

CHAPTER – III
STATE EXCISE
DEPARTMENT



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3.1 Tax Administration

The Additional Chief Secretary to the Government of Meghalaya, Excise, Registration, Taxation & Stamps (ERTS) Department is in overall charge of the State Excise Department at the Government level. The Commissioner of Excise (CoE) is the administrative head of the Department. He is assisted by a Joint Commissioner of Excise and Deputy/Assistant Commissioners of Excise (DCEs/ACEs). At the district level, the Superintendents of Excise (SsE) have been entrusted with the work of levy of excise duties and other dues from the licencees such as bonded warehouses, bottling plants, distilleries and retailer shops. The collection of tax is governed by the provisions of the Assam Excise Act, 1910 (as adapted by Meghalaya), the Assam Excise Rules, 1945 (as adapted), the Assam Distillery Rules, 1945 (as adapted) and the Assam Bonded Warehouses Rules, 1965 (as adapted).

3.2 Internal audit

The Excise Department has no separate Internal Audit Wing (IAW). Despite the same being pointed out earlier in audit, no action has been taken by the Department to create an IAW to monitor the working of the Department.

3.3 Results of Audit

Test check of the records of 8 units during 2016-17 revealed non-realisation of duties, fees, *etc.* involving ₹ 16.88 crore in 67 cases which fall under the following categories:

Table 3.1

(₹ in crore)			
Sl. No.	Category	Number of cases	Amount
1.	Non/Short realisation of duties <i>etc.</i>	14	1.47
2.	Loss of revenue	18	6.30
3.	Other irregularities	35	9.11
Total		67	16.88

During the course of the year, the Department accepted under assessments and other deficiencies of ₹ 3.57 crore in 26 cases. An amount of ₹ 0.17 crore was realised in eleven cases during the year 2016-17.

A few illustrative cases having financial impact of ₹ 2.74 crore in terms of under-assessment/short levy/non-levy of tax and other provisions of the Acts are discussed in the paragraphs 3.4 to 3.8.

3.4 Revenue not realised from retail licencees

Two hundred and thirty-eight IMFL retail licencees failed to renew their licencees resulting in revenue amounting to ₹ 1.41 crore not being realised.

[Assistant Commissioner of Excise (ACE), Shillong, Superintendents of Excise (SsE), Nongpoh, Jowai, Khliehriat, Nongstoin, Tura & Williamnagar; April 2016 - March 2017]

Rules 243, 244 and 252 of the Assam Excise Rules, 1945 (as adapted by Meghalaya) provide for payment of annual licence fee for bonded warehouses, retail licencees and bottling plants in advance, at the rates prescribed from time to time for renewal of licencees. The validity period of licencees is from April of a year to March of the next year. The Excise Department, Government of Meghalaya had fixed the annual fee for renewal of retail licencees as under:

Table 3.2

Sl. No.	Type of licence	Licence renewal fee (₹)
I	Retail 'OFF' licence ¹	60000
II	Retail 'ON' licence (Bar Licence)	45000

Further, Section 29 read with Section 35 of the Assam Excise Act, 1910 (as adapted) stipulates that if any fee or duty payable by the licence holder has not been paid, the licence granted may be cancelled and any amount payable to the Government may be recovered from the defaulters by sale of their movable property or as arrears of land revenue.

Audit of records of the ACE and the SsE revealed that 238 IMFL retail licencees failed to renew their licencees in advance for periods ranging between one year and two years (*Annexure-III*). The ACE/SsE did not take any action to direct the defaulting licencees to renew their licencees and payment of dues. They did not intimate the CoE also for cancellation of the licencees in order to prevent unauthorised operation of these retail licencees in the State. It resulted in consequent non-payment of licence fees amounting to ₹ 1.43 crore.

On this being pointed out (February 2017), the SE, Tura stated (March 2017) that licencees had been renewed and revenue amounting to ₹ 2 lakh was realised in case of four (out of 32 under his jurisdiction) licencees. Realisation in respect of the remaining 28 licencees had not been intimated (December 2017).

¹ 'OFF' licence is a term for a shop licenced to sell alcoholic beverages for consumption off the premises.

Failure of the ACE/SsE to regulate the operations of the retail licencees within their jurisdiction thereby resulted in non-realisation of revenue of ₹ 1.41 crore besides violation of the provisions of the Excise Act.

The cases were reported to the Excise Department; Government of Meghalaya between August 2016 and April 2017. The CoE stated (February 2018) that licence fees amounting to ₹ 53.80 lakh had been realized in respect of 89 out of 238 licencees. Out of remaining 149 licencees, licence of 33 licencees had been cancelled between June 2017 and November 2017 and 116 licencees had closed down their operations. Additionally, the action to recover the pending renewal fee was being initiated.

The reply is not acceptable as the Excise Act and rules do not allow for exemption from payment of licence fees from closed licencees. Further, test check of excise permits by Audit (February 2018) revealed that atleast two retail outlets (out of 24 closed outlets under the jurisdiction of ACE, Shillong) had been issued permits for purchase of IMFL/beer during the period between May 2017 and December 2017, when they were supposed to be non-operational. It, thereby, implies that the outlets were indeed functional. Thus, the information provided by the CoE was factually incorrect.

No further reply had been received from the Excise Department, Government of Meghalaya (February 2018).

3.5 Revenue not realised due to failure to register brand names

Twenty-seven distilleries/companies/bonded warehouses failed to register the brand names of 198 brands resulting in revenue amounting to ₹ 75 lakh not being realised.

[CoE, Meghalaya; March 2017]

Under Rule 363 (1) of the Assam Excise Rules 1945, no person can manufacture or sell any brand of alcoholic liquor in the State unless the brand name and the label of that product are registered with the CoE. The registration is valid upto 31 March of the next year after which it may be renewed on payment of prescribed fees. Application for renewal of the certificate of registration for any year has to be made atleast one month prior to start of the year of registration *i.e.* before last day of February of the year preceding. The Excise Department, Government of Meghalaya has fixed the fees for brand name registration at ₹ 60000 and ₹ 35000 for IMFL and beer brands² respectively.

Audit of records of the CoE revealed that registration of 198 brands manufactured by 27 distilleries/companies were not renewed for the year 2016-17 (*Annexure-IV*). No action was however taken by the CoE to either issue demand notices to the distilleries/companies for renewal of the brand names or to cancel the brand names.

² ₹ 25000 for Bottled in Origin (imported brands).

Lack of timely action by the CoE, thus, resulted in revenue amounting to ₹ 75 lakh not being realised as registration fees. Besides, there was a risk of unregistered products being sold in the State in violation of the provisions of the Excise Rules.

On this being pointed out (April 2017), the CoE stated (February 2018) that registration of additional 59 brands manufactured by ten companies/distilleries had been renewed between April 2016 and February 2017. The CoE further stated that in respect of the remaining 138 brands, the companies had ceased their rights to import these brands into the State. However, the Department was silent on the action taken to stop sale of the liquor of unregistered brands available in the stock of bonded warehouses and retail outlets. No information about the closing stock of these brands as on 31 March 2016 was communicated to Audit.

No further reply had been received from the Excise Department, Government of Meghalaya (February 2018).

3.6 Evasion of excise duty

A bottling plant concealed 0.10 lakh Bulk Litres of Extra Neutral Alcohol and evaded excise duty payment of ₹ 17.37 lakh.

[SE, Nongpoh; April 2017]

Indian Made Foreign Liquor (IMFL) is manufactured from Extra Neutral Alcohol (ENA) by adding water, colour and flavour to the ENA. The standard norm³ of conversion of ENA per case of liquor is as follows:

Table 3.3

Size (in millilitres)	Requirement of ENA in Bulk Litres (BL)
180 ml	3.85 (BL)
375 ml	4.00 (BL)
750 ml	

In Meghalaya, excise duty on General Brand of liquor is ₹ 663 per case of 12 bottles of 750 ml or equivalent quantity.

Audit of records of the SE Nongpoh revealed that a bottling plant⁴ utilised 21286 BL of ENA between April 2015 and March 2016. It produced 2277 cases of liquor containing 750 ml/375 ml and 441 cases of liquor containing 180 ml bottles therefrom. For production of the above quantity of liquor, 10806 BL of ENA should have been actually utilised as per standard norms (*Annexure-V*). The bottling plant, thus, fraudulently overstated the quantity of ENA actually utilised. It resulted in

³ Normally ENA is received with an average purity of 96 per cent and IMFL is produced with strength of 42.8 per cent volume/volume.

One case of IMFL of 180 ml has 48 bottles = 48 x 180 ml = 8640 ml or 8.64 BL

Hence 8.64 BL x 42.8/96 = 3.85 BL. Therefore, 3.85 BL of ENA is required.

One case of IMFL of 750 ml has 12 bottles = 12 x 750 ml = 9000 ml or 9 BL

Hence 9 BL x 42.8/96 = 4 BL. Therefore, 4 BL of ENA is required (Same for one case of 375 ml).

⁴ Marwet Bottling Industries.

concealment of 10480 BL of ENA from which 2620 cases of liquor of 750 ml/375 ml bottles⁵ could be manufactured.

The monthly figures pertaining to consumption of ENA and production of IMFL therefrom were available with the SE. The SE, however, did not take any steps to reconcile the difference and ascertain reasons for overconsumption of ENA by the bottling plants. Failure of the SE to properly monitor the functioning of the bottling plants thereby resulted in evasion of excise duty amounting to ₹ 17.37 lakh⁶.

The case was reported to the Excise Department, Government of Meghalaya in April 2017. On this being pointed out, the CoE stated (February 2018) that evasion of excise duty did not arise as the bottling plant had a closing stock of 25273 BL of blend as on March 2016. The reply is not acceptable since Audit had taken account of the actual quality of ENA utilized by the bottling plant during the period.

No further reply had been received from the Excise Department, Government of Meghalaya (February 2018).

3.7 Loss of revenue due to cancellation of licences without realisation of licence fees

There was loss of revenue amounting to ₹ 12 lakh as unpaid licence fee from two bonded warehouses in the absence of security deposits.

[CoE, Meghalaya; November 2016]

Rules 243 of the Assam Excise Rules, 1945 provides for payment of annual licence fee for bonded warehouses in advance, at the rates prescribed from time to time for renewal of licences. The validity period of licences is from April of a year to March of the next year. Further, rule 246 *ibid* provides for realisation of security deposit in the form of Call Deposit (to be pledged in favour of the CoE, Meghalaya) valid for 5 years and renewable on expiry thereof from all the licence holders for due observance of terms and conditions of the licence. The security deposit is liable to be forfeited for violation of any of the provisions of the Excise Act and rules.

Further, Section 29 read with Section 35 and instruction No. 141 of the Assam Excise Act, 1910 stipulates that if the licensee fails to pay licence fee before the start of the next financial year, his establishment is to be closed with the approval of CoE till the fee is paid and on failure to pay fee promptly, the licence is required to be cancelled and any amount payable to the Government may be recovered from the defaulters by sale of their movable property or as arrears of land revenue.

The Excise Department, Government of Meghalaya had fixed the annual fee and security deposit for bonded warehouses as in the following *Table 3.4*:

⁵ Loss worked out for 375 ml/750 ml bottles only as they have the same excise duty.

⁶ 2620 cases x ₹663 per case = ₹17.37 lakh.

Table 3.4

Type of licence	Annual Licence Fee (₹)	Security Deposit (₹)
Bonded Warehouse	200000	300000

Audit of records of the CoE revealed that licencees of two bonded warehouses⁷ failed to renew their licences in advance for periods ranging between two years and four years. Licence fee amounting to ₹ 12 lakh was payable on these licences.

The CoE also failed to realise the security deposit amounting to ₹ 6 lakh from the licencees at the time of issuing of licence. Despite non-payment of licence fees in advance, no action was taken by the CoE to close down the bonded warehouses. Further examination revealed that:

3.7.1 In case of the bonded warehouse in Shillong, the CoE directed the ACE, Shillong (September 2015) to recover the arrear dues amounting to ₹ 4 lakh from the licencee. The ACE, however, failed to recover any dues from the licencee. The CoE accordingly requested the Government (February 2016) for cancellation of the licence and the same was cancelled by the Government in August 2016.

3.7.2 In case of the bonded warehouse in Williamnagar, the SE, Williamnagar informed the CoE (May 2013) that the case had been forwarded to *bakijai* for recovery of dues as arrears of land revenue. The CoE accordingly requested the Government (July 2013 and February 2015) for cancellation of the licence and the same was cancelled by the Government (June 2015). The Government, while cancelling the licence, directed the CoE to monitor the recovery of arrear dues amounting to ₹ 8 lakh through *bakijai*.

Failure of the CoE in timely cancellation of licences thereby resulted in unpaid licence fee amounting to ₹ 12 lakh. If security deposits had been realised from these bonded warehouses, the amount due could have been partially recovered.

Further, the procedure followed by the Department/Government with regard to these cases of unpaid licence fees lacked consistency. It did not take any action against the licencee in Shillong, but commenced *bakijai* proceedings against the licencee in Williamnagar.

The cases were reported to the Excise Department, Government of Meghalaya in April 2017. On this being pointed out, the CoE stated (February 2018) that action had been initiated for recovery of the licence fee from the bonded warehouse licencee at Shillong. In respect of the licencee at Williamnagar, the case was still pending in *bakijai* court. Recovery amount had not yet been realised (February 2018).

No further reply had been received from the Excise Department, Government of Meghalaya (February 2018).

⁷ M/s B.M. Bonded Warehouse, Shillong (Period of default: 2014-15 to 2015-16)
M/s M.M. Bonded Warehouse, Williamnagar (Period of default: 2012-13 to 2015-16)

3.8 Evasion of excise duty by bonded warehouses

There was evasion of excise duty amounting to ₹ 35.13 lakh by three bonded warehouses on account of stock found short during verification.

[SsE, Nongpoh & Jowai; November-December 2016]

The Assam Excise Act, 1910 and rules made thereunder stipulate that:

- Correct accounts of all liquors shall be maintained by the licensee in such forms as shall be prescribed by the CoE (Rule 71);
- The receipt and removal of spirits from bonded warehouse shall be only on the basis of transit passes issued from the officer-in-charge of the distillery or of the bonded warehouse from where they have been transferred or by a special pass issued by an authorized officer (Rule 114);
- The officer-in-charge of the warehouse shall take stock of all spirits in the warehouse on the last day of March, June, September and December in each year and the licensee shall pay excise duty to the Government on shortage in excess of an allowance (Rule 125);
- The duty shall be paid before removal from the distillery or the bonded warehouse unless a bond has been executed for such payment (Rule 267).
- All excise revenues, including any loss that may accrue in consequence of default, may be recovered from the licensee as arrears of land revenue (Section 35).

Audit of stock registers of the excise licensees revealed that three bonded warehouses⁸ disclosed closing stock of 50,660 cases of different categories of IMFL/beer between November and December 2016. A physical verification of the stock in the three bonded warehouses⁹ was carried out by Audit in the presence of the officers-in-charge of the warehouses between November and December 2016. It revealed that the actual closing stock of IMFL/beer was 41839. The bonded warehouses thus concealed sale of 8821 cases of IMFL/beer resulting in evasion of excise duty amounting to ₹ 35.13 lakh (*Annexure-VI*).

Excise rules prohibit sale/transfer of liquor without authorisation by the excise officials and also prescribe mechanisms for regular stock taking and accounting of IMFL/beer by the Department. The officers-in-charge, however, failed to check unauthorised sale of IMFL/beer by the licensees in violation of the rule provisions. The CoE also failed to verify the stock details furnished by the officers-in-charge of the bonded warehouses. Absence of proper control mechanism to enforce the provisions of the Excise Act and rules thereby resulted in evasion of excise duty by the bonded warehouses to that extent.

⁸ OK Bonded Warehouse (Jowai), Nico Bonded Warehouse and OS Bonded Warehouse (Nongpoh).

⁹ Physical verification in Jowai was carried out on 28 November 2016 and in Nongpoh was carried out on 14 December 2016.

The Department may strengthen its internal controls to ensure regular verification of stock in all licenced premises so as to prevent unauthorised removal/sale of IMFL/beer by the licencees.

The cases were reported to the Excise Department, Government of Meghalaya in April 2017. On this being pointed out, the CoE stated (February 2018) that stock verification¹⁰ of these three bonded warehouses had been carried out by Excise officials and based on the verification, licence fees amounting to ₹ 4.72 lakh had been realized in respect of stock found short. The reply is not acceptable since the audit observation pertains to stock found short during a joint verification by audit and excise officials between November 2016 and December 2016 on which excise duty amounting to ₹ 35.13 lakh was realizable. A report on recovery had not been intimated (February 2018).

No further reply had been received from the Excise Department, Government of Meghalaya (February 2018).

¹⁰ Nico Bonded Warehouse and OS Bonded Warehouse (Nongpoh) on 31 December 2016 and OK Bonded Warehouse (Jowai) on 22 April 2017.