

## CHAPTER VI STATE EXCISE

### 6.1 Results of audit

We reported under assessments, non/short levy, non-recovery, etc., of revenue and other similar cases amounting to ₹ 78.95 crore in 359 cases as shown below, on the basis of test check of the records of taxes on State excise conducted during the year 2010-11:

(₹ in crore)

Sl. no.	Nature of receipts	No. of cases	Amount
1.	<b>Levy and collection of state excise duty, licence fee, fines, etc. (A Performance Audit)</b>	1	31.36
2.	Non-recovery of transport fee	20	35.15
3.	Non/short recovery of licence/privilege fees/excise duty/application fee	225	6.15
4.	Non-recovery of compounding fees/loss of revenue due to reduction in manufacturing costs, etc.,	58	4.42
5.	Non/short recovery of supervision charges/interest/bonus	23	0.95
6.	Non-recovery of toddy instalments	32	0.92
	<b>Total</b>	<b>359</b>	<b>78.95</b>

In response to our observations in the local audit reports during the year 2010-11 as well as during earlier years, the Department concerned accepted the underassessment, short levy, etc. and recovered ₹ 28.33 lakh in 80 cases, out of which 8 cases involving ₹ 7.25 lakh were pointed out during the year 2010-11 and the rest during the earlier years.

A Performance Audit on “**Levy and collection of state excise duty, licence fee, fines, etc.**” is featured here, with a total financial effect of ₹ 31.36 crore out of which the Department accepted our observations involving financial effect of ₹ 29.89 crore and contested paras for ₹ 3.44 lakh.

## 6.2 Performance Audit on “Levy and Collection of State Excise Duty, Licence Fee, Fines, etc”.

### Highlights

In comparison to other bigger States like Andhra Pradesh, Tamil Nadu and Karnataka, the State’s excise revenue collection were the lowest despite highest population. The per capita realisation of revenue from State excise duty was the lowest in the State though liquor consumption was highest when compared with these States, wherein Corporations had been established for regulating and canalising the supply of liquor.

**(Paragraph 6.2.7)**

Internal Audit control was inadequate and also ineffective as there were short falls in inspections, non-submission of returns and huge pendency in clearance of observations made by the Divisional Deputy Commissioners.

**(Paragraph 6.2.8)**

There was shortage of staff in Class II and Class III positions coupled with unequal deployment of staff, depending upon the type of licence and turnover. For instance, in Seagram Ltd., Nashik, which had three licences for manufacture of rectified spirit and the unit's revenue contribution was ₹ 329 crore, it had nine excise officials posted while United Breweries Ltd Unit I at Nashik district with similar licences and comparable revenue contribution of ₹ 358 crore had just two officials and partial supervision by a Dy. Commissioner.

**(Paragraph 6.2.9)**

The efficacy of functioning of flying Squads for State Excise related offences was adversely impacted with 72.77 *per cent* of cases registered against unidentified offenders. In 10 districts the confiscated goods valued at ₹ 27.35 crore were not auctioned off and in remaining 19 districts only an amount ₹ 52.11 lakh was realised from auction of confiscated goods valued at ₹ 71.28 crore.

**(Paragraph 6.2.10)**

The Department had not adjudicated finally on offences relating to MRP violations on sale of country liquor resulting in loss of excise duty.

**(Paragraph 6.2.11.1)**

In the case of Meher Distilleries Ltd. the lackadaisical attitude of the Government/Excise Department in stretching the issue of recovery for almost eight years even after the High Court had decided the issue in favour of revenue, resulted in non-recovery of even the minimum revenue of ₹ 29.10 crore.

**(Paragraph 6.2.12)**

Non-raising of demands for recovering differential amount of supervision charges of excise staff posted at 23 units, arising due to revision in pay had resulted in non-realisation of ₹ 1.46 crore for the period January 2006 to December 2009.

**(Paragraph 6.2.13)**

Granting exemption in excise duty to wine manufacturers with the objective of popularizing wine amongst consumers, did not serve its purpose in absence of any Departmental control on fixation of manufacturing cost/MRP of wine.

**(Paragraph 6.2.14)**

Incorrect allowance of losses on beer bottles on removal from warehouses resulted in loss of revenue of ₹ 59.36 lakh for the period January 2008 to March 2011.

**(Paragraph 6.2.15)**

The ban on issue of licences for retail trade of IMFL and CL (FL-II and CL-III), since 1973-74 though the State's population had doubled was unjustified as licences for sale of liquor to bars, clubs and beer shoppes were liberally granted to increase consumption of liquor. Further, 387 defunct licences were not put to use due to disputes etc. These policy issues affected Government revenue from excise duty in comparison to other large States.

**(Paragraph 6.2.20)**

## 6.2.1 Introduction

Levy and collection of excise duty, fees, fines and other receipts collected by the State excise Department are mainly regulated under the Bombay Prohibition Act, 1949, Bombay Molasses (Control) Act, 1956 and Medicinal and Toilet Preparations (Excise Duties) Act, 1955 and Rules, notifications and circulars framed thereunder. The state excise receipts mainly comprise of excise duty leviable on Indian Made Foreign Liquor (IMFL), Foreign Liquor, Country Liquor, Beer, Wine and Medicinal preparations containing alcohol, license fees on manufacturers, wholesalers, retailers, bars and clubs for sale of alcoholic beverages in licensed premises, privilege fees for transfer of licenses from one name to another and from one site to another, supervision fees for deployment of excise officials in the premises of manufacturers and wholesalers, escort fees for escorting consignment of rectified spirit and extra neutral alcohol (ENA) and transport fees for transport of rectified spirit, ENA, IMFL and Beer.

## 6.2.2 Organisational set up

The Principal Secretary (Transport and State Excise)<sup>1</sup>, Home Department is the administrative authority at the Government level for the implementation of the Acts. The Commissioner of State Excise (CSE) is the head of the Excise Department who is assisted by two Joint Commissioners, one Director (Vigilance), one Deputy Director (Computers) and four Deputy Commissioners. At the district level, the provisions of the Acts and Rules are administered by 35 Superintendents of State Excise (SPE)<sup>2</sup> working under six Divisional Deputy Commissioners (DDCs)<sup>3</sup>. The DDCs in addition to monitoring of functioning of SPEs also conduct internal audit of SPE offices, manufacturers and wholesalers functioning in his zone. The excise supervision in each distillery is entrusted to Excise Officer posted there.

## 6.2.3 Scope of audit

A test check of records for the period 2005-06 to 2009-10 was conducted by us between February 2011 and May 2011. For test check we selected all the districts (i.e. ten districts) contributing revenue of more than ₹ 100 crore and 25 per cent of the remaining districts i.e. six by random sampling method. We selected 17 country liquor manufacturers, 10 IMFL manufacturers and seven breweries, each contributing revenue of ₹ 25 crore and above during 2009-10 and 25 per cent of remaining distilleries i.e. five country liquor and 10 IMFL manufacturers by random sampling method. We selected five per cent of the units manufacturing rectified spirits from molasses and grain i.e. five distilleries based on random sampling method. Four DDCs, who oversee the collection of more than ₹ 500 crore revenue and records of CSE, Mumbai were test checked to ascertain the monitoring and internal control mechanism.

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<sup>1</sup> Presently under the Principal Secretary (Tourism, Culture and State Excise).

<sup>2</sup> Ahmednagar, Akola, Amaravati, Aurangabad, Beed, Bhandara, Buldhana, Chandrapur, Dhule, Gadchiroli, Gondia, Hingoli, Jalna, Jalgaon, Kolhapur, Latur, Mumbai (City), Mumbai (Suburban), Nagpur, Nanded, Nandurbar, Nashik, Osmanabad, Parbhani, Pune, Raigad, Ratnagiri, Sangli, Satara, Sindhudurg, Solapur, Thane, Wardha, Washim and Yavatmal.

<sup>3</sup> Aurangabad, Kolhapur, Konkan (Thane), Nagpur, Nashik and Pune.

#### **6.2.4 Audit objectives**

We conducted the review to ascertain whether:

- the levy and collection of excise duty, fees, supervision charges, etc., under various Acts and Rules administered by the Excise Department are being done correctly and efficiently;
- an internal control mechanism is in existence in the Department and is adequate and effective;
- there are system deficiencies which impede the optimum collection of revenue and proper enforcement of the various Acts and Rules;
- the licencees comply with all the Rules and Regulations; and
- exemptions/concessions from payment of excise duty was correct.

#### **Audit Criteria**

We adopted the following criteria in conducting the Performance Audit:

- Bombay Prohibition Act, 1949
- Maharashtra Potable Liquor (Fixation of Maximum Retail Price), Rules, 1996
- Bombay Rectified Spirit (Transport in Bond) Rules, 1977
- Maharashtra Foreign Liquor (Import and Export) Rules, 1963

#### **6.2.5 Acknowledgement**

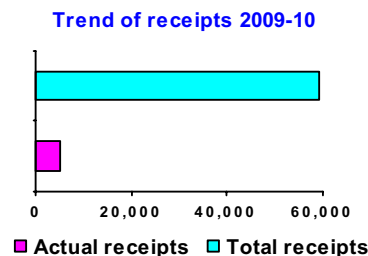
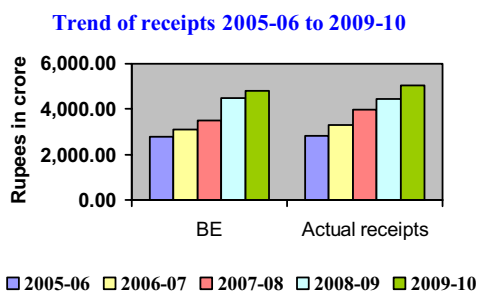
The Indian Audit and Accounts Department acknowledges the co-operation of the Home Department and its subordinate offices for providing necessary information and records for audit. An entry conference for the review was held on 31 January 2011 with the CSE and the executive was informed about the scope, objective and methodology of audit. The Commissioner explained the various aspects of levy and collection of State Excise duty and licence fees and also its administration and implementation. The draft review report was forwarded to the Government and the Department in July 2011 and the audit conclusions and recommendations were discussed in the exit conference held in October 2011. The Principal Secretary (Excise), Dy. Secretary (Excise Department), Jt. Commissioner of State Excise and other senior officers of the Excise Department attended the meeting. The replies given during the exit conference and at other times have been appropriately included in the relevant paragraphs.

## 6.2.6 Trend of revenue

The actual receipts from State excise duty, licence fee, fines, etc, during the period 2005-06 to 2009-10 along with the total tax receipts during the same period is exhibited in the following table and graphs:

(₹ in crore)

Year	Budget estimates	Actual receipts	Variation excess (+)/shortfall (-)	Percentage increase in collection over the previous year <sup>4</sup>	Total tax receipts of the State	Percentage of actual receipts vis-à-vis total tax receipts
2005-06	2,800.00	2,823.85	(+) 23.85	27.26	33,540.24	8.42
2006-07	3,100.00	3,300.70	(+) 200.70	16.89	40,099.24	8.23
2007-08	3,500.00	3,963.05	(+) 463.05	20.07	47,528.41	8.34
2008-09	4,500.00	4,433.76	(-) 66.24	11.88	52,029.94	8.53
2009-10	4,800.00	5,056.63	(+) 256.63	14.05	59,106.33	8.56



As seen from the above table, though the revenue collection increased from 2005-06 to 2009-10 the percentage rate of collection with reference to the earlier year showed a declining trend. Further, the revenue collections when compared with the total revenues of the State were stagnant at eight *per cent*.

**The State Excise Department did not have any database of arrears of revenue.**

## 6.2.7 Excise policy- Comparison of revenue with other States

The following table presents the details of the population, liquor sold, excise duty and sales tax collected and the total tax receipts in respect of the States of Andhra Pradesh, Karnataka, Maharashtra and Tamil Nadu for the period 2005-06 to 2009-10.

<sup>4</sup> The actual receipts for 2004-05 was ₹ 2218.87 crore.

(₹ in crore)

Year	IMFL sold#	Beer sold#	Excise duty	Sales Tax	Total of (4) + (5)	Total tax receipts	Percentage of (6) to (7)
<b>Maharashtra – population 968.78 lakh*</b>							
2005-06	358.01 <sup>@</sup>	185.18	2,823.85	N.A	2,823.85	33,540.20	8.42
2006-07	388.23 <sup>@</sup>	218.88	3,300.7	N.A	3,300.70	40,099.20	8.23
2007-08	419.35 <sup>@</sup>	236.54	3,969.05	N.A	3,969.05	47,528.40	8.35
2008-09	446.23 <sup>@</sup>	265.54	4,433.76	1,402	5,835.76	52,029.90	11.22
2009-10	480.63 <sup>@</sup>	310.44	5,056.63	1,795	6,851.63	59,106.30	11.59
<b>Andhra Pradesh –population 762.10 lakh*</b>							
2005-06	266.85	180.80	2,684.57	2,040.30	4,724.87	19,207.41	24.60
2006-07	313.16	252.62	3,436.63	2,585.29	6,021.92	23,926.20	25.17
2007-08	338.00	291.66	4,040.69	3,331.64	7,372.33	28,794.05	25.60
2008-09	365.64	292.43	5,752.61	3,874.93	9,627.54	33,358.29	28.86
2009-10	412.55	249.93	5,848.59	4,606.71	1,0455.3	35,176.68	29.72
<b>Tamil Nadu - population 624.06 lakh*</b>							
2005-06	228.67	132.27	3176.65	2,854.12	6,030.77	23,326.03	25.85
2006-07	270.79	177.33	3986.41	3,487.20	7,473.61	27,771.15	26.91
2007-08	306.07	196.04	4764.05	4,057.11	8,821.16	29,619.10	29.78
2008-09	356.56	224.37	5755.42	4,846.08	10,601.50	33,684.37	31.47
2009-10	409.08	243.26	6733.90	5,757.63	12,491.53	36546.66	34.18
<b>Karnataka - population 528.50 lakh*</b>							
2005-06	143	114	3,396.79	Nil	3,396.79	18,631.55	18.23
2006-07	154	118	4,495.47	Nil	4,495.47	23,301.03	19.29
2007-08	325	143	4,766.57	Nil	4,766.57	25,986.76	18.34
2008-09	366	154	5,749.56	Nil	5,749.56	27,645.66	20.80
2009-10	390	142	6,946.32	Nil	6,946.32	30,578.60	22.72

<sup>@</sup>includes country liquor # in lakh cases \* Population figures based on Census Report 2001

As can be seen from the above the percentage of excise duty receipts to the total receipts in respect of States of Andhra Pradesh, Karnataka and Tamil Nadu for the period 2008-10 were almost more than double the percentage of excise revenue collection in Maharashtra, though the population of the State was highest.

The *per capita* realisation of revenue from State excise duty and VAT was also the lowest in the State when compared with other three States as shown in the following table:

Sl. No.	Name of the State	Year	
		2008-09	2009-10
1	Tamil Nadu	170	200
2	Karnataka	109	131
3	Andhra Pradesh	126	137
4	Maharashtra	60	71

The high *per capita* revenue realisation in other States indicates revenue maximization policies in those States.

Our analysis revealed that the States of Andhra Pradesh, Karnataka and Tamil Nadu had benefited significantly by canalising the entire supply of IMFL/Beer whether domestically manufactured or received from other States through setting up of State Beverage Corporations for selling alcoholic beverages. . This finding is also supported by the study report published by ICRA Management Consulting Services Ltd., in October 2009 in respect of liquor manufacture and trade in the whole country which indicated that Andhra Pradesh, Karnataka and Tamil Nadu had benefited significantly by setting up State Corporations for sale of liquor.

As Article 47 of the Constitution of India ordains that the State shall endeavour to bring about prohibition of consumption of liquor, being a demerit commodity, it was expected that the tax on liquor would be high enough to discourage its consumption and at the same time result in augmentation of revenue. However it was seen that though the consumption of liquor in Maharashtra was high the comparative revenue yield was unfavourable.

In the exit conference the Principal Secretary stated that any decision in the matter would be taken after due diligence.

**The Government may like to study the excise policies and procedures in these States for augmentation of its excise revenues.**



## 6.2.8 Internal Controls

### 6.2.8.1 Non-submission of periodic returns by excise offices

Internal controls help in creation of reliable financial and management information system for adequate safeguards against non/short collection or evasion of taxes. The internal control mechanism should also be reviewed and updated from time to time to keep it effective. In order to collect and compile the data in a systematic and scientific manner a Deputy Director (Statistics) is posted in the office of the CSE, Mumbai. The SPEs are required to furnish returns every month in forms (MS 1 to MS 9) to the CSE, Mumbai and DDCs based on the returns furnished by the licensees to it. The returns *inter-alia* indicate the revenue of the district sub-head-wise and manufacturer-wise, quantity of liquor traded, position of breach/criminal cases, illegal activities, departmental targets and achievements thereof, etc..

During test check of records at the DDC, Pune we noticed that SPEs at Ahmednagar, Pune and Solapur did not submit any of the returns from September 2006 to March 2010 and SPEs at Raigad and Thane submitted only returns in form MS 1 to MS 3 to CSE, Mumbai. Compilation of data relating to collection of revenue and its analysis is an important requirement of internal monitoring system. Hence, in the absence of submission of periodic returns, the Department could not

reconcile the revenue realised with the Finance Accounts, recover the differential licence fees based on actual production and sale, monitor the breach cases/ registered crime cases, auction of seized materials. The Department was also not able to publish its annual publication on basic statistics since 2006.

### 6.2.8.2 Arrears of revenue

The SPE officers at district level are required to maintain a database of arrears of revenue. This information is required to be sent to the Commissioner's office for monitoring the arrears of recovery so that the amount to be recovered is not lost sight of.

During test check of the offices of the SPEs, information on arrears pending recovery as on 31 March 2010 was requisitioned. However, majority of the SPEs indicated the arrears recoverable are 'nil'. In view of this the data was requisitioned from the CSE office, but no information has been furnished till date (October 2011).

In exit conference the matter was discussed and the Department stated that the details of arrears have not been compiled and efforts are being made to compile the same after which it would be furnished to audit.

### 6.2.8.3 Internal Audit

There is an Internal Audit Wing functioning under Chief Accounts Officer (CAO) of the CSE, Mumbai as well as six DDC at the divisional level. The audit at the CAO level was started in the year 2008. Though CAO had

conducted the audits no reports were prepared by him and no registers were maintained giving details of the nature of observations made, etc.

#### 6.2.8.4 Internal audit by DDC

The positions of internal audits as per the Register of audit in respect of three DDCs<sup>5</sup> for the period from 2005-06 to 2009-10 were as under:

Year	Units due for audit	No. of units actually audited	Shortfall	Percentage shortfall
2005-06	251	98	153	60.96
2006-07	251	119	132	52.59
2007-08	251	125	126	50.20
2008-09	251	175	76	30.28
2009-10	303	177	126	41.58

As can be seen from the above, percentage of shortfall in inspections ranged from 30 to 61 *per cent*. DDC, Nashik had completed all the audits during the above period but DDC, Aurangabad had not carried out any inspections during the period 2005-06 to 2007-08. In DDC, Pune though audits were being conducted and inspection reports issued, no register giving details of units audited, observations made, cleared, recoveries effected, etc., was maintained.

The position of objections raised and clearance as per the Register of objections in respect of three DDCs were as follows:

(₹ in lakh)

Year	Opening balance		Addition of		Total paras in		Clearance of		Balance	
	LAR paras	Amt	LAR paras	Amt	LAR	Amt	LAR paras	Amt	LAR paras	Amt.
2005-06	1	3.82	236	17.07	237	20.89	72	14.74	165	6.15
2006-07	165	6.15	139	64.38	304	70.53	64	8.07	240	62.46
2007-08	240	62.46	142	18.94	382	81.40	59	11.32	323	70.08
2008-09	323	70.08	496	209.39	819	279.47	158	14.19	661	265.28
2009-10	661	265.28	364	41.83	1,025	307.11	25	4.97	1,000	302.14
			<b>1377</b>	<b>351.61</b>			<b>378</b>	<b>53.30</b>		

As seen from the above table for the period 2005-06 to 2009-10 out of 1,378 paras involving ₹ 3.55 crore about 1,000 paras (72.57 *per cent*) involving ₹ 3.02 crore (85.07 *per cent*) were pending clearance as on 31 March 2010. Failure of the officers concerned in taking prompt action had rendered Internal Audit efforts ineffective.

Thus, internal controls with reference to internal inspections were inadequate and ineffective due to short fall in inspections, non-submission of returns and pendency in clearance of observations. No system was also put in place in the CSE, Mumbai office to deliberate upon the audit observations for speedy clearance of observations and ensuring that the coverage was as prescribed.

After we pointed out the deficiencies in internal control, the CSE Mumbai accepted (September 2011) the observations and stated that necessary

<sup>5</sup> Aurangabd, Nashik and Konkan.

measures for restructuring of the internal control mechanism would be carried out.

In the exit conference the Principal Secretary while reiterating the views of the CSE also stated that action would be taken to computerize various functions of the Department and streamline the submission of returns by making it online. He further stated that a special cell would be formed to take action on all observations raised in audit.

### 6.2.9 Human Resources

For efficient functioning of the State Excise Department a proper manpower planning to meet its objectives and optimum deployment of manpower is of prime importance. The recruitment policies and practices have to be geared up to meet the available vacancies. Section 58A of the Bombay Prohibition Act, 1949 empowers the State Government to recover the cost of staff deployed for supervision from the persons engaged in manufacturing, importing and exporting of liquor.

Our scrutiny of the file of Staff position maintained in the office of CSE Mumbai revealed that there was huge shortage of staff in Class II and Class III. The position of the sanctioned and filled up strength was as follows:

Class	Sanctioned strength	Men in position	Vacancy	Percentage of vacancy
I	52	42	10	19.23
II	65	29	36	55.38
III	3,354	2,175	1,179	35.15

We collected the data of the staff position from the CSE, Mumbai which was submitted to it by the SPEs of 27<sup>6</sup> districts. The analysis of the data revealed that the staff in the Range Offices (at Government expense) such as Dy. Superintendent, Inspectors, Sub-Inspectors, Asst. Sub-Inspectors and Constables in SPEs office and similar staff deployed at licencees premises as on 31 March 2010 were as follows:

	At Government expense	At licencees expense
Sanctioned Strength	1,527	992
Filled up Strength	1,161	344
Vacancy position	366	648
Percentage of vacancy	24	65

It could be seen from the above that the major vacancies were in the personnel deployed in the premises of the Licensees such as manufacturers and wholesalers who are subject to physical control for movement of excisable goods and the expenses incurred on such personnel is recoverable from the licencee. Absence of adequate personnel, affects the proper control of

<sup>6</sup> Ahmednagar, Akola, Aurangabad, Beed, Bhandara, Buldhana, Chandrapur, Dhule, Gadchiroli, Hingoli, Jalna, Jalgaon, Kolhapur, Latur, Nagpur, Nanded, Nandurbar, Nashik, Osmanabad, Parbhani, Pune, Raigad, Ratnagiri, Sangli, Sindhudurg, Thane, and Yavatmal.

movement of excisable goods hence there is a possibility of leakage in revenue due to inadequate supervision. In the major revenue earning districts such as, Nagpur, Pune, Raigad and Sangli the shortage of staff deployed in the licenced premises of manufacturers/wholesalers of liquor were 85 per cent, 83 per cent, 79 per cent and 73 per cent, respectively.

Further, there was unequal deployment of staff, depending upon the type of licence and turnover. For instance, in Seagram Ltd., Nashik, which had licences like MI, PLL and RS II and the unit's revenue contribution was ₹ 329 crore, it had nine excise officials posted while United Breweries Ltd Unit I at Nashik district with similar licences and comparable revenue contribution of ₹ 358 crore had just two officials and partial supervision by a Dy. Commissioner. Similarly GM Breweries Ltd, at Virar, District Thane with revenue contribution of ₹ 294 crore had only two officials.

After we pointed out the matter, Department did not agree with the contention that absence of personnel had undermined or compromised revenue of the State, considering the increase in revenue during the five year period. They said that recruitment drive for all posts has been going on for the past three years and the delay was due to procedural aspects of recruitment through neutral agencies. The Government had also banned new recruitments in June 2010 which was lifted in February 2011.

The fact remains that huge shortage in manpower resulted in inadequate supervision of movement of excisable goods leading to a possible leakage of revenue.

#### 6.2.10 Cases filed by flying squads and executives

For detection of offences under the BPA Act, 1949 flying squads have been put in place by the Department. At present there are 45 flying squads working in the State, out of which one is at State level, six are at divisional levels and 38 are at the district levels.

The data furnished by 29<sup>7</sup> out of 35 SPEs, to CSE, Mumbai and the scrutiny of the crime registers maintained in the SPE offices revealed the following position:

Year	Total cases registered	No of persons arrested	Total vehicles seized	Cases disposed by the court	Convicted cases	No of acquitted cases
2005	23,160	9,680	282	4,779	505	1,246
2006	22,176	6,102	329	3,830	244	1,013
2007	43,576	11,418	727	7,390	206	2,081
2008	25,338	6,082	461	4,150	172	847
2009	25,567	6,037	459	2,965	93	9,924
2010	5,880	1,493	77	650	0	214
<b>Total</b>	<b>1,45,697</b>	<b>40,812</b>	<b>2,335</b>	<b>23,764</b>	<b>1,220</b>	<b>15,325</b>

<sup>7</sup> Ahmednagar, Akola, Aurangabad, Beed, Bhandara, Buldhana, Chandrapur, Dhule, Gadchiroli, Gondia, Hingoli, Jalna, Jalgaon, Kolhapur, Latur, Nagpur, Nanded, Nandurbar, Nashik, Osmanabad, Parbhani, Pune, Raigad, Ratnagiri, Sangli, Sindhudurg, Thane, Wardha, and Yavatmal.

Out of the 1,45,697 cases detected and registered during the calendar years 2005 to 2010, 39,667 were claimed cases (relates to person who had committed crime and were identified) whereas 1,06,030 i.e. 72.77 per cent were unclaimed cases (offenders not identified). As per the crime register, the value of the materials seized in the above detected cases was ₹ 98.63 crore while the amount realised from auction of the material seized during the corresponding period was ₹ 52.11 lakh. Out of the above in 10 district offices (SPEs)<sup>8</sup> as against 39,530 cases detected, in which value of seized material was ₹ 27.35 crore, it was seen that the material auctioned was 'nil'. Among the seized goods there were 2,335 vehicles which were yet to be auctioned. The delay in auction of the seized goods indicated that though the value of the seized goods appear to be substantial on paper the realisation was meagre and auctioning of these goods may be difficult as the value of the goods would deteriorate due to the passage of time.

According to the Performance Budget 2009-10, 2,29,211 cases filed by the Flying Squad for the entire State were pending in the court of law. The Department did not have yearwise breakup of the cases pending in the court of law. During the period 2005 to 2010, out of 23,764 cases decided by the courts 1,220 cases (0.5 per cent) resulted in conviction.

After we pointed out the matter, the Department stated that the majority of the cases booked are unclaimed and the value of the seized material constitutes value of illicit wash which requires to be destroyed. Further rusted barrels etc., used by the offenders fetch little price, hence the contention of audit that the value of the seized material is more is not tenable. In respect of the detection cases which are pending in the courts it was stated that the sample analysis report to confirm whether alcohol was found in the detected cases is not received from the Government Chemical Analyser in time resulting in the cases being disposed off by the lower courts due to lack of evidence. Hence the rate of conviction cases is less. The matter regarding non-availability of sample analysis report from the Government Chemical Analyser will be taken up and matters pending in court would be pursued.

The CSE office stated (September 2011) that necessary steps for faster disposal of the cases would be taken and measures for obtaining sample analysis reports and follow up of booked cases would be taken.

In the exit conference the Principal Secretary stated that the low rate of conviction was serious cause for concern and asked the Department officials to take immediate action in the matter and stated that the cases would be pursued by the qualified personnel in the Department to increase the conviction rate.

<sup>8</sup> Ahmednagar, Akola, Buldhana, Dhule, Gadchiroli, Latur, Nandurbar, Parbhani, Thane and Wardha.

## Manufacturing

### 6.2.11 Manufacture and sale of country liquor

#### 6.2.11.1 Loss of revenue due to sale of country liquor above MRP

The Maharashtra Potable liquor (Fixation of Maximum Retail Prices) Rules, 1996 does not define Manufacturing cost (MC). The rates of excise duty are regulated by the notifications issued by the Home Department from time to time. The Government in January 1997 introduced *advalorem* based duty. As per this system duty was payable at the prescribed rate on Manufacturing cost or specified rate of duty based on proof litre whichever is more.

Our scrutiny of the records of the records of the CSE, Mumbai relating to the authentication approval of the MRP fixed by the manufacturers, we noticed that the manufacturers were fixing the MC in such a way that the excise duty payable was never more than the specific rate payable on the proof litre<sup>9</sup>

of country liquor. The commissioner had approved the MRP as submitted by the manufacturers. All the 35 country liquor manufacturers were uniformly declaring the same manufacturing cost and MRP, irrespective of their brand and sale price, by revising the MC and MRP whenever there were changes in the rate of excise duty. The rate of excise duty and MRP are shown in the following table:

Date of change in rates	Advalorem rate as a percentage of MC	Specific rate per proof litre (₹)	Cost and MRP declared for 180 ml bottle	
			MC (₹)	MRP (₹)
29.5.2003	200	50.20	1.88	7.72
13.4.2006	200	55.00	3.71	7.43
30.3.2007	200	60.00	4.05	16.20
1.7.2009	225	65.00	3.90	21.94*

\*MRP included sales tax from 1.7.2009 prior to that MRP was excluding sales tax

Further, analysis of the data collected from the wholesalers in respect of 12 country liquor manufacturers, for the year 2009-10, revealed that as against the uniform MRP of ₹ 1053 per case of 180 ml (i.e. 21.94 x 48 bottles), the sale price of the manufacturers to wholesalers ranged between ₹ 963.30 and ₹ 1,047.80 per case. As against this the corresponding sale price of the wholesalers/retailers to the ultimate consumers ranged between ₹ 1,107.80 and ₹ 1,204.97 per case. This resulted in sale of country liquor above MRP by the wholesalers/retailers ranging between ₹ 54.80 and ₹ 151.97 per case. The above situation was due to the fact that a lower MRP fixed by the manufacturers and as approved by the Department was such that it left very

<sup>9</sup> 1 proof litre is equal to 100° London Proof litre or 57.1 per cent Volume/Volume. Normally the potable alcohol sold in India is of 75° Proof litre or 42.82 v/v strength. Hence if the specified rate of duty is ₹ 65 per proof litre then the effective specified rate of duty for 1000 ml (i.e. 1 bulk litre) of country liquor of 75° would be ₹ 48.75.

little margin for the wholesalers and retailers thereby forcing the wholesalers and retailers to irregularly sell at higher rate as compared to the approved MRP.

The MRP violations were in the knowledge of the Department as evident from one such order (February 2006) of the CSE, wherein it was observed that manufacturers were selling country liquor at higher rate to the wholesalers leaving very little margin for the wholesalers and as a result the end consumer pays more than the MRP and is therefore cheated. So also the Government is deprived of additional revenue which otherwise it would have earned, had the manufacturing cost and MRP increased by these manufacturers.

From the above it is clear that the Department was aware of the deliberate declaration of low MC/MRP but no concerted action was taken against the manufacturing units to stem the loss of excise duty.

The Show cause notice (SCN) issued to wholesalers for violation of MRP is adjudicated by the CSE. We observed that SPE, Mumbai Suburban District had issued SCN to fourteen wholesalers of country liquor in July 2009 and December 2009 for recovery of Excise duty of ₹ 7.40 crore due to sale of Country liquor above MRP by the wholesalers to retailers. These SCN had not been entered in the Breach Register by CSE nor adjudicated till date (September 2011). After we brought this fact to the notice of the CSE as also that there were several more cases which were not entered in the Breach Register escaping adjudication and imposing of penalty the Department intimated that the Breach Register had been updated. Scrutiny of the updated register revealed that 105 breach cases for sale of country liquor above MRP was issued to wholesalers from 2005 onwards but they had not been adjudicated by CSE. This shows that the Department had been taking a very lenient view on violation of MRP by the manufacturing wholesalers/retailers which has resulted in loss of excise revenue to the Government.

In case of violation of MRP by retailers the Department merely recovers compounding fees ranging from ₹ 5,000 to ₹ 20,000 but does not take any action to recover the excise duty lost due to under declaration of MRP even though the proviso to Section 104 of BPA, 1949 mandates recovery of excise duty in addition to compounding fees.

After we pointed out the case, the Dy. Commissioner (Inspection) stated that the *advalorem* duty structure for levy of excise duty was introduced replacing the system of specific rate. The aim of the Government is to protect the specific rate of excise duty and violation of MRP at retail level cannot be termed as evasion of excise duty. However, the Department accepted that in view of the audit observation incidence of violation of MRP cases would be looked into and breach cases booked against culprits.

The main reasons for violation of MRP by retailers were due to unrealistic MRP declared by the manufacturers who have declared a very low MC and at the same time selling the country liquor at a higher cost to the wholesalers with the intention to avoid excise duty. No action has been taken against the manufacturers for recovery of excise duty in case of violation of MRP by wholesalers and retailers. The show cause notices issued by the Department to the wholesalers for selling the country liquor above MRP and cases noticed in

audit where it was found that wholesaler themselves are selling to retailers above MRP also bear evidence that the problem cannot merely be addressed at the retailers stage and Government has to ensure that the MRP and MC, which are interlinked, declared by the country liquor manufacturers are realistic/true, since excise revenue is involved in an *advalorem* duty rate structure.

The fact remains that if the Department overlooks the process of under-declaration of MRP by the manufacturers, the very purpose of introducing the *advalorem* based duty structure would be defeated.

The Department may adjudicate finally on the MRP violations occurring at all stages.

### 6.2.11.2 Reduction of manufacturing cost of country liquor

The Home Department vide its notification dated 26 June 2009 had increased the excise duty on country liquor from 200 *per cent* of the manufacturing cost or ₹ 60 to 225 *per cent* of manufacturing cost or ₹ 65 per proof litre whichever is higher with effect from 1 July 2009. Since the manufacturers realised that *advalorem* excise duty payable would be higher, all the manufacturers reduced the manufacturing cost from 1 July 2009 in unison from ₹ 16.875 per bottle of 750 ml to ₹ 16.25 per bottle of 750 ml. However, simultaneously the manufacturers increased the basic sale price (excluding all taxes) of the liquor bottles. This was done to ensure that the cost of manufacture of liquor bottle as worked out by the rate (₹ 16.25 per bottle) did not exceed the revised ceiling limit of ₹ 65 per proof litre and also does not affect the profit margin adversely. In effect, the cost of manufacture declared by the manufacturers is the derived cost rather than the actual cost with a view to pay less excise duty. We worked out the possible short realisation of excise duty in respect of 11 distilleries in seven test checked districts<sup>10</sup> which worked out to ₹ 13.04 crore.

After we pointed out this matter, the concerned excise authorities stated that the matter would be referred to the higher authority for guidance.

In the exit conference the Principal Secretary stated that in case of any impropriety, effective steps to ensure that no revenue loss is caused would be taken.

**The Government may evolve a mechanism to ensure that the MC *vis a vis* MRP declared by the country liquor manufacturers is correct and realistic so as to ensure that the Government's own *advalorem* duty structure provided for is implemented in letter and spirit.**

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<sup>10</sup> Ahmednagar, Aurangabad, Kolhapur, Nashik, Osmanabad, Solapur and Thane.



### 6.2.12 Blockage of Government revenue due to inept handling of recovery in the case of M/s.Meher Distilleries Pvt. Ltd.

The levy and collection of excise duty on production, manufacture, possession, transport, purchase and sale of alcoholic liquors for human consumption are governed by the Bombay Prohibition Act, 1949 and the rules made thereunder. The rates of excise duty are regulated by the notifications issued by the Home Department from time to time.

The rate of excise duty on country liquor manufactured from *mhowra* flowers was increased by notification, issued by the Home Department in July 1987, from ₹ 13 to ₹ 26 per proof litre. M/s. Meher Distilleries Pvt. Ltd. (MDPL) who was in the process of manufacturing country liquor had challenged this notification in

the Bombay High Court in August 1987 on the grounds that the cost of production of the country liquor from *mhowra* flowers was much more than the liquor manufactured with molasses as a base and this aspect had not been taken into consideration by the State Government while issuing the notification. The Department contended in its submission to the Court that MDPL was making excess profit by resorting to blending 80 per cent of molasses with *mhowra* and that the price of country liquor was not controlled and therefore they were charging their own price on sale. The Bombay High Court accepted the contention of the Department and in its judgment dated 18 June 2001 ordered that the Government was entitled to recover ₹ 35.35 crore with interest of 15 per cent per annum upto 18 May 1998 and at two per cent per month thereafter till realisation. As of May 2009 the total amount recoverable was ₹ 160.61 crore. During pendency of the judgment licences in Form I and CL I were granted (September 1995) to the family members of the partners of Meher Distilleries to set up another company viz. M/s. South Seas Distilleries and Breweries Pvt. Ltd. (SSDBPL), though there was ban on issue of such licences at the given point of time upto the year 1999. We noticed in audit that during the period of ban the Government issued two (M/s.Oceanic who subsequently sold the licence to M/s.Seagram and M/s. Karan Distilleries) other licences.

As M/s. MDPL did not pay the excise duty, the matter relating to recovery of dues as arrears of land revenue was referred to the Collector, Thane in February 2002. The Collectorate estimated the property of the company at ₹ 80 lakh and concluded that the amount was insufficient for recovery of dues.

To look into this aspect, the Government appointed a High Power Committee (HPC) in May 2004 consisting of the Principal Secretary (Transport and Excise), Commissioner of State Excise, Dy. Commissioner of State Excise, Additional Chief Secretary (Finance) and Principal Secretary (Law and Judiciary) after a lapse of more than two years from which recovery proceedings were initiated. In its final report (January 2005), the HPC recommended recovery of ₹ 9 crore though the Additional Chief Secretary (Finance) and the Principal Secretary (Law and Judiciary) had expressed their dissent on the recommendations of the HPC. Our scrutiny of the files of the Home Department revealed that the Finance Department (May 2006) did not accept the HPC's recommendation contending that it was not in the financial interest of the State and also due to the fact that it could not be treated as an

HPC report as the officers of the Excise Department were the only signatories to the final recommendations.

Subsequently after more than four years since the HPC had submitted its report, the Chief Secretary to whom the matter was referred, decided in a meeting held in May 2009 that an amount of ₹ 15 crore could be recovered from the company in five equal installments. The decision was based on the opinion of the Advocate General that since it was a company whose legal entity is distinct from its members, the latter are not liable to pay the dues. However, our scrutiny of records revealed that the manufacturing licence (CL 1) continued to be in the name of Meher Distilleries, a partnership firm and not in the name of the company (MDPL). As the liabilities of the partners in the firm are unlimited, the arrears of duty should have been recovered from the assets of the partners.

In absence of any records being available either with the Home Department or with the CSE for the period under dispute i.e. 1984 to 1992, the extent to which firm had alienated its assets, so as to preempt their attachment by the Government could not be ascertained from the records.

The then CSE, in his letter addressed to the Principal Secretary, Home (Transport and Excise) on 5 December 2003 had stated that the Department had taken the case lightly during the period 1988 to 1992 and woke up only after massive arrears had accumulated and no security or bank guarantee was obtained from M/s. Meher Distilleries.

As of May 2009 the total recoverable dues as worked out by us amounted to ₹ 160.61 crore including the excise duty recoverable of ₹ 35.35 crore and interest leviable thereon of ₹ 125.26 crore. Out of this, the Department had recovered only ₹ 6.25 crore as against ₹ 15 crore as determined by the Chief Secretary.

The above position made it amply clear that the lackadaisical approach of the Government/Excise Department in stretching the issue of recovery for almost eight years after the High Court had decided the issue, and misrepresenting the fact that the amount is recoverable from a company and not the firm in whose name the licence still exists, resulted in non-recovery of even the minimum duty of ₹ 29.10 crore (₹ 35.35 crore excise duty less ₹ 6.25 crore paid) despite a favorable decision from the High Court.

In the exit conference, the Principal Secretary was seized of the issue and stated that the case of M/s. Meher Distilleries would be reopened for recovering the dues. This did not explain their inaction for actual recovery, all these years.

### 6.2.13 Non-recovery of supervision charges

As per the provisions of section 58(A) of the Bombay Prohibition Act, 1949, all transactions relating to the receipts, manufacture, storage, transport, export, etc., of excisable goods are required to be supervised by the State excise staff and the cost of deputing the departmental staff at the premises of the licensee is recoverable at the rates prescribed by the CSE from time to time. The rates of supervision charges are revised as and when there is revision in the pay scale/ dearness allowance. The Government vide its GR dated 28 February 2009 had adopted the report of the Sixth pay Commission.

During test check of the Supervision charges register maintained in the Excise Offices attached to 23 manufacturers/distilleries<sup>11</sup>, we noticed that

though the State Government had adopted the revision of pay structure as per the Sixth pay commission in February 2009, the revised supervision charges in respect of the excise staff deployed at the premises of the licensees for the period from January 2006 to December 2009 had not been recovered. This resulted in short recovery of supervision charges of ₹ 1.46 crore. Scrutiny of records in the office of CSE, Mumbai revealed that the circular communicating the revised rates was issued after a lapse of 20 months on 31 October 2010. Further, the concerned excise officers had also not computed the differential supervision charges for issue of demand notices to recover amounts aggregating ₹ 1.46 crore, though four to seven months had passed after the issue of the circular by the CSE. Failure of the CSE to communicate the revised rates in time and further delay by the excise officers to compute the differential supervision charges resulted in non-recovery of ₹ 1.46 crore.

After we pointed out these cases, in six districts<sup>12</sup> wherein ₹ 69.23 lakh was to be recovered, 10 Excise Offices accepted the observations and stated that demand notices would be issued for recovery. Remaining 13 Excise Officers of four districts<sup>13</sup>, wherein ₹ 76.48 lakh was to be recovered stated that action would be taken after verification.

The Department accepted (September 2011) the audit observation and stated that recovery of the differential amount is being carried out. As far as delay in raising demand is concerned it was stated that same was caused as initially guidance was sought from the Government but latter it was realised that no guidance was required.

<sup>11</sup> Ahmednagar, Jalna, Kolhapur, Latur, Nashik, Pune, Raigad and Thane.

<sup>12</sup> Ahmednagar, Jalna, Kolhapur, Latur, Raigad and Thane.

<sup>13</sup> Kolhapur, Nashik, Pune, and Thane.

## 6.2.14 Non-passing of benefit of exemption on wine to consumers

According to the notification issued by the Government, wine without addition of alcohol is subject to excise duty at 100 per cent of the manufacturing cost with effect from 15 January 1997. The MRP admissible was four times the manufacturing cost inclusive of excise duty in case the manufacturing cost does not exceed ₹ 40 and four times the manufacturing cost increased by an amount equal to the manufacturing cost in excess of ₹ 40 per litre of wine. The Government of Maharashtra had exempted wines manufactured from grapes within the State from excise duty partially in 2001 and fully from 2004. However, the MRP is regulated by the Government/ Department, since the exemption is subject to certain terms and conditions.

During test check of MC and MRP approval files in SPE offices and in the office of the CSE, Mumbai, we noticed that during the period 2005-06 to January 2009 wineries had got its MRPs approved at four times the manufacturing cost which clearly implies that the manufacturers had recovered excise duty from consumers, as excise duty is a part of MRP. Since exemption from excise duty is granted to specified wine

manufacturers it amounted to indirect recovery of excise duty from the whosalers vis-à-vis consumers.

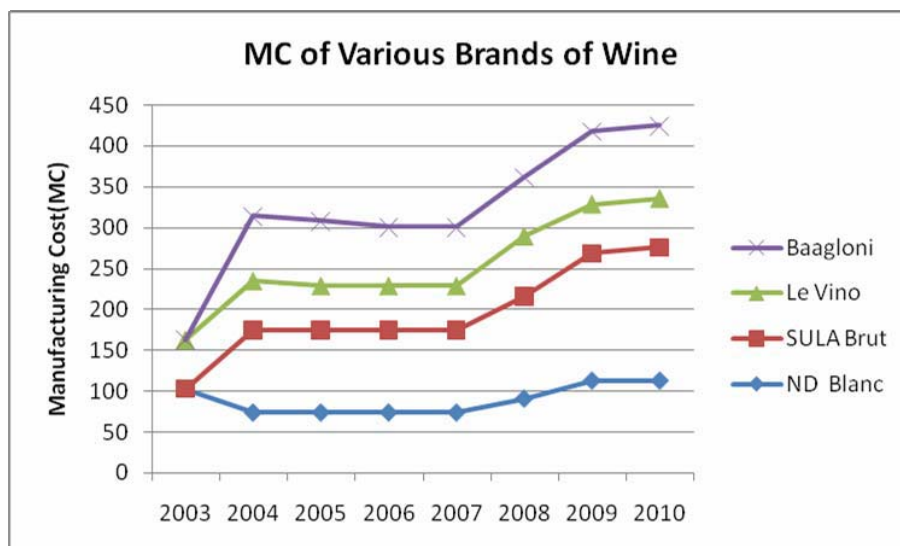
The MC and MRP fixed by the four manufacturers<sup>14</sup> for 750 ml bottles was as follows:

Sl. No.	Brand Name		2003	2004	2005	2006	2008	2009	2010
1	ND Sauvignon Blanc	MC	103	74	-	-	91	113	-
		MRP	485	340	-	-	510	509	-
2	Sula Brut Methode Champenoise	MC	-	101	-	-	125	156	163
		MRP	-	475	-	-	714	714	750
3	Le Vino Red Wine	MC	60	-	54	-	74	60	-
		MRP	210	-	240	-	315	250	-
4	Baaglioni Red/Rose/White Wine	MC	-	79	-	72	-	89	-
		MRP	-	365	-	330	-	395	-

(-) in the table indicates that either the manufacturer have not revised the rates or the information is not available.

Analysis of the above data shows that there were wide variations from year to year in fixing the MC. The basis for the same were also not found on the record as the manufacturers were also not obliged to give any details or breakup of the MC. There was no uniformity/consistency in fixing the MC on different brands as would be seen from following graph:

<sup>14</sup> ND Wines Pvt. Ltd, Nashik Vintners Pvt. Ltd, Rajdheer Wines Pvt Ltd and Prathmesh Wines Pvt. Ltd.



The Government issued a notification in February 2009, whereby the MRP admissible was reduced to three times the manufacturing cost. This was in pursuance of Hon'ble Bombay High Court decision<sup>15</sup> which had held that recovery from consumers of of MRP at four times the MC amounted to collection of excise duty from consumers and unjust enrichment by wine manufactures. However, it was noticed that except for one manufacturer other three manufacturers increased the MC and maintained the same MRP defeating the purpose of the notification issued in pursuance of the High Court judgment. Thus due to absence of the parameters in Rules for fixing the MC, manufactureres could reap the benefit of exemption of excise duty without passing it on to the consumers. The Department also approved the MRP without details of the manufacturing cost.

We recommend that the Government may fix the parameters for defining the MC and define MC in the Rules so that the manufacturers are required to furnish details/break up of the manufacturing cost.

<sup>15</sup> The Aurangabad bench of Bombay High Court (writ Petition No. 7033 of 2007) in the case of Vilas Dongarlal Jaiswal v/s State of Maharashtra.

### 6.2.15 Exemption from payment of excise duty on losses allowed in warehousing of beer

According to the provisions of the Bombay Prohibition Act, 1949, the quantity of beer manufactured after pasteurization is entered in the register (BR VI). Losses upto 6 per cent is allowed on the quantity of beer finally accounted for in the above register. The Act does not specifically provide for losses in warehousing and as per the circular issued by the CSE, Mumbai in July 1987 no losses could be allowed in manufacture of beer after pasteurization.

During scrutiny of the records in CSE, Mumbai in August 2007, we noticed that the Joint Commissioner (Alcohol and Molasses) had in the case of M/s. Fosters India Pvt. Ltd. exempted the levy of excise duty on the beer bottles which had broken during removal from the warehouse for distribution. The exemption was based on the letter received from the Home

Department in July 2007. Similar exemption from excise duty was also allowed to six other breweries<sup>16</sup> that approached the Department with a similar request as made by M/s. Foster India Pvt. Ltd.

In the case of Millennium Beer Industries Ltd losses in storage of beer was allowed for the period January 2008 to March 2011 involving excise duty of ₹ 59.36 lakh. Though the Excise authority posted in the brewery had regularly pointed out to the SPE, Aurangabad that the brewery was recovering the full cost of the beer including excise duty from the contractors handling the material for which they had evidence in support of their contention, no action was taken by the Department in this regard. This amounted to unjust enrichment to the brewery of ₹ 59.36 lakh. Similar losses in respect of the other breweries could not be ruled out.

After we pointed out these cases, the Department stated that as per the provision of Bombay Prohibition (BP) Act, 1949, excise duty is leviable on any alcoholic liquor for human consumption. Further, it was stated that in the case of M/s. Maharashtra Distilleries Ltd. v/s State of Maharashtra (W.P. No. 401 of 1982) the Bombay High Court in its order dated 17 April 1988 had held that as per clause d(1) of Section 106 of BP Act, 1949, no excise duty is leviable on wastages. In view of this the Government had conveyed its decision that excise duty is not chargeable on wastages of beer occurring in warehouse.

We do not find the reply tenable, since in the subsequent case of M/s. Mohan Meakin Ltd v/s State of Maharashtra [(1993) 95 BOMLR 49] a full bench of the Bombay High Court in its order dated 8 September 1992 had held that as per section 106 of BP Act, 1949, “where payment is made upon issue for sale from a licensed warehouse, such payment shall be at the rate of duty in force at the date of issue from the warehouse. Therefore, by an express provision in

<sup>16</sup> M/s Skol Breweries Ltd., M/s Hindustan Breweries and Bottling, M/s Bombay Breweries, M/s Asia Pacific Breweries Ltd., M/s Lilason Industries Ltd. and M/s Millenium Beer Industries.

the statute, when facility of paying at a later date is given to a person liable to pay excise or countervailing duty, he has to pay the rate prevailing at the date when he actually releases the goods from the licensed warehouse for sale. The contention of the petitioners that the excise duty becomes leviable under Section 106 on articles when they are issued from a bonded warehouse for sale does not appear to be correct". In view of this it was adjudged that the petitioners had no right in contending that duty cannot be levied in transit or while in storage.

In the exit conference, the Principal Secretary stated that action would be initiated to withdraw the order, if found incorrect.

### 6.2.16 Non-recovery of excise duty

As per the provisions of Maharashtra Foreign Liquor (Import and Export) Rules, 1963, every exporter has to execute a bond for the amount of duty and fees payable on the excisable goods which are to be exported outside the State. The exporter is issued a pass for the purpose of export by the excise authorities on execution of the bond. Further, as per Rule 25(3) the exporter is required to produce a certificate within three months from the date of issue of the export pass in confirmation of the excisable goods having reached the destination and the importer having paid the excise duty prevailing in that State. As per Section 25(4) of the said Act, the officer in-charge of the distillery is required to calculate the excise duty and fees payable on the quantity of liquor which is not delivered.

During test check of Export Register of the Excise Officer attached to one licensee, we noticed that permits had been issued to him for export of seven consignments of Extra Neutral Alcohol (ENA). The licensee had exported the consignments during various periods between June 2008 and January 2011 but had not furnished the requisite certificates to the Excise Officer, even after lapse of four to 35 months from the date of issue of export permits. The aggregate excise duty involved in these cases amounted to ₹ 2.95 crore. The Department had not taken any follow-up action in this regard.

After we pointed out these cases, the CSE office stated (September 2011) that, export verification certificates are being obtained.

### 6.2.17 Excess transit losses of rectified spirit transported under bond

#### Superintendent of State Excise, Nashik

As per Rule 8 of the Bombay Rectified Spirit (Transport in Bond) Rule 1997, transport losses of 0.3 *per cent* per 100 kilometer (km) or actual whichever is less is admissible when alcohol is being transported from one place to another under bond.

During test check of the ENA Transport Passes of the Excise Officer, Unit No. I posted at M/s. United Spirits Ltd. Nashik, we noticed that the licensee had purchased 25,000 bulk litres of extra neutral alcohol (ENA) in July 2008 under bond from

M/s.Sagar Distilleries Pvt. Ltd. Scrutiny of the transport pass for receipt of excisable goods with M/s.United Spirits Ltd., Nashik revealed that only 20,496 bulk litres of ENA was received. This indicated that the transit loss was to the extent of 4,504 bulk litres. However, as the distance between the above two units was less than 100 kms, the admissible transit loss was 75 bulk litres. Thus, the excess transit loss over and above the permissible limit was 4,429 bulk litres on which excise duty involved/recoverable was ₹ 9.27 lakh. This amount was recoverable from the purchaser which is still pending.

After we pointed out this case, the CSE office stated (September 2011) that the loss of spirit was due to a mishap during transit and the write off of the quantity of the spirit lost was pending with the CSE.

## 6.2.18 Short levy of excise duty

### Superintendent of State Excise of Thane

Under the provisions of the Section 105 of the Bombay Prohibition Act, 1949 excise duty is leviable on the manufacturer/importer at the rate notified by the Government from time to time. On beer, the rate of excise duty is dependent on the alcoholic strength. In respect of beer whose alcoholic strength of proof spirit exceeds 8.75° (five *per cent* v/v) the rate of excise duty applicable during the period from March 2007 was 125 *per cent* of manufacturing cost or ₹ 20 whichever is more.

During test of the Import Register in Thane district during October 2008, we noticed that M/s. Wine Enterprises had imported 66,000 bottles (650 ml. each) of beer with strength exceeding 8.75° (five *per cent* v/v) proof spirit in November and December 2007 at manufacturing cost of ₹ 20.825 per bottle. On this

the licensee had paid ₹ 13.74 lakh at the rate applicable for mild beer instead of ₹ 17.18 lakh at the prescribed rate for fermented beer. This resulted in short payment of excise duty of ₹ 3.44 lakh. No action was taken by the Department to recover the differential amount.

After we pointed out the case, SPE, Thane accepted the observation and stated that the recovery would be made. However, in the compliance received (September 2011) from the CSEs office it is stated that excise duty had been correctly levied as mild beer had been imported and not strong beer, and this was due to a clerical mistake in preparing the import pass which led audit to believe that fermented beer was imported.

The reply is not tenable as the applicant Wine Enterprises had applied for import of fermented beer (Armstrong Beer of strength 8 *per cent* volume/volume).



### 6.2.19 Yield of alcohol from molasses and grain

The Maharashtra Distillation of spirit and manufacture of potable liquors rules, 1966 provides that the distillery officer shall furnish a statement in Form XII to the CSE giving details of distilleries where in the out-turn of spirit is less than 42.5 and 36.5 proof litres per quintal of mhowra flowers and molasses, respectively. The form XII also includes details of fermentation and distillation processes, percentage of sugar content in raw materials and yields. The minimum yield of rectified spirit (of strength 1.66 proof litres) for one metric tonne of molasses is 220 bulk litres. For the manufacture of grain based spirit licences were being issued from 1995 onwards.

Our analysis of yield of rectified spirit from molasses for a period of over three to four years (2006-07 to 2009-10) in respect of 16 manufacturers' revealed that the average yield of spirit was to the extent of 243 to 283 bulk litres. The higher yield was probably due to more efficient and modern plants and better manufacturing techniques. Under the

circumstances it is necessary to have a relook at the prescribed yield (220 bulk litres) fixed way back in 1966 so that the standard fixed is realistic and the monitoring process is also effective.

We also made an analysis of the yield of grain based rectified spirit in respect of seven manufacturers and found that the average yield ranged from 330 bulk litres in case of South Seas Distilleries and Breweries Pvt. Ltd. and 425 bulk litres in the case of Seagram Distilleries Ltd. However no parameters for yield of rectified spirit (based on the type of grain used) have been prescribed in the rules to ensure better monitoring of the yield and production in the grain based distilleries. There is an urgent need to prescribe the yield for better monitoring.

## Licencing

### 6.2.20 Licencing policy of FL-II (IMFL shop) and CL-III (Country Liquor Shop)

In Maharashtra various types of licences for sale or storage of imported foreign liquor/IMFL (FL I, FL II, FL III), country liquor (CL II, CL III) and retail sale of country liquor in sealed bottles (FL/CL/TOD III) are issued on payment of fee under the provisions of Bombay Foreign Liquor Rules, 1953, and Maharashtra Country Liquor Rules, 1973. These licences are required to be renewed annually by payment of fee. Transfer of licences is also permissible from one name to another under the provisions of the Bombay Prohibition (Privileges Fees) Rules, 1954. The State Government has imposed a ban on issue of fresh licences in respect of FL-II and CL-III in the year 1973-74.

We saw that as per the basic statistics prepared by the CSE, Mumbai in 2005, there were 1,613 FL-II and 3,975 CL-III licences in existence in September 2005. We noticed that there was a ban on issue of FL-II and CL-III licences from 1973-

74 and no further licences had been issued even though the population of Maharashtra had increased from five crore in 1973-74 to 10 crore in 2001. The Government stated (30 September 2011) that the files relating to imposition of ban on issue of FL II and CL III licences were not available and the ban was continued due to public pressure. The reply is not tenable as licences in respect of sale of IMFL/beer in bars, clubs and beer shoppe were liberally granted during the period. Thus the ban on issue of retail licenses was not in revenue interests of the Government.

Information furnished to audit during the entry conference revealed that there were approximately 65 (FL-II) and 322 (CL-III) defunct licences, due to the dispute among the legal heirs, pending decision of the Government, etc. Due to this 387 retail licences could not be put to use though the population in Maharashtra had increased two fold from 1973 to 2010.

Analysis of the available data received from the CSE, Mumbai, in respect of 31 districts, revealed that during the year 2009-10, the population served per retail outlet in the districts varied from (in respect of FL-II and CL-III) 10,176.92 (Mumbai City) to 34,720.80 (Parbhani). In Sindhudurg district with population of 8,68,825 as per census 2001, there was only one IMFL shop for the entire district during the year 2009-10. As this district is adjacent to Goa where the price of alcoholic beverages is half that of Maharashtra, illegal movement of liquor across the border into Sindhudurg district could not be ruled out as the traders enjoy a huge arbitrage advantage.

We noticed that in 1989 the Minister of Prohibition has stated in Legislature that as long as shops are not opened in Nagpur they shall not be opened elsewhere in the State. This ban was to be reviewed after a year but was not reviewed.

In this regard it is pertinent to mention that in States like Andhra Pradesh (AP) there is a system of auctioning of the licences with a validity period of two years. It was seen that during the year 2010-11 the AP Government had received ₹ 6,904 crore from auction of 6,505 licences. In Maharashtra the revenue realised from issue of all types of licences was ₹ 340.47 crore only, during the year 2009-10. Since imposition of ban on issue of licence for retail trade (FL II and CL III) the population in Maharashtra had increased two fold there would have been a huge demand for retail shops for sale of liquor which would also yield substantial revenue to the Government. Hence,

- The ban on issue of retail licence has not yielded commensurate revenue with the growth of population
- Inaction to allot the defunct licences to new licencees deprived the government of the revenue.
- Shop coverage was not commensurate with size of the district and its population

After we pointed out the above issues, the CSE office stated that ban on grant of new retail licences (FL II and CL III), was a Government policy. It was also stated that fresh retail licences in the nature of FL III, FL IV, FL/BR II, E and

E2 are continued to be issued. However, a suggestion to the Government to overhaul the retail licensing policy has been made.

In the exit conference the Principal Secretary stated issuing new retail licences was highly unpopular move which would meet resentment from all quarters.

The stand of the Government is not tenable firstly because the State Government has not implemented a prohibition policy for the entire state (except Wardha and Gadchiroli). Secondly the licences for bars and clubs were continued to be granted. Thirdly the intention of the government was not to curb or restrict consumption of alcohol. Since the licences were issued way back in 1973-74 the rights are being transferred by way of inheritance or sale and the Government earned meager revenue by way of privilege fee for such transfers.

**Government may consider lifting the ban and auctioning of the retail licences as it would be a viable alternative to obviate the situation of defunct licences and at the same time optimize the revenue collection through issue of licences.**

### 6.2.21 Non/short recovery of privilege fees

Under the provisions of the Bombay Prohibition (Privileges Fees) Rules, 1954, privilege fees are payable by the licensees for transfer of licence from one place to another as per Rule 4 or for the admission/ withdrawal of partner or partners as per Rule 5 and 6 of above mentioned Rules. The fees chargeable are regulated through notifications issued by the Government from time to time.

**6.2.21.1** During test check of the records of three Excise Officers attached to the Distilleries in Aurangabad and Nashik districts, we noticed that privilege fees for transfer of licence from one name to another, for the periods 2005-06 and 2007-08 to 2008-09, was paid at ₹ 47.63

lakh instead of ₹ 83.43 lakh. This was due to the fact that the privilege fees were paid at the rate applicable to the lower slab. This resulted in short payment of privilege fees of ₹ 35.80 lakh. No demand notices were issued by the concerned excise officers to recover the differential amount.

**6.2.21.2** During test check of the challans for payment of privilege fee in two Excise Officers attached to the Distilleries in Aurangabad and Kolhapur districts and the endorsement made in the licence of the manufacturers, we noticed that privilege fees for the year 2008-09 was paid at ₹ 34.43 lakh instead of ₹ 53.11 lakh. This was due to the fact that the privilege fees were paid at the rate applicable to the lower slab. This resulted in short payment of privilege fees of ₹ 18.68 lakh. No demand notices were issued by the concerned excise officers to recover the differential amount.

**6.2.21.3** During test check of the Licence Renewal Register of the SPEs at Mumbai City and Nashik, we noticed that privilege fees in three cases for the periods 2008-09 and 2009-10 was paid at ₹ 12.15 lakh instead of ₹ 23.26 lakh, for transfer of licence from one site to another resulting in short payment of

privilege fees of ₹ 11.11 lakh. This was due to the fact that licence fees at higher rate were applicable at the site where the transfer of licences had taken place. In another case in SPE, Pune, there was non-payment of privilege fees of ₹ 1.64 lakh in year 2008-09, for shifting of licence from one place to another. This resulted in non/short levy of privilege fees aggregating to ₹ 12.75 lakh.

After we pointed out these cases, the Department stated that the matter would be verified and necessary action would be taken.

### 6.2.22 Short recovery of licence fees

Under the provisions of Maharashtra Potable Liquor (Periodicity and Fees for Grant, Renewal or Continuance of Licence) Rules, 1996, the rates of licence fees are notified annually by the Commissioner of State Excise (CSE). In respect of manufacture of country liquor (CL-I) the rate of licence fees depended upon the quantity of bulk litres desired to be manufactured and for wholesale trade of foreign liquor (FL-I) or Country Liquor (CL-II) the rates of licence fees depended upon the quantity of bulk litres desired to be sold. The licence fee was payable in advance. These rates were revised periodically for the years 2005-06 to 2009-10. In case of default in payment of dues, interest at the rate of two *per cent* per month was chargeable on the amounts from the date they became due. In respect of CL-I and FL-I Licence, the manufacture/ trade is subject to physical control by the Excise Officers who are posted in the premises of the country liquor manufacturers and IMFL wholesalers and in respect of CL-II licence the concerned SPEs are required to monitor the sales through the monthly/annual returns filed by the Country Liquor wholesalers.

During test check of Licence Renewal Register and Licence files in of SPEs in six districts<sup>17</sup> along with the sales statement furnished by the manufacturers and wholesalers, we noticed that one manufacturer and seven wholesalers had renewed their licenses during the period 2006-07 to 2008-09 for the subsequent years based on a desired quantity to be manufactured or sold. However, our scrutiny of the database maintained by the SPEs revealed that the actual quantity manufactured/sold by these licencees

(one CL I, four CL II and three FL I) had exceeded the slabs for which licences were renewed during the corresponding previous years. The figures in the database were also cross checked with the concerned excise officers/ range officers for correctness of the data. This resulted in short payment of licence fees aggregating ₹ 9.46 lakh by these eight licensees. No action was taken by the Department to recover the differential amount. Failure of the concerned SPEs to monitor the short payment of licence fees despite the availability of the requisite data with them resulted in short recovery of licence fees.

<sup>17</sup> Akola, Aurangabad, Buldhana, Mumbai (Suburban), Nashik and Pune.

After we pointed out these cases, the CSE office accepted these cases and stated (September 2011) that the recoveries were being effected immediately

### 6.2.23 Non-recovery of compounding fees

#### Superintendent of State Excise, Mumbai (Suburban)

Under the provisions of the Section 104 of the Bombay Prohibition Act, 1949, The Government may sanction the acceptance from any person; whose licence, permit, pass or authorization is liable to be cancelled or suspended under the provisions of this Act, a sum of money in lieu of such cancellation or suspension or by way of composition for the offence which may have been committed as the case may be. For this purpose a register (breach) is maintained in office of the SPE. The District Collector is vested with the powers to adjudicate the case and levy compounding fees based on the presentation of the case made by the concerned SPEs.

During test check of the breach register maintained by SPE, Mumbai Suburban District (MSD), we noticed that as on 31 March 2010, there were 190 cases in respect of which breaches were committed by the licencees during various periods between August 1999 and March 2010. Out of these cases, though compounding fees of ₹ 6.85 lakh were imposed in 50 cases, no recovery has been effected, in 61 other cases the action is pending at the

Collectorate level to adjudicate the cases and levy penalty and in remaining 79 cases action has not been initiated.

After we pointed out these cases the CSEs office stated (September 2011) that necessary action for recovery of compounding fees would be taken.

### 6.2.24 Conclusion

The receipts from State excise constituted third largest component of the tax revenue receipts of the State. We noticed in audit that there was no canalizing body in the State similar to Corporations setup in the Southern States for streamlining the supply of liquor and regulating the MRP. Though the government was aware of MRP violation on sale of country liquor, they ignored the same/took a lenient view by not finally adjudicating on the offences. There were 387 defunct licences (FL-II/CL-III) which could not be put to use. There were cases of non-submission of periodic returns, inadequate internal audits and lack of action on observations made in internal audit. There was inadequate action on cases detected by the flying squads and absence of follow-up with the Government Chemical Analyser for reports leading to the cases being decided by the courts against the Government. There were cases relating to inadmissible exemption from payment of excise duty, non/short recovery of privilege fees, licence fees and non/short levy of excise duty.

### **6.2.25 Recommendation**

The Government may consider:

- *putting in place a system to regulate the sale of liquor, fixing MRP and eliminating sale of illicit, spurious and non-duty paid liquor, thereby augment the Government revenue.*
- *strengthening the internal control mechanism of departmental inspections and internal audit for adequate safeguards against non/short realization, evasion of duty, fees, etc.*
- *final adjudication of offences of sale of country liquor above approved MRP.*
- *lifting the ban on retail licenses and auctioning of the licences which would be a viable alternative to obviate the situation of defunct retail licences and at the same time optimize the revenue collection through issue of licence.*