2008 revealed that an applicant was declared successful under the lottery system for allotment of three liquor shops at annual value of Rs. 28.90 lakh. The successful bidder subsequently failed to deposit the basic licence fee and security deposit within the prescribed date and shops had to be resold for Rs. 18.83 lakh. In this process of resale of shops, Government suffered loss of Rs. 9.84 lakh, after taking into account the forfeiture of earnest money deposit of Rs. 23,000. As there was no provision for recovery of loss suffered by the Government due to resale of shops under the lottery system, no action could be taken against the defaulter to recover the differential amount of Rs. 9.84 lakh.

The matter was reported to the department and the Government in January 2009. The EC stated (July 2009) that there was no provision for recovery of such amount. The reply does not throw any light on the reasons for inaction of the department/Government to take remedial action on this issue due to which there is recurring loss of revenue despite the fact being highlighted repeatedly by audit in consecutive Audit Reports for the year 2006-07 and 2007-08. The reply from the Government has not been received (October 2009).

3.17 Non-recovery of penalty imposed for breach of rules

The Madhya Pradesh Excise Act provides that the EC or the Collector, in the event of any breach or contravention of the rules or conditions of the licence may impose penalty. Further, the penalty imposed is recoverable from the licensee and in case of non-deposit, it may be recovered from the security amount deposited by him.

Test check of records of DEO, Damoh in August 2008 revealed that penalty of Rs. 7.81 lakh was imposed by the Collector in 1,041 cases of breach of rules or conditions of licence by different licensees during the period 2005-06 to 2007-08. This amount of penalty was not recovered from the licensees even after the expiry of their licences. The scope of recovery is remote as the security amount deposited by them was also refunded.

The matter was reported to the department and the Government in February 2009. The EC stated (July 2009) that Rs. 49,250 had been recovered and action for recovery of the remaining amount is in progress. Report on recovery of balance amount and reply from the Government have not been received (October 2009).

3.18 Short recovery of basic licence fee

As per notification issued by the State Government dated 8 January 2007, the liquor shops for the year 2007-08 were to be renewed by increasing 20 *per cent* in the annual value of shops for the year 2006-07.

The remaining shops after renewal were to be disposed of through tenders but the reserve price was not to be changed. The basic licence fee at the rate of eight *per cent* of the reserve price was to be deposited by the licensee.

Test check of records of DEO, Vidisha in December 2008 revealed that the reserve price of Rs. 14.21 crore was fixed for disposal of 16 country liquor and five foreign liquor shops of 12 groups for the year 2007-08. Against the basic licence fee of Rs. 1.13 crore to be deposited by the successful bidders, an amount of Rs. 1.06 crore was deposited. This resulted in short realisation of revenue of Rs. 7.73 lakh.

After the case was pointed out, the DEO stated (December 2008) that the basic licence fee was deposited at the rate of eight *per cent* on the basis of floor value of shops. The reply is not acceptable as the basic licence fee at the rate of eight *per cent* of the reserve price was to be deposited. Further reply has not been received (October 2009).

The matter was reported to the EC and the Government in February 2009; their reply has not been received (October 2009).

3.19 Non-imposition of penalty in case of failure to supply country liquor in warehouses

Madhya Pradesh Country Spirit Rules provide that the licensee shall maintain at each “manufacturing and storage warehouse” a minimum stock of bottled liquor/rectified spirit as required in the rules. He shall also maintain such minimum stock of empty bottles as may be fixed by the DEO of the concerned district. Rules also provide that the EC may impose a penalty not exceeding Rs. 50,000 for any breach or contravention of any of these rules and may further impose in the case of continued contravention, an additional penalty not exceeding Rs. 1,000 for every day during which the breach or contravention is continued.

Test check of records of five excise offices¹⁵ between July and December 2008 revealed that the minimum stock of spirit, bottled liquor and empty bottles was not maintained at the country liquor warehouses as per rules by the licensees during the period between April and November 2008. As a result, the supply of bottled country liquor could be made to the retail vendors only in the succeeding fortnight/month. However, no action to purchase the rectified spirit and/or country liquor in sealed bottles at the prevalent open market rate was taken, nor penalty amounting to Rs. 7.63 lakh for breach and continued contravention of rules was imposed on the licensees. This resulted in non-levy of penalty of Rs. 7.63 lakh.

After the cases were pointed out, the DEO, Harda stated (October 2008) that the issue was made in succeeding fortnights due to non-availability of new empty bottles. The DEO, Burhanpur stated (December 2008) that the situation was intimated to the EC from time to time. The DEOs, Damoh and Khandwa stated (July and October 2008) that the supply did not fail and issue was made in succeeding fortnights due to administrative reasons. The DEO, Tikamgarh stated (July 2008) that the notices had been issued to the distiller for which the reply was awaited. The replies are not acceptable as

¹⁵ Buhanpur, Damoh, Harda, Khandwa and Tikamgarh.

no action was initiated to forward the cases to the EC proposing penalty for not maintaining the prescribed stock of liquor/bottled liquor and empty bottles as per rule.

The matter was reported to the EC and the Government in February 2009; their reply has not been received (October 2009).

3.20 Non/short levy of transport/import fee

Madhya Pradesh Foreign Liquor Rules provide for levy of transport/import fee on foreign liquor/beer, RS and ENA transported/imported to bottling unit of foreign liquor at the rates prescribed from time to time.

Test check of records of DEO, Khargone in May and June 2008 revealed that transportation of 1.68 lakh BL of ENA/RS from two distilleries to a bottling unit of foreign liquor was permitted between April and June 2006 without realising transport fee of Rs. 4.20 lakh. Besides, import fee of Rs. 2.33 lakh was also not realised on 7,753.5 PL of foreign liquor brought from Utrakhhand in March 2008. This resulted in non-realisation of revenue of Rs. 6.53 lakh.

The matter was reported to the department and the Government in January 2009. The EC in case of M/s AABL distillery, Khargone stated (August 2009) that the spirit was transferred through pipe line, therefore the fee was not leviable. Reply is not acceptable because the rules do not provide for any concession from transport fee in case of transportation/transfer of the goods through pipe line. In another case of M/s Agrawal distillery, he stated that transport fee was not leviable on the RS transported for manufacturing country liquor. The reply is not acceptable as the EC himself vide his orders dated 17 April 2006 had granted permission for manufacture of foreign liquor from the RS so transported whereas the distiller used the RS in the manufacture of country liquor. The reply from the Government has not been received (October 2009).