

CHAPTER-III STATE EXCISE

3.1 Tax administration

The Principal Secretary (Excise and Taxation) is the administrative head at Government level. The Department is headed by the Excise and Taxation Commissioner (ETC). The Department has been divided in three Zones¹¹ which are headed by the Additional ETC (South Zone), Deputy ETCs of North Zone and Central Zone. Besides, 22 Excise and Taxation Inspectors under the control of the Assistant Excise and Taxation Commissioners (AETCs) of the respective districts, are deputed to oversee and regulate levy / collection of excise duties and allied levies.

3.2 Results of audit

In 2012-13, test check of the records of seven units relating to excise duty, license fee receipts etc., showed non / short realisation of excise duty / license fee / interest / penalty and other irregularities involving ₹4.24 crore in 48 cases, which fall under the **Table 3.1**:

Table-3.1

(₹ in crore)

Sr. No.	Categories	Number of cases	Amount
1.	Non / short realisation of excise duty	9	1.04
	Non / short recovery of license fee / interest / penalty	21	0.86
2.	Other irregularities	18	2.34
Total		48	4.24

During the course of the year, the Department accepted underassessment and other deficiencies of ₹4.50 crore in 51 cases which were pointed out in earlier years. An amount of ₹3.08 crore was recovered in 27 cases during the year 2012-13.

A few illustrative cases involving ₹3.57 crore are discussed in the following paragraphs.

¹¹ South Zone (Shimla, Solan, Sirmour, Kinnaur and Spiti area), North Zone (Chamba, Kangra and Una) and Central Zone (Bilaspur, Hamirpur, Kullu, Lahaul area and Mandi)

3.3 Non / short recovery of State Excise Duty and License Fee

Introduction

Levy and collection of duties and fees on production, manufacture, possession, storage, transport, purchase and sale of liquor by distilleries / breweries, bonded warehouses, bottling plants are governed by the Punjab Excise Act, 1914 and rules framed thereunder, as applicable to Himachal Pradesh with amendments. Excise and Taxation Department is responsible for collection of excise duty, license fee, brand fee, import / export fee, overtime fee, interest and penalty. The Excise and Taxation Commissioner-cum-Financial Commissioner (Excise) Himachal Pradesh, reserves the rights to sell all or any of the licenses by allotment or by auction or by private contract or by calling tenders or negotiations or by draw of lots or by renewal or by any other arrangement which he may consider expedient in the interest of revenue. For this purpose the department makes necessary announcements for excise allotment / renewal etc. every year setting forth the terms and conditions to give effect to grant of licenses, determining the license fee etc.

An audit on 'Non / Short recovery of State Excise Duty and License Fee' covering the period from 2010-11 to 2011-12 was conducted between May 2012 and March 2013 through test check of records in the offices of the Excise and Taxation Officer (ETO) Kinnaur and seven² out of eleven AETCs. The following are the audit findings:

3.3.2 Non-levy of State Excise Duty and License Fee

3.3.2.1 Non-levy of additional fee on short lifting of Minimum Guaranteed Quota

Para 4.3 of the Excise Announcement 2011-12 provides that every licensee shall be required to lift minimum guaranteed quota (MGQ) as fixed for each vend. Failing this he shall still be liable to pay license fee based on MGQ. Besides, additional fee of ₹20 per proof liter (PL) shall be paid by the licensee on the unlifted quantity of liquor falling short of 80 *per cent* of MGQ. The AETC / ETO shall review the position of MGQ every month and in case the licensee is unable to lift 80 *per cent* of MGQ by 15th of March, he shall proceed to recover the additional license fee.

Audit test checked the M-2 registers³ between May 2012 and February 2013 of three AETCs and noticed that 27 licensees⁴ had lifted 3,98,720.405 pls of liquor against the MGQ of 5,62,090.002 pls which was less than 80 *per cent* (4,49,672.002 pls) of MGQ fixed by the department during 2011-12. This resulted in short lifting of 50,951.597 proof liters for which additional fee of ₹10.19 lakh though payable was not demanded by the concerned AETCs. The

² BBN at Baddi, Kangra, Mandi, Shimla, Sirmour, Solan and Una

³ A register showing the quantity of Foreign Spirit including IMFL and CL issued for sale, amount of additional license fee payable and amount of additional license fee recovered during the month is maintained.

⁴ Mandi: 13 licensees, Shimla: seven licensees and Una: seven licensees

mistake escaped the notice of the ETC also, to whom the 'Annual Lifting and Consumption Statements' were furnished with the returns.

On this being pointed out (between May 2012 and February 2013), the Joint ETC, Shimla intimated (May 2013) that ₹1.01 lakh had been recovered by the AETC, Una from the seven licensees and deposited in the Government treasury. Further report of recovery is awaited (November 2013).

3.3.2.2 Non-levy of excise duty due to non-invoking of provisions of bond

Rules 21 to 23 of Himachal Pradesh Bonded Ware House (HPBWH) Rules, 1987 provide that liquor may be removed from a warehouse (1) under bond and (2) on payment of duty within the state or outside the state. In case of issue of liquor under bond, the licensee shall execute a bond in form L-37 to deliver the spirit at a particular place or destination and shall furnish proof of his having done so in form L-38, before the bond can be discharged. Notification of November 1965, issued by the department provides that if the proof is not produced within the specified period, i.e. reasonable time not exceeding two months unless the omission is satisfactorily explained, the Collector shall call upon the manager to deposit the amount specified in the bond executed by him in respect of the consignments.

Scrutiny of L-38 registers⁵ of three AETCs⁶ between July 2012 and March 2013 showed that 11 sanctions authorizing export in-bond of 43,537.50 Pls of IMFL, 76 sanctions of 5,62,353 bulk litres (Bls) of beer and two sanctions of 40,000 Bls of Extra Neutral Alcohol (ENA) were granted in favour of two distilleries and one brewery⁷ on execution of a bond in form L-37. The licensee was required to furnish certificates in form L-38 of arrival of IMFL / Beer / ENA at specified destination within specified time limit, which had expired during June 2011 and May 2012. The certificates in form L-38 were awaited and the provisions of the bond were not invoked till March 2013, despite the fact that limitation period for procuring certificate of arrival had already expired. As per provisions of Rules, the Collector was bound to collect the amount of excise duty specified in the bond but the same was not done. This resulted in non-recovery of excise duty amounting to ₹99.24 lakh.

On this being pointed out (between July 2012 and March 2013), the AETCs intimated that after reviewing the cases, action would be taken as per the provisions of the Act / Rules. Further report on recovery and reply has not been received (November 2013).

3.3.2.3 Non-accountal of Rectified Spirit / Extra Neutral Alcohol and Matured Malt Spirit

The Punjab Distillery Rules, 1932 as also applicable in Himachal Pradesh, provide for maintenance of permit register (D-13) and spirit receipt register

⁵ L-38 is a certificate of proof of arrival of IMFL / beer at the specified destination within specified time limit.

⁶ Mandi, Sirmour and Una

⁷ M/s Carlsberg Brewery Tokio, Goverdhan Bottling Plant, Galu and Ranger Brewery Ltd. Mehatpur

(D-13 A) through which the department could exercise various checks on the receipt and disposal of spirit and liquors.

Audit cross checked the permit registers with that of spirit receipt register (D-13 A) (between January and March 2013) maintained in the office of the two AETCs⁸ and noticed that in two bonded ware houses⁹, four permits containing 81,860 proof liters of RS / ENA and MMS (**Appendix-IV**) had neither been cancelled in permit register nor accounted for in spirit receipt register. Thus, 81,860 proof liters of spirits involving excise duty of ₹19.26 lakh was not realised, for which no reasons were on record.

On this being pointed out (between January and March 2013), the AETCs had intimated that after reviewing the cases, action would be taken as per the provisions of the Act / Rules. Further report on recovery is awaited (November 2013).

3.3.3 Non-recovery of State Excise Duty and License Fee

Non-recovery of fixed fee due to not opening of L-13 vend

Para 6.10 of the Excise Announcement for the years 2010-11 and 2011-12 provides that Country Liquor suppliers were required to open L-13 vend (wholesale vends) in each of the district allotted to them on payment of prescribed license fees. Rules further provide that the annual license fee of L-13 has been fixed at ₹80,000 and ₹1,00,000 for the years 2010-11 and 2011-12 respectively.

Audit test checked the records of L-13 vends between July 2012 and October 2012 of two AETCs¹⁰, and found that three licensees¹¹ engaged in manufacturing of CL had not opened L-13 vends in the districts allotted to them. Therefore, fixed fee of ₹8.60 lakh was recoverable from the licensees for not opening of vends during the years 2010-11 (two vends) and 2011-12 (seven vends). This was neither demanded by the department nor deposited by the suppliers, which resulted in non-recovery of fixed fee of ₹8.60 lakh.

On this being pointed out (between July 2012 and October 2012), the ETC stated (August 2013) that out of ₹ 8.60 lakh an amount of ₹5.60 lakh had been recovered from two licensees, and Excise & Taxation Inspector incharge of BBN Baddi distillery had been directed to recover the balance amount of fixed fee from the licensee. Further report on recovery and reply has not been received (November 2013).

⁸ Kangra and Mandi

⁹ M/s Bindal Associate, Chhanni and Goverdhan Bottling Plant, Galu

¹⁰ BBN Baddi and Sirmour

¹¹ BBN Baddi: two licensees and Sirmour: one licensee

3.3.4 Short recovery of State Excise Duty and License Fee

3.3.4.1 Short recovery of bottling license fee

Rule 9.5 of the Punjab Distillery Rules 1932 (PDR) as applicable to Himachal Pradesh, stipulates that the licensee shall pay license fee at the prescribed rates on the units of 750 milliliters (mls) of CL / IMFL bottled by them. Notification of March 2011, issued under the PDR further provides that licensee of Distilleries and Bottling Plants in Himachal Pradesh shall also pay franchise fee on the bottling of brands of IMFS of the Distilleries and Bottling Plants situated outside the State of Himachal Pradesh. These fees shall be paid by the licensee quarterly within seven days of the expiry of each quarter.

Audit test checked the records between July 2012 and March 2013 of two AETCs¹² and noticed that against the recoverable amount of ₹37.15 lakh, on account of bottling license fee, from three licensees¹³ during 2010-11 and 2011-12 a sum of ₹21.69 lakh only had been recovered. Steps to recover the balance license fee were not taken by the department. This resulted in short recovery of license fee of ₹15.46 lakh.

On this being pointed out between July 2012 and March 2013, the ETC intimated (August 2013) that an amount of ₹13.25 lakh had been recovered in respect of AETC Sirmour and efforts were being made to recover the balance amount. Further replies had not been received (November 2013).

3.3.4.2 Low yield of spirit from molasses

As per the norms fixed under Rule 37 read with Rule 35 of the Punjab Distillery Rules 1932, as applicable to Himachal Pradesh, 0.373 quintal of molasses shall yield 15.391 proof liters of country spirit.

Audit noticed between November and December 2012 from the molasses receipts and issue register and spirit issue register that a distillery¹⁴ in Una district used 52,095 quintals of molasses for manufacture of rectified spirit (RS) during 2011-12. Against the yield of RS of 21,49,582.16 proof liters as per prescribed norms, the actual yield was shown as 19,01,468 proof liters. Thus, 2,48,114.16 proof liters of RS was short produced for which no reasons were on record. This resulted in potential loss of revenue of ₹24.81 lakh on short production of rectified spirit.

On this being pointed out (December 2012), the department intimated (August 2013) that after reviewing the case action would be taken as per the provisions of the Act / Rules. Further report on recovery and reply has not been received (November 2013).

¹² AETC Mandi and Sirmour

¹³ M/s Goverdhan Bottling Plant, Galu, Hill view distillery, Shambhowal and Tilokson Brewery and distillery, Manthapal

¹⁴ M/s Ranger Brewery Ltd. Mehatpur

3.3.5 Non-levy of interest on belated payment of license fee / additional license fee

Para 4.4(d) of the Excise Announcement (EA) 2011-12 provides that full monthly installments of license fee based on MGQ of liquor fixed for each vend is required to be paid by the last day of each month and last installment for the month of March shall be paid in full by 15th of March. Additional license fee of ₹2 per quart of 750 mls shall be chargeable from the licensee on country liquor (CL) and Indian Made Foreign Spirit (IMFS) before obtaining permit / pass for transportation of liquor. Para 4.5(a) further provide that if the licensee fails to pay the amount of license fee on due dates, interest at the rate of 10 *per cent* per annum up to one month and 18 *per cent* per annum thereafter shall be leviable.

Audit test checked the M-2 registers of two AETCs¹⁵ between May 2012 and December 2012 and noticed that out of 251 licensees, 23 licensees had deposited license fee of ₹11.51 crore belatedly (between April 2011 and March 2012) for the years 2010-11 and 2011-12. The delay ranged between three to 180 days. They were, therefore, liable to pay interest of ₹9.19 lakh on belated payments. However, the concerned AETCs did not levy the same. This resulted in non-recovery of interest to that extent.

(ii) Audit further noticed from the license fee registers of AETC, Shimla that a licensee, of Subzi Mandi Vend, had paid additional license fee of ₹3.09 lakh instead of ₹4.96 lakh chargeable for the year 2011-12. This resulted in short recovery of Government revenue to the tune of ₹1.87 lakh.

On this being pointed out the cases (between May 2012 and December 2012), the AETCs, Una admitted the audit observations and stated (June 2013) that ₹2.35 lakh had been recovered from the licensees. Report of recovery of balance amount of interest in respect of AETC, Una and reply from AETC Shimla has not been received (November 2013).

3.3.5.1 Non-recovery of interest on bottling license / franchise fee

Rule 9.5 of the Punjab Distillery Rules 1932 (PDR) as applicable to Himachal Pradesh, stipulates that the licensee shall pay license fee at the prescribed rates on the units of 750 milliliters (mls) of CL / IMFL bottled by them. Notification of March 2011, issued under the PDR further provides that licensee of Distilleries and Bottling Plants in Himachal Pradesh shall also pay franchise fee on the bottling of brands of IMFS of the Distilleries and Bottling Plants situated outside the State of Himachal Pradesh. These fees shall be paid by the licensee quarterly within seven days of the expiry of each quarter. In event of failure to pay the fee by due date, interest at the rate of 12 *per cent* per annum up to one month and if the default in payment exceeds one month, interest at the rate of 18 *per cent* per annum for the entire delay shall be payable.

Audit further test checked the D-15A register¹⁶ of four AETCs¹⁷ who were engaged in manufacturing of CL, and noticed that the bottling license fee and

¹⁵ Shimla: 18 cases (2010-11=4, 2011-12=14) and Una: 5 cases

¹⁶ A register wherein the details of license fee at the prescribed rates on the units of 750 milliliters (mls) of CL / IMFL bottled is maintained.

¹⁷ BBN Baddi, Kangra, Mandi and Una

franchise fee of ₹3.34 crore for the years between 2008-09 and 2011-12 were payable between 7 April 2009 and 7 April 2012 but were deposited late between 7 July 2009 and 8 October 2012. The delay ranged between 10 and 616 days for which interest of ₹14.46 lakh¹⁸ was leviable but had not been levied / recovered by the department. Thus, inaction on the part of the department resulted in non-recovery of Government dues to the above extent.

On this being pointed out (between July 2012 and March 2013), the AETC BBN, Baddi while accepting the audit observations stated (February 2013) that an amount of interest of ₹5.47 lakh had been recovered from the licensee. The remaining AETCs intimated that action would be initiated as per the provisions of the Act / Rules after reviewing the cases. Further report on recovery and reply has not been received (November 2013).

3.3.6 Non-recovery of salaries of excise establishment posted at distillery / bonded ware houses

Rule 9.13 and 9.16 of the Punjab Distillery Rules, 1932 as also applicable in Himachal Pradesh, stipulate that the licensee shall agree to the posting of a Government Excise Establishment to his distillery for the purpose of ensuring the due observance of the Rules and for watch and ward. The licensee shall, if required by the Excise Commissioner, make into the Government treasury such payment as may be demanded on account of the salaries of the Government excise establishment posted to the distillery, but he shall not make any direct payment to any member of such establishment.

Audit cross checked the records between June 2012 and February 2013 of one brewery, three distilleries and 10 bonded ware houses with that of five AETCs¹⁹ and noticed that the establishment charges amounting to ₹1.53 crore of the excise establishment posted to the distilleries / brewery / bonded ware houses had not been paid by the licensees for the period between 2008-09 and 2011-12 inspite of the fact that the AETCs, being the Drawing and Disbursing Officers, were aware of these postings. They did not take any action to raise the demand and collect the Government dues. Thus, non-claiming of establishment charges from the licensees in respect of the excise establishment, the Government deprived itself of recoverable dues of ₹1.53 crore as per details given in **Appendix-V**.

On this being pointed out between June 2012 and February 2013, the AETC, BBN-Baddi stated (February 2013) that all the AETO / ETI in charge of the distilleries had been directed to recover the amount of salary of excise staff posted in the distillery / BWH from the concerned licensees and deposit the same in government account. The remaining AETCs intimated that after reviewing the cases action would be initiated as per the provisions of the Act / Rules. Further report on recovery and reply has not been received (November 2013).

¹⁸ Bottling license fee: ₹9.20 lakh and Franchise fee: ₹5.26 lakh

¹⁹ BBN Baddi, Kangra, Sirmour, Solan and Una

3.3.7 Non-recovery of arrears of Excise Duty

The Excise Department is responsible for recovery of its dues from the defaulter licensees pertaining to its own department. If government dues cannot be recovered by the means available with the department, such arrears are certified as Arrears of Land Revenue (ALR) under the Himachal Pradesh Land Revenue Act, 1953 (Act No. 6 of 1954) administered by the collectors of the respective districts of the State. The powers of collectors were delegated to the departmental officers of the Excise and Taxation department in December 1990 and January 1993. These cases of recovery as ALR relating to other districts within the State or outside the State is to be referred to collectors (Excise) of the concerned district or collector of the concerned district of that state.

Audit scrutiny of the information supplied (between May 2012 and March 2013) by the Department showed that in 34 cases of outstanding revenue for the years 1977-78 to 2011-12 pertaining to six AETCs²⁰ involving an amount of ₹5.62 crore was recoverable from the licensees. Out of which ₹4.68 crore in 23 cases were pending for recovery as arrears of land revenue as of March 2012 and other 11 cases involving an amount ₹94.26 lakh were at different stages of action with the departmental authorities. The department had not devised any system to recover the pending arrears in a time bound manner even after lapse of 20 to 37 years.

On this being pointed out (between May 2012 and March 2013), the AETC, BBN Baddi stated (February 2013) that an amount of ₹4.00 lakh had been recovered. The remaining AETCs had intimated that after reviewing the cases, action would be taken as per the provisions of the Act / Rules. Further report on recovery is awaited (November 2013).

The above points were reported to the Government on 4 July 2013; reply has not been received (November 2013).

3.4 Conclusion

Excise receipt is an important source of revenue of the State Government. From the above audit observations it appeared that the department had not exercised proper control over the working of distilleries / breweries / bonded ware houses in claiming its legitimate dues from the licensees. The monitoring mechanism to regulate collection of excise revenue especially on in-bond consignments was ineffective and needed to be strengthened appropriately.

²⁰ BBN Baddi, Kangra, Mandi, Shimla, Solan and Una