

Chapter-III
State Excise

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STATE EXCISE

3.1 Tax administration

The Additional Chief Secretary (Excise) is the administrative Head at Government level. The Department is headed by the Excise and Taxation Commissioner (ETC). The Department has three Zones¹, which are headed by the Additional ETC (South Zone), Deputy ETCs of North Zone and Central Zone. Besides, 255 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 2016-17, test check of the records of 10 units relating to state excise duty revealed non/short realisation of excise duty/license fee/interest/penalty and other irregularities involving ₹144.30 crore in 29 cases depicted below.

Table-3.1 Results of audit

Sr. No.	Categories	Number of cases	₹ in crore
			Amount
1.	Performance audit 'Working of State Excise Department including working of distilleries'	01	132.46
2.	Non/short realisation of excise duty	01	0.06
3.	Non/short recovery of license fee/interest/penalty etc.	16	6.85
4.	Other irregularities	11	4.93
Total		29	144.30

During the year 2016-17, the Department accepted under-assessment and other deficiencies of ₹93.12 lakh in 12 cases, out of which an amount of ₹46.75 lakh was realised in 12 cases pertaining to earlier years.

Performance audit having financial implications of ₹132.46 crore and other significant cases involving ₹3.50 crore are discussed in the following paragraphs.

¹ 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 Performance Audit on 'Working of State Excise Department including working of distilleries'

Highlights

- *Allowance of wastage in beer production without any provision in Rules resulted in loss of excise duty of ₹2.44 crore.*
(Paragraph 3.3.8)
- *Short allotment of liquor quota to 29 vends in one District vis-a-vis their potentiality resulted in short levy of license fee of ₹4.12 crore.*
(Paragraph 3.3.10)
- *There was loss of license fee of ₹1.82 crore due to excess lifting of liquor quota by 73 vends during the year 2015-16.*
(Paragraph 3.3.11)
- *The Department had not recovered license fee of ₹4.94 crore on short lifting of Minimum Guaranteed Quota by 358 vends of five Districts.*
(Paragraph 3.3.14)
- *The Department did not levy Excise duty of ₹18.29 crore on the production of Extra Neutral Alcohol by three distilleries.*
(Paragraph 3.3.16)
- *The Department did not levy Excise duty of ₹8.46 crore on export of beer by distillery of Sirmour District.*
(Paragraph 3.3.17)

3.3.1 Introduction

The State Excise duty is one of the major source of tax revenue, which is levied and collected on manufacture, storage, sale, import export of Liquor and Excise duty collected on medicinal and toilet preparations. The levy and collection of excise duty in the State is governed by the Himachal Pradesh Excise Act, 2011 and the provisions contained in Section 1, clause (3), (5), (6), (6-b), 9, 10, 11, 12, (12-a), (14), (16), (19) and (21) of Section 3 and Sections 16, 20, 21, 22, 23, 31, 32, 33-A, 58, 59 and 60 of the Punjab Excise Act, 1914. The grant of license for liquor is governed by Himachal Pradesh Liquor License Rules, 1986. The working of distilleries is governed by Punjab Distillery Rules, 1932. The excise duty on medicinal & toilet preparations containing alcohol, Opium, Indian hemp or other narcotic drug or narcotic is governed by Medicinal and Toilet Preparations (M&TP) Act, 1955 (Union Act) and is collected & appropriated by the State Government through State Excise Department.

3.3.2 Organizational set-up

The Additional Chief Secretary (Excise and Taxation) is the administrative head at Government level. The Excise and Taxation Department (ETD) is headed by Excise and Taxation Commissioner (ETC), who is empowered with the task of superintendence and administration of various fiscal measures, in addition to

quasi-judicial powers as Appellate and revisional authority under Excise laws. The Department has been divided in three Zones, which are headed by Additional ETC (South Zone), Deputy ETC of North Zone and Central Zone who have also been entrusted the powers of Collector. Besides, 255 Excise and Taxation Inspectors (ETI) under the control of Assistant Excise and Taxation Commissioner (AETC) of the respective Districts are posted at the site of distilleries/bottling plants and breweries and in circles under the control of AETCs to oversee and regulate levy/collection of excise duties and allied levies.

3.3.3 Audit Objectives

The Performance audit was conducted with a view to ascertain whether:

- levy and collection of excise duty, fees, supervision charges etc. under various Acts and Rules administered by the ETD is being done correctly and efficiently;
- collection of excise duty/cost of establishment is being made timely and fully from the distilleries/bottling plants working in the State;
- levy of excise duty under the M&TP Act, 1955 was being made correctly from the manufacture;
- optimum collection of revenue and proper enforcement of the various Acts and Rules was being made and
- adequate and effective internal control mechanism was in existence in the ETD.

3.3.4 Scope and methodology of audit

The Performance audit of the "Working of ETD including working of distilleries' covering the period 2011-12 to 2015-16 was conducted between January 2017 to May 2017 in ETC and six field offices out of 13 field offices having 16 out of the total 20 distilleries/breweries and bottling plants in the State.

An entry conference was held in April 2017 with the Principal Secretary (Excise), Government of Himachal Pradesh wherein the objectives, scope and methodology for conducting the Performance audit was discussed. The draft report on Performance Audit was forwarded to the Department and the Government in July 2017 and the Exit Conference with Additional Chief Secretary (Excise) and Joint Commissioner (Excise) was held in August 2017.

3.3.5 Audit Criteria

Audit criteria was benchmarked against the following sources:

- H.P. Excise Act, 2011,
- Punjab Excise Act, 1914,
- Punjab Distillery Rules, 1932,
- Announcements of Excise Allotments for the period 2011-12 to 2015-16,
- H.P. Liquor License Rules, 1986 and
- Medicinal and Toilet Preparations Act, 1955.

3.3.6 Trend of Revenue

The actual receipts of State Excise Duty increased from ₹707.36 crore in 2011-12 to ₹1,131.22 crore in 2015-16. It ranged between 16.89 and 18.58 per cent of the total tax receipts of the State Government.

Table-3.2 Details of SED revenue and total tax receipts

₹ in crore			
Year	SED Receipt	Total Tax Receipts	Percentage of tax receipts
2011-12	707.36	4,107.92	17.21
2012-13	809.87	4,626.17	17.50
2013-14	951.96	5,120.91	18.58
2014-15	1,044.14	5,940.16	17.57
2015-16	1,131.22	6,695.81	16.89

Source: Finance accounts

The percentage of collection of State Excise duty to total tax receipts showed a decreasing trend during 2014-15 and 2015-16 and it came down to 16.89 per cent in 2015-16 to 18.58 per cent in 2013-14.

System Deficiencies

3.3.7 Low yield of spirit from molasses

Rule 9.37 of Punjab Distillery Rules (PDR) 1932, provides that one mound (0.373 qtls.) of molasses shall be considered equal to 3.5 London Proof Gallon (15.391 Pls) of country spirit.

One distillery in Una District² put in 66,168 qtls. of molasses for manufacture of spirit during 2011-12 and 2015-16. The distillery reported actual yield of 23,83,348 Pls of spirit against the yield of 27,30,092 Pls, as per the norms. The actual yield is depicted below:

Table-3.3 Production of spirit from molasses

Year	Quantity of molasses used (in qtls)	Production as per rules (Pls)	Actual Production (Pls)	Less production (Pls)	Less Production in Bls (1Bls=1.68 Pls)	Excise duty leviable @ ₹10/ and ₹11/-Bls
2011-12	52,095	21,49,440	19,01,468	2,47,972	1,47,602	14,76,020
2015-16	14,073	5,80,652	4,81,880	98,772	58,793	6,46,723
Total	66,168	27,30,092	23,83,348	3,46,744	2,06,395	21,22,743

Thus, 2,06,395 BLs of spirit involving Excise duty of ₹21.23 lakh was short produced. The issue was also highlighted in the Performance audit on the 'Working of distilleries' in the year 2009 in Para No. 3.2.14, when the State Government stated (July 2009) that it was not possible to adhere to the norms of yield fixed under PDR, 1932 because of changed circumstances. However, steps were being taken to re-fix the norms as per the present realities.

² M/s RBL Ltd.

On this being pointed out, the Department admitted (September 2017) that yield rate had not been re-fixed and actual yield may be allowed in the absence of any rules.

The reply is not acceptable as norms were required to protect the pilferage of spirit and realisation of potential revenue.

3.3.8 Loss of duty on inadmissible wastage

Rule 35(1) of Punjab Brewery Rules (PBR), 1956 as applicable to Himachal Pradesh provides that duty on beer, at the prescribed rate, shall be charged on the total quantity actually brewed as entered in the brewing book by the licensee, or as ascertained by the Inspector and entered in his survey book Form B-6, whichever is higher, less an allowance of 8 *per cent* for wastage.

Audit scrutiny of records of two breweries³ revealed that 344.89 lakh bulk liters (Bl) of finished beer were received in the bottling tanks of two breweries in Solan and Sirmour Districts during the period 2011-12 to 2015-16. Out of this, wastage of 14.88 lakh Bls of beer was claimed and allowed by the AETCs after the beer reached the stage of bottling tanks. The Hon'ble Supreme Court of India in November 1996 in a case of M/s Mohan Meakin Ltd. Vs Excise and Taxation Commissioner, HP and others decided the merit that excise duty was eligible to duty at time when finished product i.e. beer was received in the bottling tanks or the finished product is removed from the place of storage or warehouse etc. without specifying any deduction of wastage. Thus, allowance of wastage in Beer was incorrect and resulted in loss of excise duty of ₹2.44 crore.

On this being pointed out, the Department stated (September 2017) that AETC Sirmour had been asked the concerned distillery to produce relevant records. While AETC Solan replied that actual wastage was being allowed. Reply is not acceptable as wastage was not admissible as per Supreme Court Judgment of November 1996.

3.3.9 Irregular allowance of breakage

HP Liquor License Rules, 1986 has not prescribed any wastage allowance due to breakage or leakage in transit, storage and issue of liquor for the wholesale suppliers of country and foreign liquor including beer. However, ETI who is entrusted with the work to maintain accounts of the wholesale suppliers is responsible to keep the record of all transactions including actual wastage occurred by physically verifying the breakage incurred. As per the provisions contained in the HP Liquor License Rules, 1986 all the licenses shall maintain accounts of receipts and sales in the forms mentioned and shall at the end of each month prepare and submit to the ETI, true abstract of receipts and sales by the 5th of the following month.

³ Sirmour: Carlsberg India Ltd.: ₹1.24 crore and Solan: Mohan Meakins Brewery: ₹1.20 crore

Audit scrutiny of records for the years 2011-12 to 2015-16 of four AETCs Offices revealed that L-13 and L-1⁴ licensees had shown breakage of 57,757 pl, 36,648 pl and 1,567 Bls of Country Liquor (CL), Indian Made Foreign Liquor (IMFL) and beer during transit, storage and issue from wholesale vends. The Excise officers viz. ETO/ETI had not verified the breakage either in the registers maintained by licensees or in any other records and breakage claimed by these licensees had been taken as such. In the absence of any norms and physical verification of breakage by Excise Officer, deduction on this account was irregular. This resulted in loss of excise revenue on account of license fee to the tune of ₹1.83 crore⁵. It was observed in audit that copies of the records submitted by wholesale licensees (L-1 and L-13) were not available in any of the six AETCs.

On this being pointed out, the Department stated (September 2017) that in view of no provision in HP liquor License Rule 1986; the wastage of 0.50 *per cent* was allowable as per PDR, 1932. The reply is not acceptable as concerned Excise Officers allowed the wastage as claimed by licensees without verification.

Compliance Deficiencies

3.3.10 Fixation of quota of vends

The ETC-cum-Financial Commissioner, Himachal Pradesh, reserves the right to sell all or any of the licenses or predetermined combination of vends termed as 'unit' by allotment or by auction or by private contract or by calling tenders or by negotiations or by draw of lots or by renewal or by any other arrangement in the interest of the revenue.

As per clause 4.1 of the Excise Announcement (EA), Minimum Guaranteed Quota (MGQ) and the District wise quota shall be allotted for each vend at the District by the concerned AETC/Excise and Taxation Officer, in-charge of the District in consultation with the Collector (Excise) of the concerned Zone. However, while distributing the quota of CL & IMFL to various units/vends at the District Level, the concerned Collector (Excise) and AETC of the District in-charge shall ensure that the quantity of additional quota of CL & IMFL lifted by a particular unit/vend up to preceding March is also included in the figures of the quota of each unit/vend. Annual license fee of a particular vend is based on the MGQ of CL & IMFL fixed for vend for whole of the year on the rates of license fee of that year.

Audit scrutiny of records of AETC Sirmour for the period 2015-16 revealed that lesser quota of liquor (CL and IMFL) was allotted as compared to lifted quota of previous year (i.e. 2014-15) in 19 vends, without any justification even when these vends lifted the allotted MGQ in previous four years. Thus, short allotment of quota to 19 vends *vis-a-vis* its potentiality had resulted in short levy of annual license fee by ₹3.23 crore.

⁴ L-1: wholesale vend of IMFL and L-13: wholesale vend of CL

⁵ Mandi: ₹83.00 lakh, Nurpur: ₹38.00 lakh, Sirmour: ₹52.00 lakh and Una: ₹10.00 lakh

Further, allotment of quota of 10 other vends of Sirmour was fixed lower against the potential of these vends at 60,643 Pls (CL) and 66,568 Pls (IMFL) in 2015-16 as against the Quota of 75,278 Pls (CL) and 93,426 Pls (IMFL) during the previous year i.e. 2014-15. But perusal of lifting and consumption statements of these vends revealed that the licensees of these 10 vends had subsequently lifted additional quota of 1,602 Pls (CL) and 1,305 Pls (IMFL) during 2015-16 at concessional rates. Thus, short allotment of initial quota to 10 vends resulted in short levy of annual license fee by ₹89.00 lakh.

On this being pointed out, the Department stated (September 2017) that 19 vends could not be allotted at District level due to non-receiving of appropriate bid/tender as per quota/license fee fixed by the Headquarter and after negotiation at the Headquarter level the quota/license fee was fixed. Further, IMFL quota was increased while CL quota was reduced at Headquarters due to allotment of vends by negotiation in Sirmour District. The reply is not acceptable as justification for reduction of quota in respect of 29 vends (19+10) was not offered.

3.3.11 Excess lifting of quota

As per clause 4.4 of EA for the year 2015-16, the license fee of a vend/unit/units is predetermined on the basis of allotted quota. The additional quota is granted after lifting of allotted quota on payment of the prescribed license fee as per clause 4.6 of EA.

Audit scrutiny of annual statements furnished to ETC by five AETCs, out of test checked six AETCs, revealed that licensees of 73 vends out of 477 vends test checked, had lifted quota 10,44,627 Pls against the allotted quota of 9,53,864 Pls during 2015-16. However, the license fee was paid on the basis of amount predetermined on the basis of quota and no additional amount was paid on excess lifting of quota. The license fee on excess lifting of quota was neither demanded by the Department nor the licensees paid as per M-2 register⁶. This resulted in loss of revenue on excess lifting of quota of 90,764 Pls (CL 48,080 Pls and IMFL 42,684 Pls) on account of license fee to the tune of ₹1.82 crore⁷.

On this being pointed out, the Department stated (September 2017) that the difference between quota lifted and quota allotted may occur on account of conversion of quota of CL into IMFL and *vice-versa*. Further AETC Solan had recovered ₹0.61 lakh, out of ₹26.41 lakh and AETC Baddi had issued directions to recover the amount.

3.3.12 Suspected pilferage of revenue due to excess consumption than lifting

The MGQ of CL and IMFL is fixed in proof liters by the Government for the State. It is further allotted for each vend at the District Level by the respective AETCs of the District. As per Para 4.3 of EA 2015-16, a licensee is required to pay annual

⁶ A register showing the details of license fee realised from vends.

⁷ Baddi: ₹46.00 lakh, Mandi: ₹34.00 lakh, Sirmour: ₹58.00 lakh, Solan: ₹26.00 lakh and Una: ₹18.00 lakh

license fee fixed on the basis of monthly MGQ. Para 4.4(a) provides that the annual license fee of a particular vend shall be predetermined based on the MGQ of CL and IMFL fixed for each year on prescribed rates of licensee fee. The license fee shall be divided into 12 monthly instalments and the licensee shall deposit into the Government treasury by the last day of each month.

The quota of a vend is lifted as per Excise passes issued by Excise Officer who ensures that quota of liquor is lifted as per allotment. The consumption of liquor in vend is submitted by the licensee brand wise on monthly basis to the excise officer in whose jurisdiction the vend is situated. Thereafter, lifting and consumption statement in respect of each vend is submitted on monthly basis by Excise Officer to the concerned District and the consolidated lifting and consumption statement of the District is submitted to the ETC.

Audit noticed that in three AETCs, 45 licensees, out of 114 licensees test checked, consumed 41,33,098 Pls of liquor (CL and IMFL) against the lifting of 41,15,083 Pls made by them during the year 2015-16. Thus, they had made consumption (sale) of 18,015 Pls in excess of the lifted quota. Reasons though asked for, were not provided. Thus, excess procuring and consumption of 18,015 PLs of liquor by 45 licensees resulted in revenue loss of ₹34.54 lakh⁸ on account of non-levy of license fee.

On this being pointed out, the Department intimated (September 2017) that AETC Solan had recovered ₹0.34 lakh whereas AETC Baddi and Nurpur directed the concerned ETIs to reconcile the consumption and recover the amount.

3.3.13 Short recovery of License fee

As per Para 4.3 of EA 2015-16, a licensee is required to pay annual license fee fixed on the basis of monthly MGQ. Para 4.4(a) provides that the annual license fee of a particular vend shall be predetermined based on the MGQ of CL and IMFL fixed for each year on prescribed rates of license fee. The license fee shall be divided into 12 monthly instalments and the licensee shall deposit into the Government treasury by the last day of each month. The last instalment for the month of March shall be paid in full by 15th of March before obtaining the excise pass for issue of liquor. Further, as per Para 4.5(a), the licensee shall pay interest on the amount which remain unpaid at the rate of 14/18 *per cent* per annum for a delay of upto one month/for period beyond one month.

Section 73(2) of the H.P. Excise Act, 2011 provides that all excise revenue including all other amount due to the State Government which remain unpaid after the due date shall be recoverable as arrear of land revenue (ALR) under the provisions of the HP Land Revenue Act, 1954.

Audit noticed that in AETC Mandi (one vend) and Una, licensees of eight vends deposited license fee of ₹47.09 crore against the predetermined annual license fee

⁸ Baddi: ₹6.34 lakh, Nurpur: ₹24.99 lakh and Solan: ₹3.21 lakh

of ₹57.10 crore for the year 2015-16 resulting in short realisation of license fee amounting to ₹10.01 crore⁹. Besides, interest of ₹1.91 crore had also accrued on unpaid amount up to the date of audit (April 2017).

These cases were required to be declared as ALR under the H.P. Excise Act, 2011. Audit scrutiny revealed that AETC Una had declared ₹9.55 crore as ALR in eight vends out of total 10 units, whereas AETC Mandi had not declared the recovery of license fee as ALR. Further, the Department had created red entry in one unit only and red entry was yet to be made in remaining seven units of Una.

On this being pointed out, the Department stated (September 2017) that in case of unpaid amount; the same was declared as arrears under ALR with creation of red entry in the revenue record of defaulter. The reply is not acceptable as red entries in revenue papers of the defaulters were yet to be made in seven units out of eight units involved in Una District.

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

The MGQ of CL and IMFL is fixed in proof liters by the Government for the State. It is further allotted for each vend at the District Level by the respective AETC of the District.

Para 4.3 of the EA 2015-16 stipulates that each licensee shall be required to lift the MGQ as fixed for each vend on quarterly basis, failing which he shall still be liable to pay the license fee fixed on the basis of the MGQ. In addition, the licensee shall also be liable to pay additional fee of ₹10 per Pl on CL and ₹56 per Pl on IMFL on un-lifted quota which falls short of 100 *per cent* of MGQ. Further, penalty shall be leviable at the rate of ₹7 per Pl on CL and ₹14 per Pl on IMFL on un-lifted MGQ, falling short of benchmark of 80 *per cent* of MGQ. The AETC or ETO in-charge of the District shall review the position of lifting of MGQ on quarterly basis and ensure recovery of the additional license fee as well as the amount of penalty on un-lifted MGQ.

Audit scrutiny of the records revealed that in five AETCs, licensees of 358 vends out of 529 vends test checked, had lifted 63,02,880 Pls of liquor against the fixed MGQ of 78,14,755 Pls, which was short by 15,11,875 Pls (CL 7,67,376 Pls and IMFL 7,44,499 Pls) during 2015-16. The additional fee of ₹4.94 crore¹⁰ payable on short lifting of MGQ was neither paid by these licensees nor was demanded by ETD, resulting in loss of revenue of ₹4.94 crore.

Audit further noticed that out of 358 vends, 24 licensees had also not lifted 3,37,822 Pls, which fell short of benchmark of 80 *per cent* of MGQ for 2015-16 on

⁹ Mandi: one case: ₹5.00 lakh and interest: ₹0.98 lakh and Una: eight cases: ₹9.96 crore and interest: ₹1.90 crore

¹⁰ Baddi: Additional fee: ₹29.70 lakh, Mandi: Additional fee: ₹1.01 crore, Sirmour: Additional fee ₹9.27 lakh, Solan: Additional fee ₹40.56 lakh and Una: Additional fee ₹3.13 crore

which penalty of ₹40.70 lakh was required to be levied but the same was also not levied/demanded from the licensees.

On this being pointed out, the Department stated (September 2017) that cases were under process. Further, AETC Solan had recovered an amount of ₹5.69 lakh and outstanding amount had been declared ALR in Una District.

3.3.15 Non-realisation of interest on belated payment of license fee

Para 4.4(d) of EA 2015-16 stipulates that if a licensee is unable to lift MGQ within a month, he shall be required to pay the full instalment of license fee for that month by the last day of the month, and fee for the month of March shall be paid in full by the licensee by 15th March. Para 4.5(a) further provides that if the licensee fails to pay the deficient amount of license fee on due dates, interest at the rate of 14 *per cent* per annum up to one month and 18 *per cent* per annum thereafter shall be leviable.

Audit scrutiny of records of six AETCs revealed that licensees of 160 vends out of 348 vends deposited licensee fee of ₹80.76 crore after due dates between April 2015 and June 2016 with delays ranging between 1 to 385 days. They were, therefore, liable to pay interest of ₹1.44 crore on belated payment of license fee but the concerned AETCs had not demanded the same.

On this being pointed out, the Department stated (September 2017) that directions for recovery of interest as per prescribed conditions had been issued.

3.3.16 Non-levy of excise duty on Extra Neutral Alcohol

Section 23 of Punjab Excise Act, as applicable to State of H.P. provides that no intoxicant shall be removed from any distillery, brewery, warehouse or other place of storage established or licensed under this Act, unless the duty if any payable under Chapter-V has been paid or a bond has been executed for payment thereof. Further, Chapter 5.2 of H.P. EAs for the year 2011-12 to 2015-16 had prescribed the rates of excise duties on Extra Neutral Alcohol (ENA) at the rate of ₹10.00 to ₹11.00 per Bl.

Audit test checked the records of three distilleries of AETCs manufacturing ENA for the period 2011-12 to 2015-16 and noticed that 3,66,95,631 Bls of ENA had been produced by these distilleries in HP but no duty had been paid to Government resulting in non-recovery of revenue of ₹18.29 crore.¹¹

3.3.17 Non-levy of excise duty on export of beer

Section 36 of HP Excise Act, 2011 provides that there shall be levied and paid excise duty or the countervailing duty, as the case may be, at such rate or rates as the State Government may, by notification direct on any alcoholic liquor for

¹¹ Baddi: M/s Sabchhus Distillery: ₹2.07 crore, Nurpur: M/s Premier Alcovev: ₹2.01 crore and Una: M/s Rangar Breweries Ltd. ₹14.21 crore

human consumption whether imported, exported or transported in accordance with the provisions of Section 21 of the *ibid* Act.

Audit scrutiny of the records of AETC Sirmour revealed that 3,151 sanctions of export of beer were issued to one of the brewery during the period 2014-15 and 2015-16 involving 72,47,199 BIs of beer after recording necessary entries in column 1 to 10 of the prescribed L-36 register¹². However, no excise duty was levied on the beer exported which was leviable on removal from the factory. This resulted in non-levy of excise duty on export of beer amounting to ₹8.46 crore on the basis of applicable rates of excise duty.

On this being pointed out, the Department stated (September 2017) that notices had been issued to the concerned brewery to produce the relevant record.

3.3.18 Irregular adjustment of D-2A/BWH-2 license fee in bottling fee

D-2 licenses are granted for manufacture of CL and IMFL and D-2A for establishment and working of Pot-Still for re-distillation of spirit respectively. Similarly, BWH-2 license is granted for establishment of Bonded Ware House on the payment of prescribed fee. ETC notified (March 1994) that in case of D-2 license, the licensee shall first adjust the amount paid by the licensees, in advance, and the payment of license fee shall thereafter be according to the rates prescribed by the Government. ETC in July 2006 had also clarified that D-2A license is granted only for double distillation of spirit to make spiced CL and no other activities are covered under this license. The licensee can bottle only when he possesses the BWH-2 license and in that case the bottling fee is linked with BWH-2 for the purpose of calculation. Thus, license fee of D-2A and BWH-2 licenses is not adjustable against bottling fee.

Scrutiny of records revealed that 13 distilleries/bottling plants under six AETCs paid bottling fee of ₹26.80 crore against ₹29.40 crore actually due after adjusting ₹2.60 crore paid on account of license fee of D-2A and BWH-2 licenses, which was not admissible as per the instructions issued in July 2006. The Department did not raise claim on concerned distilleries/bottling plants towards irregular adjustment of license fee of D-2A and BWH-2 licenses.

On this being pointed out, the Department stated (September 2017) that bottling fee on CL and IMFL was adjustable against the annual license fee for D-2A/BWH-2 as per Rule 5 and 9.5 of PDR, 1932. The reply was not acceptable as it was contrary to instructions issued by ETC in July 2006.

3.3.19 Non recovery of license fee on unsold stock of liquor

Para 3.19 of the EA 2015-16 stipulates that in case of renewal of license of a vend/unit, the unsold stock of liquor up to three *per cent* of MGQ of the preceding year i.e. 2014-15, shall not be accounted towards the MGQ for the year 2015-16

¹² A register in which the approval of the Authority sanctioning order of export is recorded.

and the licensee shall have to take this unsold stock on payment of license fee at the rate of 50 *per cent* as prescribed for the year 2015-16. The unsold stock of liquor in the vend as on 31st March 2015 exceeding three *per cent* of the MGQ of the preceding year shall be counted towards the MGQ for the next year and license fee shall be charged on that stock at the prescribed rate.

Test check of records of the six AETCs for the year 2015-16 brought out that licensees of 126 vends out of 441 vends, had not accounted for the unsold stock of 26,258 Pl of liquor (CL: 10,567 Pl and IMFL: 15,691 Pl) of 2014-15. The license fee of ₹35.82 lakh¹³ was payable at the rate of 50 *per cent* of applicable license fee¹⁴ for the year 2015-16. The license fee was neither deposited by the licensees nor demanded by ETD. This resulted in non-recovery of license fee of ₹35.82 lakh.

On this being pointed out, the Department stated (September 2017) that concerned AETCs were directed to reconcile the account of licensees.

3.3.20 Non-issue of passes by Excise and Taxation Department

The EA for the year 2014-15 fixed total CL quota of 2,00,80,700 PLs each year out of which 18 *per cent* quota was earmarked in favour of two plants of Himachal Pradesh General Industries Corporation (HPGIC) Ltd. plants at *Mehatpur* and *Parwanoo*. The Excise Policy mandates that if the minimum quantity fixed by the Excise and Taxation Department is not sold, additional fee of ₹5 per Pl and penalty of ₹7 per Pl will be levied on the manufacturer.

Audit observed that HPGIC Ltd. failed to deliver 4,41,649 Pls of CL in different Districts during the years 2014-15 in view of non-issue of monthly passes by ETO/ETI equivalent to earmarked 18 *per cent* quota on monthly basis. Thus, additional fee of ₹22.08 lakh and penalty of ₹30.92 lakh was leviable on HPGIC Ltd. due to non-delivery/sale of earmarked quota. Besides, ETD suffered loss of VAT on the shortfall in sale of earmarked quota by HPGIC Ltd.

On this being pointed out, the Department stated (September 2017) that directions for initiating actions for non-compliance to Condition 10.29 read with Condition 6.10 of E.A. 2014-15 had been issued.

3.3.21 Non-recovery of Annual License fee for non-opening of L-13 vends

Para 6.10 of the EA 2014-15 and 2015-16 stipulates that CL suppliers/distilleries were required to open an L-13 vends (wholesale vend) in each of the Districts allotted on payment of license fee of ₹2.30 lakh and ₹2.65 lakh per vend respectively. It further provides that those CL suppliers who have opened L-13 vends during 2014-15 in those Districts which were not allotted to them during

¹³ Baddi: 33 vends: ₹8.21 lakh, Mandi: 23 vends: ₹0.29 lakh, Nurpur: 31 vends: ₹1.06 lakh, Sirmour: 13 vends: ₹2.69 lakh, Solan: 21 vends: ₹4.03 lakh and Una: 5 vends: ₹19.54 lakh

¹⁴ IMFL: ₹243/2 per Pl and CL: ₹162/2 per Pl

2014-15 shall have to compulsorily open these L-13 vends during the year 2015-16 also, as the same have been made 'allotted' Districts during the year 2015-16.

Audit test checked the records of L-13 vends of six AETCs and found that in four AETCs, six CL suppliers had not opened 19 vends out of the 37 vends allotted during the period 2014-16 inclusive of three CL suppliers who had opened three vends during 2014-15 but did not open the vends during 2015-16. The Annual license fee of ₹48.95 lakh¹⁵ was recoverable in respect of these 19 vends, which was not demanded by the Department from concerned CL suppliers.

On this being pointed out, the Department stated (September 2017) that all District in-charges had been directed to verify non-opening of L-13 vends by CL manufacturers in the allotted District.

3.3.22 Short recovery of bottling fee, Franchise fee and interest

Para 5.1(30) of the EA 2015-16 provides that bottling fee at the rate of ₹1 per unit of 750 mls of IMFL and ₹0.80 per unit of 750 mls of CL shall be payable in case of bottling of CL and IMFL by the distillery licensees. Under Clause 30 of the EA, Franchisee fee at the rate of ₹7 per Pl on the bottling of IMFL of other distilleries and bottling plants situated outside the State was also leviable. Clause 4.5(a) further provides that if the licensee fails to pay the fee or part thereof on due dates, interest at the rate of 14 *per cent* upto one month and thereafter at the rate of 18 *per cent* per annum, shall be payable till the default continues from the date of default.

(i) Test check of 16 distilleries and bottling plants revealed that bottling fee for bottling of 5,21,331 units (4,61,484 units of CL and 59,847 units of IMFL) for the period 2015-16 aggregating to ₹4.29 lakh was not paid by one distillery¹⁶ of Sirmour. Audit further noticed that the above licensee had not paid franchisee fee on 44,885 Pls of IMFL amounting to ₹3.14 lakh. This resulted in non-recovery of license fee/franchisee fee of 7.43 lakh.

(ii) Test check of four AETCs¹⁷ revealed that in seven distilleries, bottling fee of ₹2.51 crore for the year 2015-16 was payable between July 2015 and April 2016 but was deposited between September 2015 and March 2017 by these licensees. The delay ranged between 2 to 378 days on which interest of ₹5.51 lakh was also leviable. Further, five distilleries in three AETCs, deposited Franchisee fee of ₹3.72 crore for the year 2015-16 payable between July 2015 and March 2016 with delay ranging between one to 363 days on which interest of ₹6.07 lakh was leviable. The Department did not raise any demand for interest on delayed

¹⁵ Baddi: ₹13.25 lakh, Mandi: ₹2.65 lakh, Nurpur: ₹7.95 lakh and Sirmour: ₹25.10 lakh

¹⁶ Sirmour: Bottling fee: ₹4.29 lakh and Franchisee fee: ₹3.14 lakh

¹⁷ Baddi, Mandi, Nurpur and Sirmour

payment of bottling and franchise fee resulting in non-recovery of interest ₹11.58 lakh¹⁸.

On this being pointed out, the Department stated (September 2017) that District in-charges had been directed to take immediate necessary action against the defaulters.

3.3.23 Non/short recovery of salaries of excise staff posted at distillery/bonded warehouses

Rule 9.13 and 9.16 of the PDR 1932, as applicable to Himachal Pradesh, stipulates 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 of any member of such establishment.

Test check of two bottling plants with that of concerned AETCs¹⁹ revealed that salaries amounting to ₹21.98 lakh of the posted excise establishment during the year 2015-16 were not demanded by the ETD, resulting in non-recovery of Government dues.²⁰

On this being pointed out, the Department stated (September 2017) that AETC Mandi had issued notice for depositing salaries of excise staff whereas distillers of AETC Sirmour had adjusted the same against payment of BWH-2 license fee. The reply is not accepted as the Rules do not provide for adjustment of BWH-2 license fee.

3.3.24 Non-accountal of samples for re-distillation

Rule 9.17 of PDR, 1932 stipulates that the licensee shall when required permit samples of materials used or spirit prepared in the distillery to be taken for analysis. Each sample shall be taken in three-quart bottles or (when the materials cannot be placed in bottles) in three parcels, in the presence of the licensee or a responsible representative deputed by him for this purpose. One bottle or parcel shall be made over to the licensee's representative, the second shall be sent for chemical examination and the third retained by the officer concerned pending the disposal of the case. Further, rule 9.40 (1) provides that all spirit, which becomes waste in the laboratory and does not by addition of any chemicals or otherwise become deleterious, shall be returned to the distillery for re-distillation.

¹⁸ Baddi: M/s Sabchhus distillery Bottling Fee: ₹0.72 lakh, Franchise Fee: ₹0.38 lakh, M/s Himalayan Gold: Bottling Fee: ₹0.71 lakh, Franchise Fee: ₹3.91 lakh, M/s Ricord Pernod Franchise Fee: ₹0.14 lakh, Mandi: M/s Basandh Rai Bottling Fee: ₹0.65 lakh, Franchise Fee: ₹0.21 lakh, Nurpur: M/s VRV Foods Bottling Fee: ₹1.60 lakh, Franchise Fee: ₹1.43 lakh and Sirmour: M/s Hill View Bottling Fee: ₹0.64 lakh, M/s Yamuna Brewery: Bottling Fee: ₹0.60 lakh, M/s Trilok Sons: Bottling Fee: ₹0.59 lakh

¹⁹ Mandi and Sirmour

²⁰ Mandi: Bottling Plant: ₹8.76 lakh and Sirmour: Bottling plant: ₹13.22 lakh

Scrutiny of the records of seven distilleries/bottling plants of four Districts revealed that out of 27,804 samples of CL and IMFL, 18,536 samples (15,823 of 750 ML each upto 2014-15 and 2,713 of 180 ML during 2015-16) aggregating to 8,035 Pls²¹ of CL and IMFL were required to be taken back for re-distillation. These were, however, neither returned back for re-distillation nor these samples were separately preserved in the records of distilleries/bottling plants, resulting in non-realization of excise levies of ₹16.99 lakh²² (excise duty: ₹2.07 lakh and license fee: ₹14.92 lakh).

On this being pointed out, the Department stated (September 2017) that district in-charges had been directed to verify non-accountal of samples for re-distillation.

3.3.25 Short accountal of spirit

As per PDR, 1932 all imports of ENA/RS/MMS etc. are required to be entered in the receipt register i.e. D-13A²³. After that blending, bottling and issue takes place as per quantity imported and duly accounted for.

Scrutiny of the records of AETC Baddi, revealed that one distillery²⁴ accounted for 6,554 Bls of rectified spirit in its D-13A register during June 2015 against the purchase of 10,000 Bls of confiscated rectified spirit through Police Station, *Parwanoo*. No reasons for the short accountal of rectified spirit were found on the records of the distillery. Short accountal of 3,446 Bls of rectified spirit resulted in short levy of excise levies of ₹8.59 lakh (consisting of excise duty ₹0.56 lakh, bottling fee ₹0.10 lakh and license fee ₹7.93 lakh).

On this being pointed out, the Department stated (September 2017) that directions had been issued to recover the excise levies.

3.3.26 Irregular renewal of distillery license

Audit observed that license of one distillery under Sirmour District was renewed for the period up to 31st March 2017 in-spite of ₹89.54 lakh recoverable from the distillery on account of (VAT ₹56.18 lakh, Franchisee Fee ₹3.52 lakh, bottling fee of ₹10.98 lakh (4th Qtr of 2015-16 and 1st Qtr of 2016-17), staff salary of ₹14.87 lakh and penalty of ₹3.99 lakh). The proposal for renewal of license of the distillery was recommended (November 2016) by the AETC Sirmour on the ground that the licensee submitted 10 postdated cheques for arrears with a promise that he will clear the postdated cheques and pay all current liabilities of VAT, Excise duty and fee etc. timely. In case of failure, action as per law may be taken. Incidentally another penalty of ₹69.51 lakh was stayed by the Hon'ble High Court. AETC Sirmour did not provide the details of amount recovered from the distillery in its reply as well.

²¹ Conversion formula: IMFL: 750 ml=0.5635 Pl and CL: 750 MI=0.375 Pl

²² Baddi: M/s Sabchhus Distillery ₹0.79 lakh, M/s PDM: ₹0.52 lakh, M/s USL: ₹3.03 lakh
M/s Ricord Pernod: ₹10.82 lakh Mandi: M/s Basandh Rai ₹0.47 lakh, Nurpur: M/s VRV Foods
₹0.48 lakh and Sirmour: M/s Yamuna Brewery ₹0.88 lakh

²³ Register showing the details of spirits received in the distillery.

²⁴ M/s Sabchhus Distillery, Nalagarh

In the case of another distillery under Sirmour District, the license of the distillery was renewed for 2016-17 in spite of VAT amounting to ₹1.94 crore for 2006-07 to 2008-09, bottling fee of ₹11.64 lakh (1st and 2nd Quarter of 2016-17) and staff salary of ₹4.33 lakh, aggregating to ₹2.10 crore pending for recovery from the distillery.

Thus, licenses of two distilleries were renewed in spite of non-clearance of Departmental dues and the same were not blocked or cancelled. AETC Nahan did not initiate action to recover the amount of VAT arrears of ₹1.94 crore pertaining to assessment years 2006-07 to 2008-09 as arrears of land revenue under Section 25 of the HP VAT Act, 2005.

On this being pointed out, the Department stated (September 2017) that the case of one distillery had been decided by Hon'ble High Court of HP and directed to pay ₹5.00 lakh per month to clear the dues whereas the other distillery deposited all the dues. The reply is not accepted as distillery licenses were renewed on compliance of certain conditions but there was no mechanism to monitor the recovery of pending dues from the licensees.

3.3.27 Shortage of holograms

Rule 9.37 of PDR provides that a licensee shall on the 1st and 15th day of each month, report to the ETI, the quantity in stock of empty bottles in gross numbers and shall permit the ETI to verify the quantity, if he desires to do so. EA 2014-15 vide clause 6.4(b) made the provision of affixing pilfer proof seals/holograms on CL bottles. The holograms are obtained from Excise and Taxation Commissioner by distilleries/bottling plants and an account of receipt and issue of Holograms is maintained in Hologram Stock Register by the ETI posted in distillery.

Audit scrutiny revealed that in a distillery in Baddi closing balance of 9,10,098 Holograms in September 2014 was carried forward as 7,10,098 resulting in shortage of 2,00,000 holograms in the distillery²⁵. This was fraught with mis-utilisation of 2,00,000 CL bottles, which could bottle 75,000 PLs of CL attracting excise duty of ₹9.10 lakh.

On this being pointed out, the Department stated (September 2017) that directions had been issued to enquire the matter.

3.3.28 Ineffective control through excise barriers

In order to curb interstate smuggling of liquor and illicit distillation in the State, ETC issued instructions in 1998 wherein excise staff posted in all Multi-Purpose Barrier (MPBs) were directed to maintain 'Excise Check Registers' (ECR) containing full particulars of the consignments of liquor viz. original documents, proper route of transportation, complete details of the permit no., pass no., validity period, name of the distillery and name of consignee etc.

²⁵ A distillery of Baddi

Audit scrutiny of four MPBs revealed that ECRs had been maintained without entering full particulars of the consignments and the entries recorded therein were not clearly legible. Test check of the 502 export consignments of a brewery in Sirmour District during the period 2012-13 to 2015-16 revealed that 26 consignments carrying 1,30,816 Bls of beer were not found entered in ECRs maintained at MPB *Govindghat* and *Behral* involving excise duty of ₹21.70 lakh.

The ECR of MPB, *Parwanoo* was not produced to audit. Incidentally, the entire export of beer made from the brewery²⁶ under the jurisdiction of Solan District passed through this barrier, which could not be verified.

On this being pointed out, the Department stated (September 2017) all the MPBs in-charge had been directed to maintain the proper legible 'ECRs' at MPBs. Specific reply to cases of Sirmour district is awaited.

3.3.29 Irregularities in maintenance of records of distilleries

As per Rule 9.13 of PDR 1932, distillery shall agree to the posting of Government excise establishment for the purpose of ensuring the due observance of the Rules and for watch and ward. Test check of the records of 16 distilleries revealed that:

- i. excise staff on single charge basis was not posted or were transferred frequently, in most of the distilleries of Sirmour and Nurpur District;
- ii. ETIs posted in most of the distilleries were not well versed/adequately trained in the working of distilleries, which severely hampered the maintenance of the records and/or supervision of their activities and
- iii. maintenance of records in most of the distilleries was not proper and adequate, which handicapped proper scrutiny of the activities of the distilleries in audit.

3.3.30 Medicinal and Toilet Preparations

Under the Constitution of India, levy of excise duty on alcoholic liquors, opium, Indian hemp or other narcotic drugs is a State Subject. But medicinal and toilet preparations containing alcoholic and other items mentioned above and levy of excise duty thereon is Union Subject. Accordingly, the M&TP Excise Act, 1955 and Rules of 1956 thereunder provide for levy and collection of excise duty on medicinal and toilet preparations containing alcohol, opium, Indian hemp or other narcotic drug or narcotic. The duty levied is collected and appropriated by State Government through State Excise Department.

For the manufacture of medicinal and toilet preparations, the manufacturers are required to obtain license from State Excise Department under the Act and obtain spirit from distilleries/bonded warehouses in the State or from outside the State, but supplies are made in such quantities as are in conformity with the formulae of the concerned preparations. The manufactories are classified as "Bonded and Non

²⁶ A distillery of Solan

Bonded”. The bonded manufactory means the premises or any part of the premises approved and licensed for the manufacture and storage of medicinal and toilet preparations containing alcohol, opium, Indian hemp and other narcotic drugs or narcotics on which duty has not been paid. In other words, the bonded manufactories obtain spirit without payment of duty and are required to pay the same as when the medicines containing alcohol, spirit etc. are released from these warehouses. The ‘Non-Bonded manufactories’ means the premises or any part of the premises approved and licensed for the manufacture and storage of medicinal and toilet preparations containing alcohol, opium, Indian hemp and other narcotic drugs or narcotics on which duty has been paid.

Every person desiring to engage in operations of manufacture of Medicinal and Toilet Preparations is required to obtain a license from the licensing authority to be renewed every year on payment of prescribed fee. Possession of the license under the Drug Act, 1940 is a pre-requisite for grant of license under M&TP Act of 1955.

3.3.30.1 Incomplete data of revenue collection

- i. On being asked in audit, ETD provided a list of 105 licensees of seven Districts²⁷, out of which 54 licensees renewed their licenses during the year 2016-17 and remaining 50 (exclusive of one licensee which was cancelled) did not renew their licenses. The status of renewal of licenses during the previous four years was not made available either by ETD or by the District offices. Further, records containing details of such licensees were not maintained by the District offices, indicating failure of internal control mechanism.

On this being pointed out, the Department stated (September 2017) out of 105 licensees under M&TP Act licenses of 96 were renewed for the year 2016-17 and the renewal of balance licenses were pending.

- ii. On being asked about the verification made by ETD in respect of licensees manufacturing only those preparations which are specified in the license issued under M&TP Act and Drug Act no such records were produced. Thus, the status of non/short levy of excise duty could not be arrived at in audit.

ETD intimated excise collection of ₹74.60 crore during the year 2015-16 under M&TP Act, 1955 as part of revenue data of 2015-16 for implementation of GST. However, the ETD did not provide challan wise/party wise breakup of the excise collection under the M&TP Act, 1955.

- iii. On being asked in audit, about the revenue collection under this Act during the years 2011-12 to 2015-16, none of the Districts except Baddi provided the same. This reflected no revenue monitoring under this Act, is made by ETD. In the absence of District wise/party wise details of revenue

²⁷ Baddi, Kangra, Mandi, Nurpur, Sirmour, Solan and Shimla

collection, the accuracy/trend analysis of the revenue collection could not be made in audit.

- iv. Review of revenue collection made by Baddi District under the *ibid* Act during the years 2014-15 (₹56.27 crore) and 2015-16 (₹51.69 crore) revealed that revenue collection fell down by ₹4.58 crore during the year 2015-16 as compared to previous year for which no reasons though asked for in audit were provided by the Department.

On this being pointed out, the Department stated (September 2017) out of 105 license under M&TP Act, 96 licenses were renewed for the year 2016-17 and the renewal of balance licenses were pending. The reply is not accepted as in the absence of proper records, renewal of licenses during the period 2011-12 to 2015-16 could not be verified.

3.3.30.2 Loss of revenue due to non-recovery of excise duty

A team of flying squad (South Zone) *Parwanoo* conducted an inspection of the manufacturing unit under Rule 113 and 115 of the M&TP (Excise Duties) Rules, 1956 at Nalagarh on 24th November 2012 on the basis of specific information. The licensee is engaged in the manufacture of *Spray perfumes, de odorized spray* and *After Shave lotions* besides other cosmetic and toilet products. In the manufacture of *spray perfume, de odorized spray* and *After Shave Lotion*, a raw material (pre-mix compound) imported from outside the State is used which was suspected to contain alcoholic strength and as such inspection was done. The final products of the licensee are toilet preparations within the meaning of Section 2(k) of the M&TP Act, 1955 and hence were dutiable goods. Duties of excise under Section 3 of the *ibid* Act and Rule 6 of the M&TP Rules, 1956 are to be levied on them. Further, the products manufactured by the licensee were not rebated/exempted under Section 4 of the Act and Rule 7 or 8 of the Rules. On the basis of flying squad inspection, it emerged that:

- i. the manufacturer never applied for grant of a license which was a statutory obligation on the part of the manufacturer;
- ii. the manufacturer was importing pre-mix compound containing alcohol in high percentage which was not reported to the Department as required under the Act and Rules and
- iii. the manufacturer failed to pay the duties involved on these dutiable goods.

In view of the above irregularities, the manufacturer violated Section 6 of the Act and sub rule (1) of Rule 9 of the Rules. Accordingly, the DETC, Flying Squad (SZ), *Parwanoo* recommended (29 November 2012) to ETC for initiating penal action and recovery of duties evaded by the manufacturer since start of manufacturing of dutiable goods containing alcohol. It was also recommended for adjudicating the case under Rule 123 of the M&TP Rules, 1956. The ETC asked (January 2013) Collector (SZ), Shimla for detailed investigation of the case and detailed action taken report terming the activities of the manufacturer being in gross violation of the provisions of *ibid* Act.

Audit observed that Department failed to finalize the case and was arbitrarily transferred (November 2014) to Additional ETC (SZ) Shimla on the ground that manufacturer's counsel during final hearing held on 29th August 2014 pleaded that DETC (FS), *Parwanoo* did not have jurisdiction to dispose of this case and powers of the Commissioner lay with the Zonal in-charge or Collector, South Zone. However, the above order was factually incorrect as records of DETC (FS) revealed that licensee did not submit sale quantum of excisable commodities from 2009-10. It was recorded that order was reserved, to be released soon and intimated to the dealer.

On being asked in audit, Department replied (June 2017) that as the case was detected and reported by Flying Squad (SZ), same was transferred back (February 2015) in the interest of proper enquiry and scrutiny to DETC (FS). The case was yet to be finalized (August 2017).

Thus, failure of the Department to investigate and adjudicate the case led to revenue loss of ₹66.07 crore due to non-recovery of excise duty during the period 2011-12 to 2015-16. The loss would further go up on determination of GTO of 2009-10 and 2010-11, which was not available even on HIMTAS software of the Department. The licensee was not registered under M&TP Excise Act, 1955 even after detection in November 2012.

On this being pointed out, the Department stated (September 2017) that matter of investigation was pending before DETC (FS) *Parwanoo* who had been directed to dispose of the investigation on priority basis.

3.3.30.3 Inadmissible rebate of excise duty

Rule 97 of the M&TP Rules, 1956 provides that duty paid goods shall be exported under claim for rebate of duty. Rule 14 further provides that the collecting Government shall grant rebate of duty on dutiable goods, if exported out of India. As per Rule 103, the rebate of excise duty on export of goods is admissible subject to the fulfillment of certain conditions.

Scrutiny of records of AETC Una revealed that a licensee was engaged in the manufacture and export of Toilet Preparations (*Fogg* fragrance-body spray). The ETD allowed (February 2014 to November 2015) refund/adjustment of excise duty of ₹5.33 crore on the exports made by the firm. The refund/adjustment was to be allowed after proper verification of payment of amount with the original treasury receipts, and money being adjusted was actually deposited, money adjusted had not been adjusted earlier and there were no arrears against the licensee. However, compliance of such directions could not be observed from the records of AETC Baddi.

The State Government decided (March 2016) after consultation with the Law Department that rebate under M&TP Act is not admissible as exports were not made by manufacturer (licensee) but by the third party with whom the licensee had

entered into an agreement, which was void ab-initio. The State Government requested ETD to take further necessary action in this matter. Consequently, excise refund of additional ₹6.65 crore was not allowed by ETD. Thus, no action was initiated to recover the inadmissible rebate of ₹5.33 crore allowed prior to State Government clarification.

On this being pointed out, the Department stated (September 2017) that reversal of refund previously granted was being examined.

3.3.30.4 Non-conduct of chemical analysis of products of M&TP licensees

Under Rule 53 of M&TP (Excise Duties) Rules, 1956 Excise Officer in whose jurisdiction the manufactory is situated shall without previous notice to the manufacturer, take samples of not less than 13 *per cent* and not more than 15 *per cent* of the total number of medicinal and toilet preparations containing alcohol from the finished stocks, at least once every month and forward them to the Chemical Examiner for analysis. If the proof strength is more than 3 *per cent* proof spirit than the strength declared by the manufacturer on the labels pasted on such bottles, the manufacturer is liable to penalty at the rate of 10 times the difference in duty on the quantity so manufactured but not exceeding ₹2,000.

AETC Baddi in its reply confirmed that no chemical analysis of the products before their removal from the factory was carried out. The remaining two AETCs did not submit any reply regarding conduct of chemical analysis of the samples. Thus, the accuracy of imposition of excise duty on the basis of alcoholic strength of products manufactured was suspect.

3.3.30.5 Non-furnishing of returns by M&TP Units

Rule 41 and 56 of the M&TP Rules, 1956 provides that licensees shall maintain accounts in proper forms and registers and shall deliver to the office-in-charge, by the 5th of each month a return of transactions of business in respect of the preceding month in Form RT-1 and RT-2.

Audit test checked the records of AETC Baddi and observed that out of 62 registered licensees, only 11 licensees were furnishing the returns and making payment of excise duty. The remaining 51 firms were not furnishing returns.

On this being pointed out, the Department stated (September 2017) that District in-charges were directed to take immediate action for timely submission of returns.

3.3.31 Evasion of State Excise Duty

Scrutiny of records of State Excise Duty evasion cases detected by different Departmental/police authorities and their finalization depicted below:

Table-3.4 Evasion cases of State Excise Duty

Year	Opening balance	Cases detected	Total	Cases Decision/ additional demand		Closing balance of cases
				Cases	₹ in lakh	
2011-12	3	42	45	43	2.76	2
2012-13	11	1,174	1,185	1,140	1,71.00	45
2013-14	45	4,242	4,287	4,235	1,91.99	52
2014-15	52	275	327	284	49.34	43
2015-16	43	3,889	3,945	2,367	270.64	33
Total					685.73	

Source: Departmental figures

Scrutiny of the details furnished by different Districts/records of ETC revealed as under:

- i. There was no system in place to monitor the recovery of additional demand of excise duty raised on completion of investigation.
- ii. During 2015-16, on the basis of cases decided, the number of pending cases worked out to 1,578 against which only 33 cases were intimated as closing balance by ETC. The difference of 1,545 evasion cases was not clarified to audit.
- iii. Two cases detected on 28 July 2015 and forwarded to Collector Excise (CZ) were still lying un-disposed of despite lapse of nearly two years.

3.3.32 Refunds of State Excise duty

Rule 19.17 of Chapter XIX of the HP Financial Rules, 1971 dealing with remission or refunds of revenue provides for sanctioning refund of excise revenue wrongly collected, by ETC without any limit and by the DETC up to ₹1,500 in each case.

Scrutiny of the records of ETD revealed that refunds of State Excise duty were disbursed to different dealers as per following details:

Table-3.5 Refund of Excise Duty

Sr. No.	Name of District	Year	₹ in lakh
			Amount
1.	Shimla	2013-14	46.97
2.	Shimla	2015-16	35.64
3.	Kangra at Dharamshala	2013-14/2015-16	16.92
4.	Sirmour	2015-16	18.24
5.	Bilaspur	2011-12/2015-16	30.85
Total			148.62

Source: Departmental figures

Audit observed that refunds were granted towards license fee, renewal fee, basic license fee, annual fee, excess amount deposited, allotment not approved, allotment cancelled, wrong deposit of fee etc. in violation of the provisions of Rule 19.17 of the HPFR. Further, in case of Kangra, Sirmour and Bilaspur Districts, the name of sanctioning authority was also not on records. It was further observed in audit that Una District had granted refunds of ₹88.58 lakh even without the name of the dealers, date of sanction/ release of refund etc. during the year 2015-16 and as such the admissibility of refunds could not be checked. The system of proper verification of proof of deposit with original treasury receipts, no arrears outstanding against the licensees etc. before release of refunds was not existent.

On this being pointed out, the Department stated (September 2017) that concerned AETCs were directed to maintain requisite register of refund cases.

3.3.33 Internal Control

3.3.33.1 Internal Audit

Internal Audit being an effective tool of internal control should be so designed and operated in a manner that all internal control functions are working effectively. The success of the Internal Audit is dependent upon objectivity, coverage of different verticals/functions within the Department, adequate, qualified and trained manpower to undertake the internal audit functions, reporting mechanism and lastly the action taken notes on the findings of the internal audit. Though ETD issued (February 1987) procedure/guidelines for regulating the functioning of Internal Audit Wing at Headquarters under direct charge of the ETC.

Test check of selected AETCs/distilleries revealed that internal audit was mostly not undertaken in the field units. The internal audit mostly dealt with the replies to the Draft Paras/Action Taken Notes of Public Accounts Committee.

The ETC issued instruction (January 2015) for audit of all concern districts on regular basis due to detection of embezzlement of ₹73.00 lakh in Shimla District by Internal Audit of the Department.

Further, due to detection of embezzlement of ₹73.00 lakh, in Shimla District by internal audit wing of the Department, ETC issued instructions (January 2015) for audit of all revenue districts on regular basis.

Audit observed that AETC Baddi directed (February 2015) all the ETOs/ETIs to undertake reconciliation of deposit of monthly license fee/other levies by L-2 and L-14 Licensees²⁸ with the concerned Treasuries/e-kosh. However, no such reconciliation of the revenue could be inferred from the records of the Department/AETC offices. Thus, recurrence of fake/forged challans in support of payment of dues by licensees and consequent loss of revenue to the Department could not be ruled out in audit.

Further, the system of periodical reconciliation with the treasuries as well as with the Finance Accounts was also lacking in the Department, which resulted in significant variation in the Departmental revenue figures with those of Finance Account and instances of booking of non-SED revenue under SED revenue.

On this being pointed out, the Department attributed (September 2017) that this irregularity to shortage of staff and matter for deployment of staff was being taken up with the Government.

²⁸ L-2: Retail vend of IMFL and L-14: Retail vend of CL

3.3.33.2 Departmental inspections

The ETD prescribed monthly schedule for inspections of different field offices by the officers of the Department at each level. ETC also prescribed (September 2012) the norms for Departmental inspections of Distilleries, Breweries, Bonded Warehouses, Wineries and other manufactories under the M&TP Act on monthly basis for ETOs and inspection of premises/godowns of all the wholesalers in the District on monthly basis for ETOs and ETIs. Further, ETC issued directions (May 2015) for inspection of retail vends ensuring the sale of balance quantity and quality of liquor. ETD introduced the affixing of holograms on the liquor bottles and holograms testing kits with a view to ensure to genuineness of the holograms to rule out the adulteration of the liquor. The field offices were directed to inspect the liquor vends under their jurisdiction with hologram testing kits at least twice in every month and to submit the monthly report to ETC.

Test check of records revealed 52 inspections/surprise checking's only as against 1,890 inspection/surprise checking's required as per prescribed norms resulting in shortfall of 97.25 per cent in checking of distilleries/bottling plants as depicted in **Table-3.9**. Further record of checking of vends by AETCs/ETOs/ETIs was not available in all the AETC offices test checked in audit.

Table-3.6 Details of inspections carried out by Officers

Sr. No.	Name of Inspecting Officer	Inspections required	Inspection carried out	Shortfall
1.	ETO	840	13	827
2.	AETC	840	34	806
3.	DETC	210	05	205
Total		1,890	52	1,838

On this being pointed out, the Department stated (September 2017) that field officers were directed to inspect the liquor vends, distillery/bottling plants as per Annual Inspection Plan. The reply is not acceptable in view of persistent failure to carry out the required inspections by the officers as provided in Annual Inspection Plan.

3.3.34 Conclusion

State excise duty occupies an important place in contributing to the tax revenue of the State. The Government had not fixed norms of wastage in beer resulting in irregular/inadmissible claim of wastage by breweries. The system of issue of passes for lifting of quota to different vends/units on manually basis was defective in view of the instances of issue of passes in excess of the allotted quota without realisation of license fee there against. Besides, there was no co-ordination within the Department in respect of different revenue verticals as distilleries, breweries, bottling plants contribute to the revenue by way of VAT on the sale of liquor/beer, license fee, franchisee fee etc. Non-posting/frequent transfers of excise establishment in the distilleries, breweries, bottling plants, on single charge basis resulted in non-maintenance of requisite records of the activities being undertaken

there. There was significant shortfall in inspections/surprise checks by different departmental authorities which resulted in non-detection of evasion cases/other irregularities in the observance of the Rules. There was also lack of internal control mechanism regarding periodical reconciliation of the revenue details with the treasury, subsidiary records.

3.3.35 Recommendations

The Government may

- *fix production and wastage norms for production of spirit and beer to check the leakage of revenue;*
- *formulate a proper mechanism to monitor the cumulative passes issued to the licensees as compared to the liquor quota fixed for the State as a whole as well as for different vends/units through Excise Module;*
- *integrate the recoveries from distilleries, breweries, bottling plants under different revenue heads so as to safeguard its revenue;*
- *monitor the enforcement of M&TP Act effectively to realize the revenue to its full potential;*
- *enforce the instructions for periodic inspections to strengthen the internal control mechanism to ensure better compliance of instructions/Rules and*
- *set up a mechanism for reconciliation of recoveries from the licensees with Treasuries on monthly basis.*

Other audit observations

3.4 Renewal of licenses without payment of renewal fee

The Department renewed different licenses without payment of requisite renewal fee resulting in short recovery of ₹1.45 crore.

Para 3.4 (a & b) and Para 5 of EAs of 2013-14, 2014-15 and 2015-16 dealing with fixed license fee and renewal fee for retail/whole sale licensees holding liquor vends licenses, bars, distilleries etc. of CL, IMFL, BIO, B-II require payment of renewal fee for each vend as per prescribed rates on the basis of different slabs of value of vends, while filling application of renewal. The applicant/licensee shall also deposit 50 per cent of basic license fee and five per cent of annual license fee before submission of application for renewal and attach proof of such payment along with the application.

Audit scrutiny of statements of annual allotment of liquor vends and M-1 registers of AETC Hamirpur revealed that renewal fee of ₹2.36 crore was realized as against renewal fee of ₹3.81 crore due on account of renewal of different licenses during the years 2013-14, 2014-15 and 2015-16 as depicted below:

			₹ in lakh
Year	Renewal fee due	Renewal fee realized	Difference
2013-14	105.60	68.28	37.32
2014-15	133.98	76.53	57.45
2015-16	141.90	91.60	50.30
Total	381.48	236.41	145.07

Thus, AETC Hamirpur renewed licenses without ensuring receipt of entire renewal fee resulting in short deposit of renewal fee of ₹1.45 crore during above years. The Department did not initiate action to recover the renewal fee short deposited, resulting in short recovery of renewal fee of ₹1.45 crore.

The matter was reported to the Department and the Government in June 2017; their reply was awaited (December 2017).

3.5 Non-levy of additional fee and penalty on short lifting of Minimum Guaranteed Quota

Additional fee of ₹1.62 crore for short lifting of 4,86,054 proof liters of liquor by licensee of 532 vends was not levied. In addition, a penalty of ₹15.91 lakh was also leviable.

Para 4.3 of the EA 2015-16 stipulates that each licensee shall be required to lift Minimum Guarantee Quota (MGQ) of CL and IMFL as fixed for each vend failing which he shall be liable to pay license fee fixed on the basis of the MGQ. In addition, the licensee shall also be liable to pay additional fee of ₹10 per Pl on CL and ₹56 per Pl on IMFL on the un-lifted quota which falls short of 100 per cent of the MGQ. The licensee shall also be liable to pay penalty of ₹7 per Pl on CL and ₹14 per Pl on IMFL on the un-lifted quota of the liquor which falls short of the

benchmark of 80 per cent of the MGQ. The AETC or Excise and Taxation Officer (ETO) in-charge of the District shall review the position of lifting of MGQ on quarterly basis and ensure recovery of the additional fee as well as the amount of penalty on un-lifted MGQ.

Audit test checked the records of four AETCs²⁹ and noticed that licensees of 532 vends had lifted 85,57,780 Pl of liquor against the fixed annual MGQ of 90,43,834 Pl resulting in short lifting of MGQ by 4,86,054 Pl³⁰ (CL: 2,40,384 Pl and IMFS: 2,45,670 Pl) during 2014-16, on which additional fee of ₹1.62 crore was recoverable from the licensees of such vends. The AETCs or ETO in-charge of the Districts did not levy additional fee of ₹1.62 crore resulting in loss of revenue of ₹1.62 crore. Audit further noticed that lifting against MGQ was short of 80 per cent bench mark by 1,32,644 Pl in respect of 37 licensees. The penalty of ₹15.91 lakh was required to be levied on these licensees.

The matter was reported to the Department and the Government between November 2016 and March 2017; the Department intimated (September 2017) that an amount of ₹7.07 lakh had been recovered by AETC Shimla and efforts were being made to recover the balance amount whereas notices were being issued to the defaulters by the remaining AETCs. The reply of the Government was awaited (December 2017).

3.6 Non-levy of interest on delayed payment of license fee

Interest amounting to ₹33.31 lakh on delayed payment of license fee was not demanded by the Department from the licensees of 109 vends resulting in non-recovery of interest to that extent.

Para 4.4(d) of the EA 2015-16 stipulates that if a licensee is unable to lift the MGQ within a month, he shall be required to pay the full instalment of license fee for that month by the last day of the month and license fee for the month of March shall be paid in full by 15th of March. Further, Para 4.5 (a) of EAs 2014-15 and 2015-16 further provides that if the licensee fails to pay the amount of license fee on due dates, interest at the rate of 10 and 14 per cent per annum upto one month and 18 per cent per annum thereafter shall be leviable.

Audit scrutiny of records of four AETCs³¹ between September 2016 and April 2017 revealed that licensees of 109 vends had deposited license fee of ₹40.90 crore after due date between April 2014 and March 2016 with delay ranging between two and 370 days. They were, therefore, liable to pay interest of ₹33.31 lakh on belated payment of license fee. However, the concerned AETCs did not levy and

²⁹ Bilaspur: 226 vends: ₹13.24 lakh, Dharamshala: 22 vends: ₹11.02 lakh, Hamirpur: 202 vends: ₹22.40 lakh and Shimla: 82 vends: ₹1.15 crore

³⁰

<u>Liquor quota</u>	<u>CL</u>	<u>IMFL</u>	<u>Total</u>
MGQ monthly fixed	4381663	4662171	9043834
MGQ lifted	4141279	4416501	8557780
MGQ short lifted	240384	245670	486054

³¹ AETCs Bilaspur, Dharamshala, Hamirpur and Shimla

raise the demand for interest on concerned licensees. This resulted in non-recovery of interest amounting to ₹33.31 lakh³².

The matter was reported to the Department and the Government between November 2016 and March 2017; the Department intimated (September 2017) that an amount of ₹8.99 lakh³³ had been recovered by AETCs Hamirpur and Shimla and efforts were being made to recover the balance amount whereas notices were being issued to the defaulters by the remaining AETCs. The reply of the Government was awaited (December 2017).

3.7 Non-recovery of license fee on unsold stock of liquor

License fee of ₹10.13 lakh was recoverable in respect of 149 vends due to non-accountal of unsold stock of preceding year.

Para 3.19 of the EAs 2014-15 and 2015-16 stipulates that in case of renewal of license of a vend, the unsold stock of liquor upto 3 per cent of the MGQ of the preceding year i.e. 2014-15 in the vend, shall not be accounted towards the MGQ for the year 2015-16 and the licensee shall have to take this unsold stock on payment of license fee at the rate of 50 per cent as prescribed for the year 2015-16.

Test check of records of two AETCs³⁴ brought out that licensees of 149 vends had not accounted for the unsold stock of 9,859.28 Pl of liquor (CL: 3,944.17 Pl and IMFL: 5,915.11 Pl) of preceding year 2013-14 and 2014-15. The license fee of ₹10.13 lakh at the rate of 50 per cent of applicable license fee³⁵ for the years 2014-15 and 2015-16 was payable on unsold stock by the licensees. The license fee was neither demanded by the Department nor deposited by the licensees. This resulted in non-recovery of license fee of ₹10.13 lakh³⁶.

The matter was reported to the Department and the Government between November 2016 and March 2017; the Department intimated (September 2017) that ₹4.57³⁷ lakh had been recovered by AETCs Dharamshala (Kangra) and Shimla and efforts were also being made to recover the balance amount. The reply of the Government was awaited (December 2017).

³² AETCs Bilaspur: 35 vends: ₹8.86 lakh, Dharamshala: 25 Vends: ₹6.32 lakh, Hamirpur: 34 Vends: ₹11.36 lakh and Shimla: 15 Vends: ₹6.77 lakh

³³ Hamirpur: ₹4.47 lakh and Shimla: ₹4.52 lakh

³⁴ AETCs Dharamshala (Kangra) and Shimla

³⁵ License fee: **2014-15** IMFL: ₹219 & CL: ₹147 per Pl and **2015-16** IMFL: ₹243 & CL: ₹162 per Pl

³⁶ AETCs Dharamshala (Kangra): 88 vends: ₹4.80 lakh and Shimla: 61 vends: ₹5.33 lakh

³⁷ Dharamshala: ₹2.58 lakh and Shimla: ₹1.99 lakh