

CHAPTER – VI
STATE EXCISE

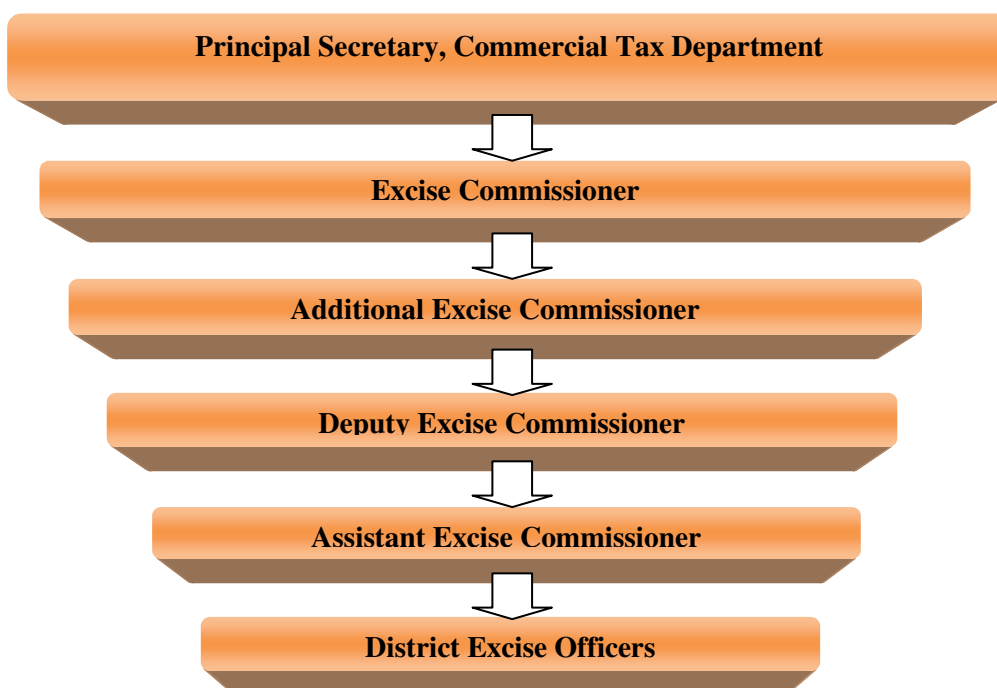
Chapter-VI State Excise

6.1 Tax Administration

The Principal Secretary, Commercial Tax Department is the administrative head of the Excise Department at the Government level. The Excise Commissioner (EC) is the Head of the Department and is assisted by one Additional Excise Commissioner (Addl. EC), three Deputy Excise Commissioners (DEC) at headquarters at Gwalior, seven divisional flying squads headed by DECs, 15 Assistant Excise Commissioners (AEC) and 54 District Excise Officers (DEO) in districts. In the district, the District Collector heads the Excise Administration and is empowered to settle shops for retail vending of liquor and other intoxicants and is also responsible for realisation of excise revenue.

The organisational chart of the Department is as under:

Chart 6.1: Organisational Setup



The working of distilleries, bottling plants (India made foreign liquor) and breweries are monitored by the DEOs with the assistance of the Assistant District Excise Officers (ADEOs) and Sub Inspectors posted in the distilleries/breweries and bottling plants.

State Excise revenue comprises receipts from duty, fee, penalty or confiscation imposed or ordered under the provisions of the Madhya Pradesh Excise Act, 1915 and Rules made thereunder. It also includes revenue from manufacture, possession and issue of liquor for sale, *bhang* and poppy straw.

State Excise revenue is collected under the provisions of the following Acts, Rules and notifications issued thereunder:

- Madhya Pradesh Excise Act, 1915 (MP Excise Act);
- Madhya Pradesh Distillery Rules, 1995 (MP Distillery Rules);
- Madhya Pradesh Foreign Liquor Rules, 1996 (MPFL Rules);
- Madhya Pradesh Country Spirit Rules, 1995 (MPCS Rules);
- Madhya Pradesh Breweries and Wine Rules (MP B&W Rules);
- Medicinal and Toilet Preparation (Excise Duties) Act, 1955 (M&TP ED Act); and
- Orders, circulars and notifications issued by Excise Commissioner/Government.

6.2 Internal Audit

An Internal Audit Cell (IAC) was established in the office of Excise Commissioner in the year 1978 and is headed by a Joint Director, who is assisted by officers of MP Treasuries and Accounts Department for conducting internal audit of the Department. The Department prepares roster for audit of subordinate offices every year.

The Department informed (May 2016) that due to engagement of Head of the Department and other staff in work related to branch offices and paucity of time, internal audit could not be conducted as per roster system in 2015-16. The Department conducted audit of only 16 units out of 69 units planned for audit in 2015-16. A total of 93 paragraphs of general nature were included in these internal audit reports and officials were directed to carry out work in accordance with the Departmental Manual and as per orders issued by Finance Department.

The Department needs to strengthen the system of internal audit to remove the persistent irregularities pointed out by audit, some of which have been discussed in this Chapter.

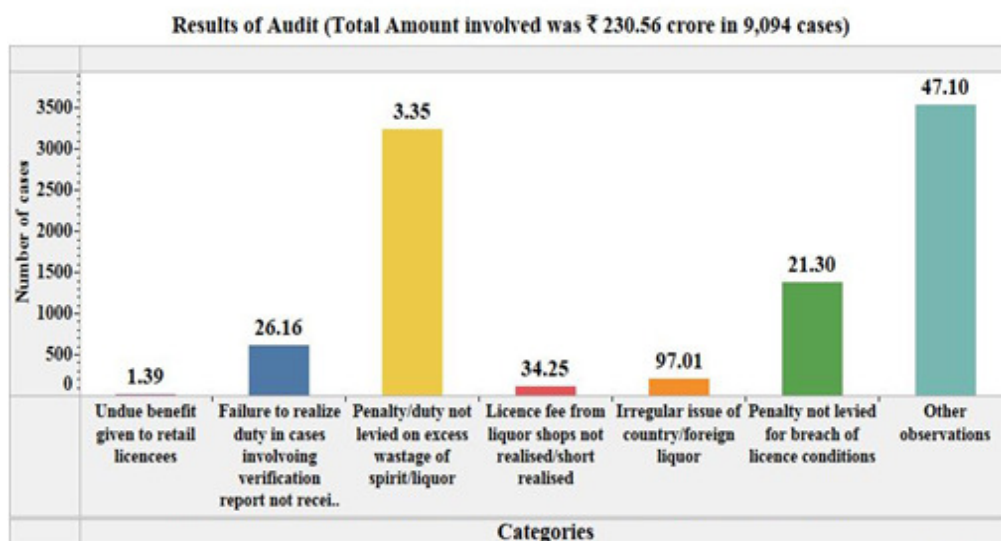
6.3 Results of Audit

We test checked records of 43 units out of 61 units of State Excise receipts during the year 2015-16 and observed issues involving duty was not realised/short realised, loss of revenue, penalty was not levied etc., amounting to ₹ 230.56 crore in 9,094 cases which fall under the following categories as mentioned in **Table 6.1**.

Table 6.1
Results of Audit

Sl. No.	Categories	(₹ in crore)	
		Number of cases	Amount
1.	Undue benefit given to retail licensees	8	1.39
2.	Failure to realise duty in cases involving verification report not received	615	26.16
3.	Penalty/duty not levied on excess wastage of spirit/liquor	3,236	3.35
4.	Licence fee from liquor shops not realised/short realised	113	34.25
5.	Irregular issue of country/foreign liquor	207	97.01
6.	Penalty not levied for breach of licence conditions	1,373	21.30
7.	Other observations	3,542	47.10
Total		9,094	230.56

Chart 6.2



All observations were communicated to the Government and the Department. The Department accepted cases in which duty was not realised/short realised, penalty was not imposed and loss of revenue etc. involving ₹ 198.84 crore in 8,938 cases, which were pointed out in audit during the year 2015-16 and reported realisation of ₹ 16.17 lakh in 855 cases.

A few illustrative audit observations involving ₹ 26.39 crore are mentioned in the following paragraphs. A meeting was held with the Department on 28 September 2016 to discuss paragraphs included in this chapter. Replies given by the Department in the meeting have been included in the paragraphs.

6.4 Excise Verification Certificates not furnished by licencees who got transport/export permits issued for transport of foreign liquor/beer

The licensees of foreign liquor/beer did not furnish Excise Verification Certificates (EVCs) duly obtained from the Officer-in-charge of the destination units to the authority who issued the transport/export permit. EVCs were not furnished against export/transport of 7,93,797.56 proof litre (PF) foreign liquor and 3,87,165 bulk litre (BL) beer involving excise duty of ₹ 0.62 crore on beer and ₹ 16.99 crore on liquor.

According to Rules 12, 13 and 14 of Madhya Pradesh Foreign Liquor (MPFL) Rules, the export/transport of foreign liquor/beer is permissible on payment of duty or on furnishing a bank guarantee or on executing a bond in form FL-23¹ with adequate solvent sureties for the amount of duty involved. After transportation of the liquor, the licensee shall obtain an EVC from the Officer-in-Charge of the destination unit and furnish it to the authority, who issues the transport/export permit, within 40 days of the expiry of the permit. In case of default of licensee, the duty involved shall be recovered from the deposit made, bank guarantee furnished or the security bond executed by the

¹ Form of bond to be executed on the removal of foreign liquor from the licensed premises of F.L.9/F.L.9A/F.L.10A/F.L.10B/B-3 license at export/transport in bond.

licensee. This will be in addition of penalty which may be imposed under Section 19 of MP Excise Act.

We observed (between October and December 2015) from the export/transport permits registers and Excise Verification Certificates receipt registers in DEO Gwalior, DEO Morena and AEC Raisen that the licensees exported/transported 7,93,797.56 PL foreign liquor and 3,87,165 BL beer involving duty of ₹ 17.61 crore on 175 permits out of 175 permits issued and examined. However, these EVCs were not furnished to the authorities who issued the transport/export permits.

After we pointed out the cases, DEO, Gwalior replied (October 2015) that the cases were being sent to Commissioner's office for further orders and DEO Morena (December 2015) stated that the pending EVCs would be shown to next party while AEC Raisen stated (October 2015) that EVCs would be collected and shown to audit.

We reported the matter to the Government and Department in April 2016. The Department replied in a meeting (September 2016) that pilot study was going on for issuance and verification of EVCs online through internet/broadband and after its implementation, this issue would be resolved.

The fact remains that export/transport of foreign liquor/beer amounting to ₹ 17.61 crore could not be verified in absence of EVCs.

6.5 Short recovery of licence fees on licences of poppy straw

The District Collectors did not revoke licences of 11 poppy straw licensees who did not pay licence fees amounting to ₹ 12.15 crore.

As per Clause 10.3 of Gazette Notification (*Asadharan*), Bhopal dated 30 April 2015, licence would be given to the highest bidder for wholesale trade of poppy straw. Licence fees shall be divided in 10-1/2 parts and licensee shall deposit monthly licence fees of that month before the end of that particular month. If the licence fees of the month is not paid before the end of the month concerned, then District Collector would revoke the licence of wholesaler of poppy straw and prohibit him to carry out any further trade (purchase/sale) of poppy straw and process to float new tender would be initiated at the cost of licensee concerned. The recovery of all losses of revenue to Government would be recovered from old licensee by issuing Revenue Recovery Certificate.

The above Clause of the said notification nowhere states that Collector would give notices to the defaulter licensee to recover the amount of monthly installment of annual licence fees defaulted by the licensee. The Clause clearly states that if licence fee of a month is not paid by the last date of that month then, wholesaler licence of that licensee would be withdrawn and shall be re-tendered at the cost of defaulter licensee. The said Clause also stipulates that Collector would also restrict/sale of the poppy straw by the defaulter licensee.

We test checked records of the DEOs Mandsaur and Ratlam between April 2015 and March 2016 and observed that the DEO Mandsaur and Ratlam had allotted 38 licences to 32 licensees. Licence for wholesale trade of poppy straw for a period of ten and half months was issued on 13 May 2015 for the period 15 May 2015 to 31 March 2016. However, post-dated cheques given by

11 licensees having 12 licences against monthly instalment of licence fees of every month from June 2015 onwards were not honoured by the Banks due to insufficient balance in their bank accounts.

Despite provisions of the notification for withdrawal of licences in cases of default in payment of licence fee of one month, the District Collector issued notices (between July 2015 and February 2016) to defaulter licensees for payment of dues. Moreover, criminal action for dishonor of cheques issued by licensees was also not initiated by the District Collectors.

This not only resulted in short realisation of revenue of ₹ 12.15 crore but also the trade of narcotic substance continuously remained in the hands of persons, who were not committed to adhere to the clauses of the agreement.

After we pointed out the cases, the DEO and AEC stated (February 2016) that the audit would be informed after recovery of the amount.

The matter was reported to the EC and the Government (July 2016), their replies have not been received (October 2016).

6.6 Very Small Aperture Terminal (VSAT) connectivity was not installed at warehouses for which penalty was not imposed

In 107 warehouses of 51 districts of Madhya Pradesh, arrangements for VSAT connectivity were not made, contravening the provisions of tender document. The Department did not levy penalty amounting to ₹ 6.05 crore on the warehouses.

In Clause 6 (xxxii) of tender notice for supply of country spirit in sealed bottles in 51 districts of Madhya Pradesh issued by the Excise Commissioner Madhya Pradesh, Gwalior vide notification dated 3 January 2014, it was stipulated that the successful tenderer for supply of country spirit will have to make arrangements for VSAT connectivity in all the storage warehouses at his cost. Rule 12(1) of Madhya Pradesh Country Spirit Rules, 1995 provides that the Excise Commissioner may impose a penalty not exceeding ₹ 50,000 (up to 12 January 2014) and ₹ 2 lakh (from 13 January 2014) for any breach or contravention of any of these rules and may further impose in the case of continued contravention, an additional penalty not exceeding ₹ 1,000 for every day during which the breach or contravention is continued. The objective behind installation of VSAT at country spirit warehouses was to generate permits online.

We test checked the records of Excise Commissioner Office, Gwalior for the period August 2014 to July 2015 and found that out of 107 warehouses of 51 districts of Madhya Pradesh, none of the warehouses had made arrangements for VSAT connectivity. As a result, the online permit from warehouses were not generated and issued. No proper action was taken by authority concerned and penalty amounting to ₹ 6.05 crore² was not levied for breach and continued contravention of rules on the successful tenderer. Further, Excise Verification Certificates were also not generated online against the liquor supplied through transport/export permits. As a result, transportation of liquor

² (₹ 2,00,000 + ₹ 3,65,000 = ₹ 5,65,000 per warehouses) * 107 = ₹ 6,04,55,000

involving excise duty of ₹ 17.61 crore remained unacknowledged which is highlighted in paragraph 6.4 of this Chapter.

We reported the matter to the Government and the Department in April 2016. The Department replied in a meeting (September 2016) that contract is given for one year, and if in next year, same contractor does not get contract again, his investment in VSAT would become redundant. It was further stated that the Department had been working for connectivity of all warehouses through broadband.

We do not agree with the reply as any variation from conditions stipulated in the tender tantamount to undue favour to the contractor and vitiated the tendering process.

6.7 Penalty not imposed on failure to maintain minimum stock of country liquor at warehouses and bottling units

The licensees of country liquor did not maintain minimum stock of bottled country liquor at country liquor warehouses and country liquor bottling units. However, penalty amounting to ₹ 2.76 crore for breach and continued contravention of rules was not imposed against the licensees.

Rule 4(4) of Madhya Pradesh Country Spirit Rules 1995 provides that the licensee shall maintain at each manufacturing and storage warehouse a minimum stock of bottled liquor/rectified spirit that equals average of five days supply of previous month. Rule 12(1) of Madhya Pradesh Country Spirit Rules 1995 provides that the Excise Commissioner may impose a penalty not exceeding ₹ 50,000 (up to 12 January 2014) and ₹ 2 lakh (from 13 January 2014) for any breach or contravention of any of these rules and may further impose in the case of continued contravention, an additional penalty not exceeding ₹ 1,000 for every day during which the breach or contravention is continued.

(i) Minimum Stock at Warehouses not maintained

We observed (between April 2015 and March 2016) from records viz. Stock Register, Monthly Register etc., of 10 Assistant Excise Commissioner Offices³ and 11 District Excise Officers⁴ that the minimum stock of bottled country liquor was not maintained by 25 licensees between August 2011 and February 2016. This was in violation of provisions of Rule 4(4) of Madhya Pradesh Country Spirit Rules 1995. Penalty amounting to ₹ 1.96 crore for breach and continued contravention of rules was not imposed on the licensees as per Rule 12(1) of Madhya Pradesh Country Spirit Rules, 1995.

(ii) Minimum stock at Country liquor bottling units not maintained

We observed from the records viz. Stock Register, Monthly Register etc., of three Assistant Excise Commissioner Offices⁵ and two District Excise

³ Bhopal, Chhatarpur, Chhindwara, Jabalpur, Khandwa, Raisen, Ratlam, Sagar, Shivpuri and Ujjain

⁴ Annuppur, Barwani, Dhar, Hoshangabad, Mandsour, Morena, Seoni, Shajapur, Sheopur, Umariya, and Vidisha

⁵ Chhindwara, Khandwa and Shivpuri

Officers⁶ (between May 2015 and March 2016) that minimum stock of spirit and bottles at Country liquor bottling units that equals average of five days' supply of previous month was not maintained by five licensees (between February 2014 and February 2016). This was in violation of provisions of Rule 4(4) of Madhya Pradesh Country Spirit Rules 1995. Penalty amounting to ₹ 79.67 lakh for breach and continued contravention of rules was not imposed on the licensees as per Rule 12(1) of Madhya Pradesh Country Spirit Rules, 1995.

We reported the matter to the Government during February 2016 and July 2016. The Department replied in a meeting (September 2016) that imposition and recovery of penalty is under process.

6.8 Penalty not imposed on excess wastage/shortage

During export/transport of foreign liquor, beer and Extra Neutral Alcohol (ENA), total wastages of foreign liquor, beer and ENA was 1,57,108.59 PL, 12,814.30 BL and 26,439.27 PL respectively. This was 1,22,329.50 PL in excess of admissible limit in the case of the foreign liquor, 9,035.58 bulk litre in the case of beer and 15940.79 PL in the case of ENA. However penalty of ₹ 2.51 crore was not imposed and recovered by the Department.

6.8.1 Foreign liquor/beer during export/transport

Rule 16 and 19 of Madhya Pradesh Foreign Liquor Rules, 1996 provide that the maximum wastages allowance for all export of bottled foreign liquor/beer shall be 0.25 percent irrespective of the distance, for all transports. It shall be 0.1 percent if the selling and purchasing licensees belong to the same district and 0.25 percent if they belong to different districts. In case of wastages beyond the permissible limit, the licensee shall be liable to pay penalty at the rate prescribed by the Government from time to time. The Excise Commissioner or the authorised officer may waive off this penalty under Rule 19 (2) of Rules *ibid* if it is proved to his satisfaction that such excess deficiency or loss was due to some unavoidable causes like fire or accident and its First Information Report was lodged in Police Station.

We observed (between September and December 2015) from EVCs of foreign liquor bottling units and breweries of Deputy Commissioner Office, Indore, Assistant Excise Commissioner Office, Bhopal and three District Excise Officers⁷ that during export/transport, total wastages of foreign liquor was found 1,57,108.59 PL which was 1,22,329.50 PL in excess of the admissible limit of 34,779.09 PL in 2,469 permits. Further, during export/transport (between November 2014 and October 2015), total wastage of beer was found 12,814.30 BL which was 9,035.58 BL in excess of the admissible limit of 3,778.72 BL in 250 permits. On these excess wastages, penalty of ₹ 2.36 crore was leviable on licensees but was not imposed and recovered by the Department.

⁶ Dhar and Rajgarh

⁷ Gwalior, Morena and Shajapur

We reported the matter to the Government in March 2016. The Department replied in a meeting (September 2016) that the imposition and recovery of penalty was under process.

6.8.2 Extra Neutral Alcohol (ENA)

Rule 6(4) and 8(4) of Madhya Pradesh Distillery Rules 1995 provide for an allowance of 0.1 to 0.2 *per cent* on account of leakage or evaporation of spirit/ENA transported or exported in tankers from a distillery/warehouse to another distillery/warehouse according to their distance. In the case of excess wastage beyond permissible limit or shortage, the licensee was liable to pay penalty at the rate not exceeding the duty payable per PL on country spirit at that time.

We observed in December 2015 from Excise Verification Certificates of District Excise Officer, Khargone pertaining to M/s Associate Alcohol and Breweries Ltd. that through all 141 permits issued and examined, 52,49,240 PL ENA was exported from Madhya Pradesh to other states between August 2014 and October 2015 against which 52,22,800.73 PL ENA was received by the borrowing/importing States resulting in loss of 26,439.27 PL ENA. The total loss beyond the permissible limit of 10,498.48 PL was 15940.79 PL ENA. On the excess wastage, a penalty of ₹ 14.92 lakh⁸ was leviable. However, the Department did not levy penalty.

We reported the matter to the Government and the Department in March 2016. The Department replied in a meeting (September 2016) that the issues were under process. Further reply has not been received (October 2016).

6.9 Value Added Tax (VAT) was not recovered on old stock of liquor

The Department did not levy VAT on closing stock of country liquor with retailers as on 31 March 2013 as per the provisions of VAT Act. As a result, VAT amounting to ₹ 2.26 crore on closing stock of ₹ 45.25 crore could not be recovered.

Government of Madhya Pradesh notified in March 2013, that liquor as specified in Part III A of Schedule II of VAT Act, on which tax is payable and which have been purchased by a dealer from a registered dealer inside the State of Madhya Pradesh shall be “tax-paid goods”. Liquor, when sold by a dealer was also included under Schedule II, Part III A of the VAT Act for levy of VAT at five *per cent*.

It was also specified that VAT would be leviable on both Country Liquor and Foreign Liquor sold in the State on or after 1 April 2013.

We test checked (between March 2014 and October 2015) records of four Assistant Excise Commissioner Offices⁹ and 11 District Excise Officers¹⁰ and found that stock amounting to ₹ 45.25 crore was lying with retailers as closing

⁸ For the year 2014-15 - 12699.54 PL * ₹ 92 (Rate of ENA in 2014-15) = ₹ 11,68,358
For the year 2015-16 – 3241.25 PL * ₹ 100 (Rate of ENA in 2015-16) = ₹ 3,24,125
Total (₹11,68,358 + ₹3,24,125 = ₹ 14,92,483)

⁹ Chhatarpur, Dewas, Dhar and Hoshangabad

¹⁰ Ashok Nagar, Barwani, Chhindwara, Damoh, Dindori, Katni, Khargone, Satna, Sehore, Seoni and Sheopur

stock for the financial year 2012-13 and the same was sold on or after 1 April 2013. Thus, the aforesaid stock attracted VAT amounting to ₹ 2.26 crore. However, neither the retailers deposited VAT nor the Department took any initiative for recovery of VAT.

Matter was reported to the Government and the Department in May 2016. The Department replied in a meeting (September 2016) that VAT on old stock of liquor with licensee was not levied as it was already sold to licensee in previous year while the procedure for collecting VAT prescribed by the Commercial Tax Commissioner was applicable from 1 April 2013. It was also stated that VAT was collected by Officer-in-Charge from the retailers at the time of issue from Foreign Liquor warehouse and in case of Country Liquor warehouse; it was collected by the supplier from the retailers at the time of issue so there is no provision of collecting VAT from retail shops.

We do not agree with the reply of the Department as the order of March 2013 implied that VAT should be levied and collected from retailers concerned and not from end users. Moreover, the Department was already collecting VAT on foreign liquor.

6.10 Loss of revenue as offer of highest bidder was not accepted

The offer of the highest bidder for ₹ 8,68,77,777 was not accepted as the cheque of earnest money submitted by him along with the financial bid was 75 paise less than the stipulated amount of ₹ 72,39,814.75, which was equivalent to 1/12th of the offer price. Shops were awarded to second highest bidder whose offer of ₹ 8.01 crore was ₹ 67.65 lakh less than the offer of highest bidder.

As per para 16.11 of the gazette notification dated 21 January 2015, every bidder had to submit a cheque equivalent to 1/12th amount of offer price along with the financial bid. Notification further stipulated that if in the envelope, bidder had not submitted the cheque equivalent to 1/12th of the offer price the offer shall not be considered.

During audit of District Excise Office, Khandwa, we observed (December 2015) that for execution of one foreign liquor shop and three country liquor shops in C-1 group during the year 2015-16, one bidder made highest offer of ₹ 8.69 crore. His offer was not accepted as the cheque for financial bid submitted by him in the envelope was less than the 1/12th of the amount of offer ₹ 72.40 lakh by 75 paise. The Department allotted the shops to the second highest bidder who offered ₹ 8.01 crore for these shops which was ₹ 67.65 lakh less than the offer of highest bidder.

On being pointed out in audit, the DEO replied (December 2015) that Para 16.14 of the Gazette Notification stipulated that if in the envelope of financial bid, tenderer had not submitted a cheque equivalent to 1/12th of offer made by him then his offer would not be considered.

We do not agree with the reply as Para 16.11 of the said Gazette Notification also stipulated that the said cheque of earnest money shall be returned to successful tenderer after he deposited the security amount. Therefore, it was clear that the said cheque along with offer was collected only for security purpose. The authorities of the Department rejected an offer in which earnest

money was only short by 75 *paise* thereby causing loss to the exchequer to the extent of ₹ 67.65 lakh. The revenue officers in the larger interest of the revenue should have sorted out the issue with the highest tenderer to safeguard the revenue of the State. Not doing so resulted in loss of revenue to this extent.

We reported the matter to the Government and Department (January 2016). The Department stated in a meeting (September 2016) that detailed reply would be given after analysis of the issue. Further reply has not been received (October 2016).