

CHAPTER-V: STATE EXCISE DUTY

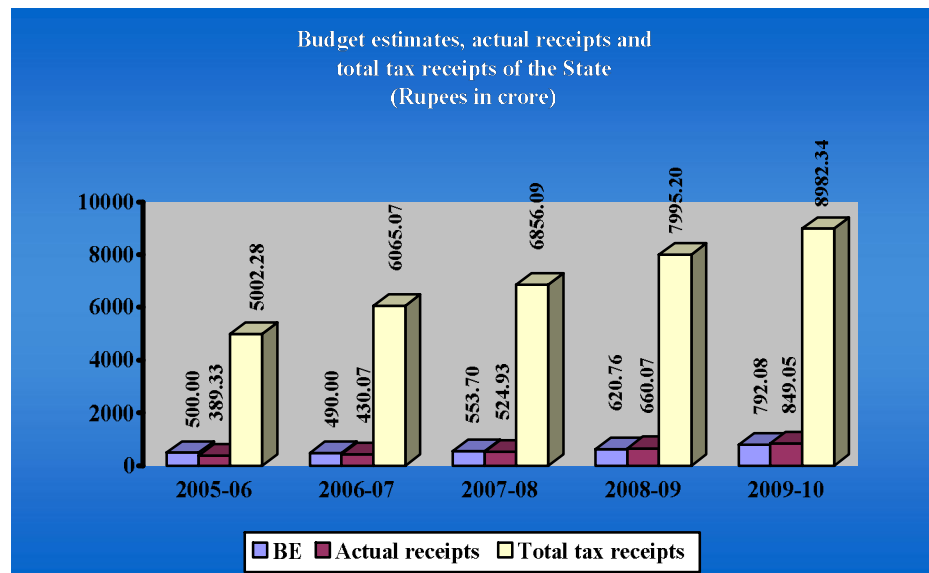
5.1.1 Tax administration

Levy and collection of excise duty, fee, penalty etc. is governed by the Bihar and Orissa Excise (B&OE) Act, 1915, the Board's Excise (BE) Rules, 1965, Orissa Excise Exclusive Privilege (OEEP) Rules, 1970, the Orissa Excise (Exclusive Privilege) Foreign Liquor (OEEPFL) Rules 1989, the Board of Revenues (BOR)'s Excise (Fixation of Fees on Mahua Flower (BEFFMF) Rules, 1976 and the Annual Excise Policies (AEPs) framed by the Government in Excise Department. The Excise Commissioner (EC) being the head of the department administers the various provisions of the above Acts/Rules under the control of BOR as well as the overall control of the Principal Secretary of the department. He is assisted by three Excise Deputy Commissioners (EDCs) at three divisions, 30 Superintendents of Excise (SEs) at 30 District Excise Offices (DEOs) and the field level staff thereunder.

5.1.2 Trend of receipts

Actual receipts from State excise during the years 2005-06 to 2009-10 along with the budget estimates and total tax receipts during the same period is exhibited in the following table and graph.

(Rupees in crore)						
Year	Budget estimates	Actual receipts	Variation Excess (+)/ shortfall (-)	Percentage of variation	Total tax receipts of the State	Percentage of actual receipts vis-a-vis total tax receipts
2005-06	500.00	389.33	(-) 110.67	(-) 22.13	5,002.28	7.78
2006-07	490.00	430.07	(-) 59.93	(-) 12.23	6,065.07	7.09
2007-08	553.70	524.93	(-) 28.77	(-) 5.20	6,856.09	7.66
2008-09	620.76	660.07	(+) 39.31	(+) 6.33	7,995.20	8.26
2009-10	792.08	849.05	(+) 56.97	(+) 7.19	8,982.34	9.45



5.1.3 Cost of collection

The gross collection of state excise revenue, expenditure incurred on collection and the percentage of such expenditure to gross collection during the years 2007-08, 2008-09 and 2009-10 along with the relevant all India average percentage of expenditure on collection to gross collection for 2008-09 are mentioned below:

Year	Gross collection	Expenditure on collection	Percentage of expenditure to gross collection	(Rupees in crore)
				All India average percentage for the year 2008-09
2007-08	524.93	17.54	3.34	3.66
2008-09	660.07	24.76	3.75	
2009-10	849.05	30.74	3.62	

5.1.4 Impact of audit

Revenue impact

During the last five years (2004-05 to 2008-09) audit pointed out non/short levy, non/short realisation of excise duty and fee etc., with revenue implication of ₹ 87.37 crore in 3,996 cases. Of these, the department had accepted audit observations in 1,760 cases involving ₹ 12.05 crore and since recovered ₹ 6.81 crore in 1,051 cases. The details are shown in the following table:

Year	No. of units audited	Amount objected		Amount accepted		Amount recovered	
		No. of cases	Amount	No. of cases	Amount	No. of cases	Amount
		2004-05	34	427	29.44	365	3.13
2005-06	33	1,603	9.84	712	4.29	443	3.50
2006-07	32	1,025	25.14	243	0.42	100	0.14
2007-08	31	531	9.66	232	3.42	118	1.31
2008-09	31	410	13.29	208	0.79	19	0.08
Total	161	3,996	87.37	1,760	12.05	1,051	6.81

The recovery position as compared to acceptance of objections was low. **The Government may take appropriate steps to improve the recovery position, at least on accepted cases.**

5.1.5 Working of internal audit wing

As per the information furnished by the department, during the last three years i.e. 2007-08 to 2009-10 the Internal Audit Wing (IAW) functioning under the control of BOR with two audit parties did not cover the audit of the accounts for the said years as they were busy in clearing the backlog of audit upto 2003-04. The reasons for not conducting audit was attributed to shortage of manpower.

The Department may take steps to strengthen the IAW and clear the backlog of internal audit.

5.1.6 Results of audit

During the year 2009-10 we test checked the records of 27 units relating to state excise receipts and found non/short realisation, non-levy, loss of revenue, etc., involving ₹ 46.29 crore in 1,936 cases which fall under the following categories:

Sl. No	Categories	(Rupees in crore)	
		No. of cases	Amount
1.	Loss of revenue due to non-settlement/ delay in settlement/non-renewal of excise shops	71	28.15
2.	Non/short realisation of excise duty/ transport fee etc.	349	1.96
3.	Non-levy of differential duty on IMFL/liquor	187	1.62
4.	Non/short realisation/non-levy of initial fees (application fees, user charges and label registration fees on transfer of license)	394	8.59
5.	Other irregularities	935	5.97
Total		1,936	46.29

During the year, the department accepted non-levy/short realisation of duty of ₹ 17.52 crore in 799 cases pointed out in 2009-10. An amount of ₹ 1.52 crore was recovered in 140 cases.

After issue of draft paragraphs, the department recovered ₹ 12.33 lakh (March 2010) in two cases pertaining to two observations pointed out by us during 2009-10.

A few illustrative audit observations involving ₹ 1.14 crore¹ are discussed in the following paragraphs.

5.2 Audit observations

We scrutinised the assessment records of excise duty, fee and charges in the DEOs and found several cases of non-observance of the provisions of the Acts/Rules/Annual Excise Policy (AEP) leading to loss/non/short levy and realisation of excise duty, fee, charges, fine and non-destruction of excise goods etc., and other cases as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on a test check carried out by us. Such omissions on the part of the SEs are pointed out by us each year, but not only do the irregularities persist; these remain undetected till an audit is conducted. There is need for the department to improve the internal control system including strengthening of internal audit so as to avoid recurrence of such irregularities.

¹ It does not includes the para on loss of revenue.

5.3 Non-observance of the provisions of the Acts/Rules/AEPs and instructions of Government

The B & OE Act, 1915 and Rules made thereunder by the Government as well as the BOR read with the AEPs and notifications of Government provide for:

- (i) levy and collection of excise duty and fees at the prescribed rates;
- (ii) levy and realisation of establishment charges, extra hour operation fee or overtime remuneration fee for excise staff deployed regularly/occasionally at the warehouses and the distilleries, breweries etc. at the prescribed rates;
- (iii) destruction of excise goods stocked but not found fit for human consumption and imposition of fine against the licensee concerned;
- (iv) levy and realisation of transport fee from the licensees of outstill shops at the prescribed rates; and
- (v) annual settlement of liquor shops as per the excise laws read with the AEPs.

The SEs while finalising the assessments did not observe the above provisions in some cases as mentioned in paragraphs 5.3.1 to 5.3.9 which resulted in non/short levy and non-realisation of excise duty/fees/charges and fine etc. of ₹ 1.14 crore².

5.3.1 Non-levy of duty on short lifting of minimum guaranteed quantity of liquor

As per the OEEPFL Rules, 1989, the licensee shall lift the minimum guaranteed quantity (MGQ) of liquor in respect of every foreign liquor 'On'/'Off' shop as per the terms and conditions of the licence issued by the Collector, failing which the licensee is liable to make good the loss at the end of the year according to the prescribed rates of the AEP with 10 per cent fine on the deficit excise duty.

During test check of records in March 2010 of the DEO, Mayurbhanj (Baripada), we noticed that licensees of seven off shops³ lifted 5,052.78 LPL of IMFL and 11,235.12 BL of beer during the year 2008-09 against the MGQ of 19,055.448 LPL of IMFL and 39,241.06 BL of beer as fixed by the Collector. Thus, there was short lifting of 14,002.668 LPL of IMFL and 28,005.94 BL of beer which resulted

in non-levy of excise duty of ₹ 27.11 lakh.

After we pointed out the cases, the Government stated in August 2010 that the short lifting of MGQ was being verified and the compliance would be submitted soon after receiving reports from the DEO.

² It does not include the para on loss of revenue.

³ Joshipur IMFL off shop, Sukruli IMFL off shop, Bisoi IMFL off shop, Bisoi IMFL off shop (demjanoa), Jharadihi IMFL off shop, Karanjia IMFL off shop and Station Bazar IMFL off shop.

5.3.2 Non/short realisation of establishment cost and overtime remuneration fee

As per the BE Rules, 1965, the licensee of a distillery/brewery is to pay to the Government account, the monthly pay and allowance payable for any excise staff posted for supervision of its warehouse/storeroom etc. as may be determined from time to time by the EC.

During test check of records between November 2009 and February 2010 in respect of four⁴ DEOs, we noticed that establishment cost of ₹ 12.52 lakh for the period between January 2004 and March 2009 was not demanded and

realised from M/s. Aska Co-operative Sugar Industries Ltd. (ACSIL), a distillery of Ganjam district. Further, an amount of ₹ 8.82 lakh relating to the period from January 2006 to March 2009 was short realised towards overtime remuneration fee of excise staff against seven distilleries/breweries⁵ for the above period.

After we pointed out the cases, the Government stated, in August 2010, that the SE, Ganjam had been asked to submit detailed compliance for non-levy of ₹ 12.52 lakh against ACSIL. It was also stated that the balance amount of ₹ 8.82 lakh would be realised. A report on further development has not been received (December 2010).

5.3.3 Non-levy of fee for extra hour operation of distillery

As per the Government notification of October 2006, for operation of a distillery beyond the scheduled time of eight hours per day, fee at the rate of ₹ 1,000 for every extra hour is to be realised from the Personal Ledger account of the unit.

During test check of the records of ACSIL under DEO, Ganjam in December 2009, we noticed that although the unit operated 1,475 hours beyond the scheduled hours during the period from August 2008 to March 2009, the extra hour fee of ₹ 14.75 lakh was not realised from the said unit.

After we pointed this out, the Government stated in August 2010 that it would take some more time for submission of the final compliance. Their reply is yet to be received (December 2010).

5.3.4 Non-levy of penalty for short supply of country spirit

As per the AEPs for the years 2007-08 and 2008-09, the authorised supplier of country spirit (CS) shall be penalised to the extent of ₹ 10 lakh per annum, if he fails to make timely delivery of CS demanded.

During test check of records in December 2009 of ACSIL under DEO, Ganjam who acted as the wholesale authorised supplier of CS of the State, we noticed that the industry failed to supply CS as per

⁴ Bolangir, Ganjam, Khurda and Rayagada.

⁵ Denzong brewery, Jeypore Sugar Company Ltd., Shakti distillery Ltd., Oriental Bottling, United brewery, United Spirit Ltd. and Utkal distillery.

the demand of the market for which penalty of ₹ 20 lakh for the years 2007-08 and 2008-09 was leviable, but was not levied.

After we pointed this out, the Government stated in August 2010 that an amount of ₹ 10 lakh had been realised in March 2010 for the year 2008-09 and it would take some more time to submit the final compliance in respect of non-levy of penalty for the year 2007-08. Further reply is yet to be received (December 2010).

5.3.5 Non-realisation of differential storage fee on mahua flower

As per the AEPs for the years 2007-08 and 2008-09 the storage permit fee of mahua flower (MF) for traders and out still (OS) licencees are fixed on slab basis according to storage capacity of the MF godown. The permits for storage of MF in the godown are issued as per calendar year whereas the AEP covers the financial year.

During test check of records relating to MF storage agent permit fees, for the calendar year 2008 of two⁶ DEOs, in December 2009 and January 2010, we noticed that in respect of 159 OS shops, storage permit fees were realised on the basis of the fee prescribed in the excise policy of 2007-08. Since the storage fee had undergone upward revision with effect from April 2008

as per the AEP for 2008-09, the licencees were required to pay the differential storage fee of ₹ 4.57 lakh. However, the concerned SEs did not raise demands for realisation of the fees.

After we pointed out the cases, the SE, Chhatrapur agreed in December 2009 to realise the amount whereas the EC intimated in June 2010 that ₹ 0.60 lakh had already been realised by SE, Nabarangpur and demand had been made in April 2010 for realisation of the balance amount of ₹ 1.73 lakh. The Government in August 2010 endorsed the views of the EC.

5.3.6 Non-levy of label registration fee

The label registration fee at prescribed slab rates against the quantity (cases) of IMFL/Beer supplied to Orissa State Beverage Corporation (OSBC) during a calendar year should be realised from the licencee during the next financial year as per the AEP for that year.

During test check of records of the EC, in June 2009 and October 2009, we noticed that label registration fee of ₹ 2.90 lakh against supply of 1,81,827 cases (35,790 cases in the year 2006 and 1,46,037 cases in the year 2007) of Maikal 8000 Super

Strong Beer to OSBC by Maikal Breweries (P) Ltd., Bolangir under the jurisdiction of DEO, Bolangir was not realised as per the AEPs for 2007-08 and 2008-09.

After we pointed this out, the Government stated in August 2010 that since the matter related to a policy decision it would take some more time for submission of final compliance. Further reply is yet to be received (December 2010).

⁶ Chhatrapur (Ganjam) and Nabarangpur.

5.3.7 Non-destruction of sedimented beer unfit for human consumption and non-imposition of fine

As per the BE Rules, 1965, when any intoxicant is found unfit for human consumption on chemical examination, its issue shall be held up and the stock destroyed. Further, if the deterioration in quality is due to long storage or other factors, the licensee shall be held responsible for this and shall be liable to pay fine equal to five times the prescribed duty payable on the stock so spoiled and destroyed.

During test check of records of DEO, Jagatsinghpur, in August 2009, we noticed that 15,327 BL of beer of M/s. SKOL Breweries Limited, Paradeep was found unfit for human consumption during chemical examination (December 2003) by the Government Drug Testing and Research Laboratory, Bhubaneswar. But the stock was not destroyed and the fine of ₹ 16.06 lakh⁷ was not imposed by

the SE against the licensee.

After we pointed out the case, the EC stated in August 2010 that against demand of ₹ 16.06 lakh raised in October 2009 the licensee deposited normal excise duty of ₹ 3.01 lakh in March 2010 as per the interim orders passed by the Hon'ble High Court of the State. The licensee was permitted by the EC in June 2010 for destruction of 1,965 cases of old stock sedimented beer stored in his warehouse subject to the result of the writ petition.

5.3.8 Non-realisation of transport fee from the licensees of outstill shops

As per the Board's Excise (Fixation of fees on Mohua Flower) Rules, 1976 read with the AEP 2008-09 issued in March 2008, the rate of fee on transportation of MF within the State is ₹ 15 per quintal.

During test check of records in July 2009 we noticed that MGQ of MF of 17 outstill shops under DEO, Angul was fixed at 50,076 quintals for 2008-09. But the licensees did not deposit the transport fee of ₹ 7.51 lakh

calculated at the rate of ₹ 15 per quintal. This lapse was not detected by the SE, Angul.

After we pointed out the case, the SE, Angul agreed to raise demand for realisation of the above mentioned transport fee. Further reply is yet to be received (December 2010).

We reported the matter to the Government/EC, Orissa in February 2010; their reply is yet to be received (December 2010).

⁷ Haywards Lager Beer : 202.800 BL (not exceeding 5% V/V) leviable to duty at the rate of ₹18 per BL and Haywards 2000 Extra Strong Beer : 15124.200 BL (5.1 to 7% V/V) leviable to duty at the rate of ₹ 21 per BL as per Government's Excise Policy for 2008-09 and 2009-10.

5.3.9 Loss of revenue due to non-settlement of liquor shops

As per the Excise laws in force read with the AEPs, all the existing IMFL 'Off' and CS shops are renewed for a year against realisation of the prescribed consideration money. Where the shops are not renewed, the Collector of the district may take immediate steps to settle the same by way of inviting applications from persons interested for the said shops. In case more than one application is received, the shop is to be settled in favour of one by way of drawal of lottery. After this procedure, if any CS/IMFL 'Off' shops remains unsettled, those shops may be run by any Government undertaking, co-operative organisations and Orissa State Beverage Corporation (OSBC) as specified in the AEPs.

During test check of records, between January and March 2010, of five DEOs, we noticed that 23 excise shops⁸ remained unsettled during the period 2004-05 to 2008-09 which resulted in loss of excise revenue of ₹ 20.05 crore. The shops remained unsettled due to higher consideration money fixed by the department as compared to the rate fixed for the nearby shops. The department also failed to open and run the shops through OSBC or co-operative organisations.

After we pointed out the cases, the Government agreed (August 2010) that the shops remained unsettled due to higher consideration money. As per the AEP in force the two IMFL off shops in Bargarh district were allotted to OSBC in November 2006 which failed to open the same.

The fact, however, remains that there was loss of revenue due to fixing of unrealistic consideration money for which these shops could not even be opened by the public sector undertaking or any co-operative organisation.

⁸ Under the DEOs, Angul-five IMFL off shops, Bargarh-two IMFL off shops, Bolangir-one IMFL off shop, Cuttack-four IMFL off shops and one CS shop and Ganjam-ten IMFL off shops.