

CHAPTER - III

STATE EXCISE

EXECUTIVE SUMMARY

What we have highlighted in this Chapter	In this Chapter we present few illustrative cases of ₹ 1.21 crore selected from observations noticed during our test-check of records during the year 2012-13 relating to non/short levy, non/short realisation etc., where we found that the provisions of the Acts/Rules/Government notifications were not observed.
Trend of receipts	The percentage of receipts from State Excise increased consistently in comparison to the total tax receipts of the State from 11 <i>per cent</i> to 15.71 <i>per cent</i> during the period from 2008-09 to 2011-12, but decreased during 2012-13 to 14.95 <i>per cent</i> from 15.71 <i>per cent</i> .
Impact of audit conducted by us during 2012-13	<p>In the course of audit of records of 41 units relating to State Excise revenue conducted during 2012-13, we found non/short realisation and other irregularities involving ₹ 46.74 crore in 233 cases.</p> <p>The Department accepted underassessment and other deficiencies of ₹ 10 crore in 88 cases, of which 40 cases involving ₹ 1.91 crore were pointed out during 2012-13 and the rest in earlier years. A sum of ₹ 42.97 lakh in four cases has been recovered which were pointed out during 2012-13.</p>
Our conclusion	<p>The Department needs to improve the internal control system so that weaknesses in the system are addressed and omissions detected by us are avoided in future.</p> <p>It also needs to take appropriate steps to recover the amount involved, at least in the accepted cases.</p>

CHAPTER-III: STATE EXCISE

3.1 Tax administration

The assessment, levy and collection of excise revenue in the State is governed by the provisions of the Bihar Excise (BE) Act, 1915 and Bihar Excise (Settlement of licences for Retail Sale of country/spiced country liquor, Foreign liquor, Beer and Composite liquor Shop) Rules, 2007. It is administered by the Secretary, Department of Registration, Excise and Prohibition (Excise) at the Government level and by the Commissioner of Excise (CE) at the apex level of the Department of Excise and Prohibition. The CE is also the ex-officio Controller of Molasses for the administration and execution of the Bihar Molasses Control Act and Rules. The CE is assisted by one Joint Commissioner of Excise (JCE), one Deputy Commissioner of Excise (DCE) and one Assistant Commissioner of Excise (ACE) at the headquarters level. Further, there is one DCE at each of the four¹ divisional headquarters. At the district level, the Collector of the district is in-charge of the excise administration, assisted by an ACE or by a Superintendent of Excise (SE).

For supply of all types of liquor to retailers of excise shops in the State, the Bihar State Beverage Corporation Limited (BSBCL) headed by a Managing Director was formed in October 2006, to function as an exclusive wholesale depot.

3.2 Budget formulation

According to the Bihar Budget Procedures, the estimates of revenue and receipts should indicate the amount expected to be realised within the year. The arrears and current demands should be shown separately and reasons given, if full realisation cannot be expected and should be based on estimates furnished by the Department. In course of scrutiny of budget files in the office of the Commissioner of Excise, Bihar for the year 2012-13, we observed that the arrear of excise revenue was not taken into consideration while preparing the budget estimates. In reply the Department stated (July 2013) that efforts would be taken for taking arrear of excise revenue in budget estimates from financial year 2014-15.

3.3 Trend of receipts

The variation between budget estimates and actual receipts from State Excise during the period 2008-09 to 2012-13 along with the total tax receipts during the same period is mentioned in the following table:

¹ Bhagalpur-cum-Munger, Darbhanga-cum-Kosi-cum-Purnea, Patna-cum-Magadh and Tirhut-cum-Saran.

Table- 3.1

(₹ in crore)

Year	Budget estimates	Actual receipts	Variation excess (+)/ shortfall (-)	Percentage of variation	Total tax receipts of the State	Percentage of actual receipts (col.-3) vis-à-vis total tax receipts (col.-6)
1	2	3	4	5	6	7
2008-09	537.69	679.14	(+)141.45	(+)26.31	6,172.74	11.00
2009-10	850.00	1,081.68	(+)231.68	(+)27.26	8,089.67	13.37
2010-11	1,400.00	1,523.35	(+)123.35	(+)8.81	9,869.85	15.43
2011-12	1,790.00	1,980.98	(+)190.98	(+)10.67	12,612.10	15.71
2012-13	2,715.00	2,429.82	(-) 285.18	(-) 10.50	16,253.08	14.95

(Source: Revenue and Capital Receipt, (Detail): Finance Accounts, Government of Bihar)

The above table indicates that the percentage of receipts from State Excise when compared with the total tax receipts of the State increased consistently from 11 per cent to 15.71 per cent during the period from 2008-09 to 2011-12, but decreased during 2012-13 to 14.95 per cent.

3.4 Cost of collection

The gross collection of receipts from State Excise, expenditure incurred on collection and the percentage of such expenditure to gross collection during the years 2008-09 to 2012-13 along with the all-India average percentage of expenditure on collection to gross collections for the relevant previous years are mentioned in the following table:

Table- 3.2

(₹ in crore)

Year	Gross collection	Expenditure on collection	Percentage of expenditure to gross collection	All-India average percentage for the previous year
2008-09	679.14	24.15	3.56	3.27
2009-10	1,081.68	44.02	4.07	3.66
2010-11	1,523.35	37.65	2.47	3.64
2011-12	1,980.98	41.24	2.08	3.05
2012-13	2,429.82	42.67	1.76	2.98

(Source: Finance Accounts, Government of Bihar)

The above table indicates that the percentage of expenditure to gross collection in respect of State Excise revenue during 2010-11 to 2012-13 were below the all-India average percentage for the previous year. The Department should ensure that this trend is maintained in the subsequent years also.

3.5 Working of internal audit wing

There is an internal audit wing called Finance (Audit), which works under the Finance Department and internal audit of the different offices of the Government is conducted on the basis of requisitions received from the Administrative Department. The Chief Controller of Accounts can also select units for internal audit on availability of audit team. The Finance Department

did not conduct internal audit of the Registration, Excise and Prohibition (Excise) Department during 2012-13. The Department stated that requisition for conducting internal audit was being made.

3.6 Impact of audit

3.6.1 Status of compliance to Audit Reports (2007-08 to 2011-12)

During the years between 2007-08 and 2011-12, we have pointed out audit observations involving ₹ 291.30 crore in respect of receipts from State Excise through our Audit Reports. The Department/Government accepted cases involving ₹ 11.28 crore, of which an amount of ₹ 0.41 crore only was recovered till 31 March 2013 as mentioned below:

Table- 3.3

(₹ in crore)

Year of Audit Report	Amount involved in the Audit Report	Amount accepted	Amount recovered
2007-08	53.85	Nil	Nil
2008-09	123.57	Nil	Nil
2009-10	105.68	10.72	Nil
2010-11	4.35	Nil	Nil
2011-12	3.85	0.56	0.41
Total	291.30	11.28	0.41

The above table indicates that the recovery was very low (3.63 per cent) as compared to the accepted cases involving ₹ 11.28 crore.

3.6.2 Status of compliance to outstanding Inspection Reports (2007-08 to 2011-12)

During the period from 2007-08 to 2011-12, we have pointed out through our inspection reports, non/short levy, non/short realisation, loss of revenue etc., with revenue implication of ₹ 1,189.66 crore in 665 cases in respect of receipts from State Excise. Of these, the Department/Government had accepted audit observations in 203 cases involving ₹ 338.34 crore which also include the cases pointed out by us during earlier years and had since recovered ₹ 0.58 crore. The details are shown in the following table:

Table- 3.4

(₹ in crore)

Year	No. of units audited	Pointed out		Accepted		Recovered	
		No. of cases	Amount	No. of cases	Amount	No. of cases	Amount
2007-08	32	149	149.60	4	0.47	Nil	Nil
2008-09	32	113	223.58	43	31.99	12	0.08
2009-10	39	174	345.92	152	305.42	2	0.04
2010-11	38	95	131.62	Nil	Nil	Nil	Nil
2011-12	24	134	338.94	4	0.46	4	0.46
Total	165	665	1,189.66	203	338.34	18	0.58

This negligible recovery of ₹ 0.58 crore (0.17 per cent) against the accepted cases involving ₹ 338.34 crore indicates lack of promptness on the part of the Government/Department in realising the Government dues.

We recommend that the Government may take appropriate steps to recover the amounts involved, at least in the accepted cases.

3.6.3 Status of compliance to Inspection Reports 2012-13

In course of audit of records of 41 units out of 65 auditable units relating to State Excise revenue during the year 2012-13, we found non/short realisation, loss of revenue and other irregularities involving ₹ 46.74 crore in 233 cases which fall under the following categories:

Table- 3.5

(₹ in crore)			
Sl. No.	Categories	No. of cases	Amount
1.	Non realisation of license fee	8	1.32
2.	Loss due to non/short lifting of MGQ	27	2.31
3.	Loss/wastage of molasses in storage, transit and working	2	13.90
4.	Non/delayed settlement of excise shops	31	17.54
5.	Other cases	165	11.67
Total		233	46.74

During the year 2012-13, the Department accepted underassessment and other deficiencies *etc.* involving ₹ 10.00 crore in 88 cases, of which 40 cases involving ₹ 1.91 crore were pointed out during the course of the year and the rest in earlier years. Further, the Department reported recovery of ₹ 42.97 lakh in four cases which were pointed out during 2012-13.

A few illustrative cases involving tax effect of ₹ 1.21 crore are mentioned in the following paragraphs.

3.7 Non-compliance of the provisions of the Act/Rules

The provisions of the Bihar Excise Act, 1915 and Bihar Excise (Settlement of licences for retail sale of country/spiced country liquor/Foreign liquor/beer and composite liquor shop) Rules, 2007 require:

- *settlement of excise shops through lottery;*
- *payment of licence fee at the prescribed rates as determined by the Government for respective excise shop ;*
- *payment of licence fee within the prescribed period and*
- *cancellation of licence or levy of penalty/fine for breach of any condition of the sale notification of excise shops.*

Non-compliance of the provisions of the Acts/Rules in some cases as mentioned in paragraphs 3.8 to 3.11 resulted in non/short levy, non/short realisation of licence fee etc. of ₹ 1.21 crore. There is need for the Government to improve the internal control system so that such omission can be prevented.

3.8 Defalcation of excise revenue

The condition 14(b) of sale notification (2010-11 and 2011-12) of excise shops provides that the monthly instalment of licence fee specified in the licence and determined by the Government shall be deposited by the licensee in the Government treasury of the district by the 1st day of the month which in any event must be deposited by the 20th day of the month, failing which the licence shall be cancelled and all deposited security amount shall be forfeited and the shop shall be settled to the next applicant.

As per Rule 7 read with Rule 37 of the Bihar Financial Rules Volume-I, it is the responsibility of the departmental authority to see that all sums due to the Government are regularly and promptly assessed, realised and duly credited in the Government account under proper head without any delay.

Under provisions of sub para 22 of para 485 of chapter XIV (Appendix-I) of Excise Laws of Bihar Vol.-II, every excise office will maintain a Challan Register in Form-106 and every challan for excise payments presented should be entered in the register after being satisfied of the correctness of the entries therein. The register will be sent to treasury at the end of each day for the signature of the Treasurer. The entries of payments made in other registers should be on production of challan of payments, be also duly compared with the entries made in the challan register, and discrepancies reconciled.

As per Rule 104 of the Bihar Treasury Code, 1937 (Vol.-1), in case of Excise Department, one copy of challan should be sent to District Excise Officer by the treasury concerned.

were not found deposited in the bank. Thus the permits were issued against fake and fictitious payments. Further, signature of the Treasury accountant (column no. 35) and signature of the Superintendent of Excise (column no. 36) was not found in the challan register as proof of having checked, which indicated that the District Excise Officer did not verify the genuineness of the challans submitted by the licensees with the treasury records.

We scrutinised the Demands, Collections and Balances Register of 32 District Excise Offices and found cases of defalcation in two District Excise Offices as discussed below:

- During test-check of the Demands, Collections and Balances Register for the year 2010-11 and 2011-12 of the District Excise Office, Sitamarhi between November and December 2012, we observed that licence fee of ₹ 4.62 lakh was shown in the demands, collections and balances register as deposited by licensees of three groups of excise shops² during the period between July 2010 and July 2011, but was not found in the treasury schedule under head '0039 – State Excise'. The concerned branch of State Bank of India also confirmed (5 December 2012) that the aforesaid sums

² Group No. 72 (2010-11), Group No.80 (2010-11) and Group No. 56 (2011-12).

After we pointed (5 December 2012) this out, the SE Sitamarhi intimated in April 2013 that at the instance of audit the notices of demands were issued against the defaulter licensees and ₹ 4.62 lakh had since been recovered and deposited (8 December 2012) in the Treasury and the detailed report on action taken against the erring officials had been sent to the Department. Further, the Government stated (August 2013) that the concerned SE was under suspension and departmental action had been initiated against him.

- In course of verification of the Demands, Collections, and Balances Register for the year 2009-10 of the District Excise Office, Madhubani in February 2013, we observed that licence fee of ₹ 15.12 lakh deposited by licensees of three groups of excise shops³ during the period April 2009 to December 2009 was not found deposited in the treasury schedule under head '0039 – State Excise' and two licensees⁴ had paid licence fee short by ₹ 7,970 during October 2009 and March 2010. Thus the permits were issued without ensuring payment of licence fee.

After we pointed (27 February 2013) this out, the Government stated (August 2013) that **at the instance of audit** the SE Madhubani issued the notices of demands against the erring officials/defaulters licensees and entire money had since been recovered and deposited⁵ (between 4 March 2013 and 9 March 2013) in the Treasury. Timely action could not be taken due to delayed receipt of challans from treasury. However, instruction had been issued (August 2013) to all the field offices to take measures for prevention of such occurrence in future in response to the audit observation.

In reply to similar issue pointed out in para no. 3.2.3 of Audit Report (Revenue Sector) 2011-12, the Government had stated that the amount was recovered in Muzaffarpur and FIR was lodged against the defaulting licensees in Patna. The nature of lapses are still persisting which shows ineffectiveness of the internal control system of the Department to prevent recurring leakage of revenue.

Non-verification of the amount deposited by licensees from the records of treasury as well as non-observance of condition of sale notification by the Excise officers resulted in defalcation of Government revenue of ₹ 19.82 lakh. The Department failed to check areas of malfunctioning in the system and could not take appropriate remedial measures which showed non-adherence to the monitoring mechanism.

³ Group No. 107 (2009-10) and Group No.88 and 89 (2009-10).

⁴ Group No. 10 (2009-10) and Group No.7 (2009-10).

⁵ ₹ 79,600: Challan No. 51 Dated 7 March 2013; ₹ 4,77,600: Challan No. 170 Dated 7 March 2013; ₹ 4,77,600: Challan No. 8 Dated 8 March 2013; ₹ 4,77,600: Challan No. 72 Dated 9 March 2013; ₹ 6,000: Challan No. 215 Dated 4 March 2013 and ₹ 1,970: Challan No. 185 Dated 4 March 2013.

3.9 Short realisation of licence fee of excise shops after cancellation

Rule 15 of the Bihar Excise (Settlement of licences for retail sale of country/spiced country liquor/Foreign liquor/beer and composite liquor shop) Rules, 2007 framed under the Bihar Excise Act, 1915 stipulates that after the acceptance of settlement through lottery by the licensing Authority, one twelfth portion of the annual licence fee shall be paid by the settlee as security money and an equal amount shall be deposited by the settlee as advance licence fee which will be adjusted in the last month of the excise year.

Further as per Rule 17 (2) of the Rules *ibid* read with clause 14(b) of condition of sale notification of excise shops, one twelfth part of annual licence fee of each shop shall be deposited by the licensees in the treasury of the district by the first day of the month, which in any event must be deposited by the 20th of the concerned month, failing which the licence shall be cancelled and all deposited security money shall be forfeited.

As per schedule I under Section 3(6) of the Public Demands Recovery (PDR) Act, 1914, the amount due to the Government is required to be paid within the prescribed period. In case of default, the recovery is to be made as arrear of demand and accordingly the dues remaining unpaid and declared as arrear must be recovered by filing certificate case by the Requiring Officer to the Certificate Officer in terms of Section 4 of the PDR Act.

We scrutinised the Settlement files/Register, Demands, Collections and Balances Register and Security Deposit Register of 32 District Excise Offices and observed (between September and December 2012) that in two⁶ districts excise offices, the licences of 12 groups of excise shops were cancelled during the period between January and March 2012 due to non-payment of monthly licence fee. Further, we observed that the shops were cancelled after a delay of two to five months, though it was required to be cancelled latest by the 20th day of the same month of default. Thus, due to delay in cancellation of shops a sum of ₹ 56.60 lakh remained unrealised till date of audit (September and December 2012). No action was found on the

record to be initiated by the excise authorities for realisation of the Government dues, which resulted in short realisation of ₹ 56.60 lakh as detailed in **Annexure –IX**.

After we pointed this out, the Government stated (August 2013) that revenue recovery certificate cases had been instituted against the defaulting licensees in district excise office, Siwan and in district excise office, Gaya forfeited security money of the licensees would be deposited in treasury. The reply of the Department in case of Gaya was not in consonance with the fact that action should have been taken for raising demands against defaulting licensees and initiating revenue recovery certificate cases under the PDR Act, 1914 for realisation of outstanding revenue.

⁶ Gaya and Siwan.

3.10 Undue favour to licensees

3.10.1 Short realisation of revenue due to incorrect adjustment of security money

Rule 15 of the Bihar Excise (Settlement of licences for retail sale of country/spiced country liquor/Foreign liquor/beer and composite liquor shop) Rules, 2007 framed under the Bihar Excise Act, 1915 stipulates that after the acceptance of settlement through lottery by the licensing Authority, one twelfth portion of the annual licence fee shall be paid by the settlee as security money and an equal amount shall be deposited by the settlee as advance licence fee which will be adjusted in the last month of the excise year.

Further, Rule 17 (2) of the Rules *ibid* read with condition 14 (b) of the sale notification of excise shops prescribes that the monthly installment of licence fee shall be deposited by the licensee in the Government treasury by the first day of the month, which in any event must be deposited by the 20th day of the month, failing which the licence shall be cancelled and all deposited security money, shall be forfeited.

During scrutiny of settlement files and Demands, Collections and Balances Register of the office of the Assistant Commissioner of Excise (ACE), Patna for the year 2011-12, we observed (October 2012) that licences of 10 groups of excise shops were cancelled due to non-payment of monthly licence fee during the period between October 2011 and March 2012. Further, we observed that the outstanding dues were adjusted from their deposited advance licence fee as well as from security money. The adjustment of security money of ₹ 44.98 lakh against outstanding dues was in contravention to the provisions of the Rules *ibid*, which stipulates forfeiture of security money in case of cancellation of

excise shops. This resulted in not only short realisation of revenue of ₹ 44.98 lakh but also undue favour to the licensees.

After we pointed this out, the Government stated (August 2013) that the shops were cancelled due to non-payment of monthly licence fees and the shops were settled with the next applicant. However, the Government did not explain the reason for adjustment of outstanding licence fees against security money and non-compliance of condition 14 (b) of the sale notification which prescribes forfeiture of security money.

3.10.2 Irregular issuance of licences

Rule 16 of the Bihar Excise (Settlement of licences for retail sale of country/spiced country liquor/Foreign liquor/beer and composite liquor shop) Rules, 2007 framed under the Bihar Excise Act, 1915 provides that in case of failure to deposit the amount of advance security and the advance licence fee within the prescribed time, the settlement shall stand cancelled and all the deposited security money shall be forfeited.

Further, as per instruction issued (April 2009) by the Commissioner of Excise, the settlee of the excise shop would be treated as holder of licence and advance licence fee is recoverable from the settlee.

We observed between December 2011 and June 2013 from the Settlement files/Register, Demands, Collections and Balances Register and Security Deposit Register for the period 2011-12 in the office of the Assistant Commissioner of Excise (ACE), Gaya that two groups of excise shops (Gr. No. 86 and 113) were settled by accepting partial payment in shape of advance licence fee and security money and licence for one group (Gr. No. 66) was granted

without realising advance licence fee. Further, we observed that licences/settlement for all three groups of excise shops were cancelled in May 2011 and March 2012 due to non-payment of monthly licence fee. Thus settlement of shops/grant of licence without realising the required amount of advance licence fee or without obtaining security money was irregular and not only in contravention to the provisions of the Rules but also undue favour to the licensees. The Department could not realise the revenue of ₹ 3.39 lakh from the licensees as one of them did not pay advance licence fee and remaining two licensees had deposited partial advance licence fee/security money.

After we pointed this out, the Government stated (August 2013) that licence was not issued to settlees of Gr. No. 86 and 113 and settlement was cancelled for not depositing advance licence fee and security money. The reply is not in consonance with the fact that the provisions of the Rules clearly provide that in any case the excise shop should not be settled without realising advance licence fee and security money.

In reply to similar issues pointed out in para no 3.6 of Audit Report (Revenue Receipts), 2003-04, para no 3.4 of Audit Report (Revenue Receipts), 2005-06 and para no 3.6.11.1 of Audit Report (Revenue Receipts), 2009-10, the Government had stated that in most of the cases certificate cases were instituted for recovery of dues. The Government further stated that disciplinary proceedings were initiated against the then Assistant Commissioner of Excise in case of para no. 3.4 of Audit Report (Revenue Receipts), 2006-07. The nature of lapses are still persisting which shows ineffectiveness of the internal control system of the Department to prevent recurring leakage of revenue.

3.11 Non-levy of penalty for delayed deposit of licence fee

The condition 14 (b) of sale notification of excise shops provides that the monthly installment of licence fee shall be deposited by the licensee in the Government treasury of the district by the first day of the month, which in any event must be deposited by 20th of the month, failing which the licence shall be cancelled and the shop shall be settled to the next bidder.

Section 42(b) of Bihar Excise Act, 1915 provides that if any duty or fee payable by the holder thereof is not duly paid, the licensing Authority may cancel the licence, suspend it or impose penalty.

Further, Section 68 of the Act *ibid* stipulates that excise officer may accept from any person whose licence, permit or pass is liable to be cancelled, suspended or imposed penalty on economic offence under clause (a), (b), (d), (e), (f), (g) and (h) of Section 42, payment of a sum of money minimum of ₹ one thousand and maximum ₹ one lakh in lieu of such cancellation, suspension or by way of composition for such offence, as the case may be.

During test-check of Demands, Collection and Balances registers in the three districts excise offices⁷, we observed between August 2012 and April 2013 that out of 384 excise shops, 17 licensees of Composite liquor shops had deposited their monthly license fees of ₹ 1.38 crore for the period between January 2011 and December 2012 with delay ranging between two to 46 days. However, they were required to deposit their monthly licence fee latest by the 20th of each month as per the condition of sale notification. But the licensing authorities neither cancelled/suspended the licence nor imposed penalty on defaulting licensees. Instead they accepted the amount of licence fee

without realising the sums in shape of penalty. Moreover, encouragement to other licensees to make default in payment of revenue cannot be ruled out and thus penalty should have at least been imposed as a deterrent measure.

After we pointed this out, the Government stated (August 2013) that penalty was imposed in cases of district excise offices (Darbhanga and West Champaran) and licences of defaulting licensees in district excise office, Kaimur were not cancelled in the interest of revenue. However, instruction had been issued (August 2013) to all the field offices to take measures for prevention of such occurrence in future in response to the audit observation. But we observed that penalty was imposed in only a few cases in Darbhanga and the Government did not furnish the details of defaulting licensees against whom penalty was imposed in West Champaran. Also, the Department did not take any penal action against defaulting licensees of Kaimur.

⁷ Darbhanga, Kaimur (Bhabhua) and West Champaran (Bettiah).