

CHAPTER-II: STATE EXCISE

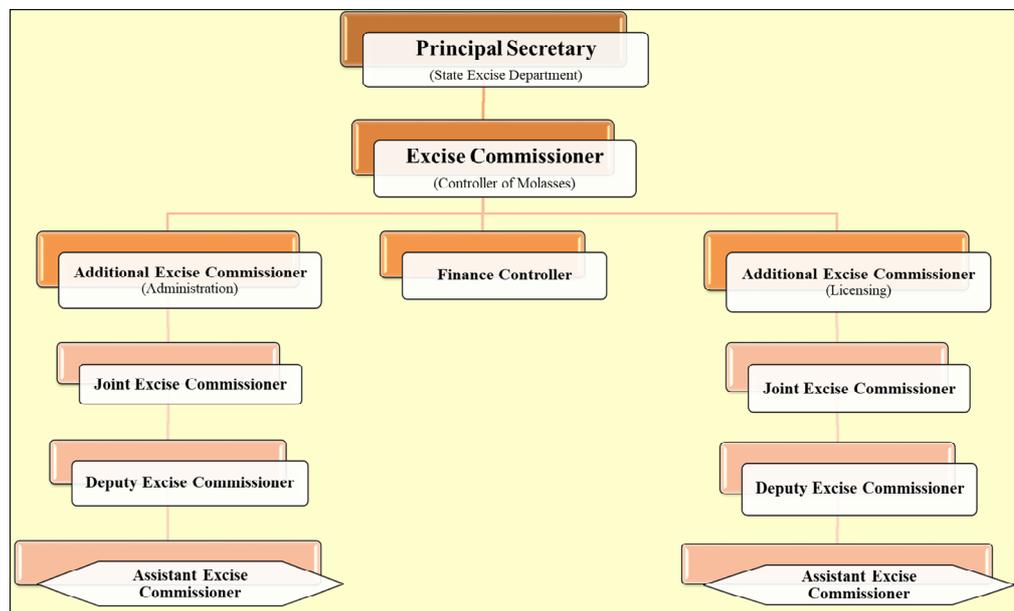
2.1 Tax administration

Various kinds of liquor, such as Country Liquor (CL) and Indian Made Foreign Liquor (IMFL) are manufactured from alcohol. Excise duty on production of alcohol and liquor in distilleries forms a major part of the State's excise revenue¹. Apart from the excise duty, license fee² also forms a part of excise revenue. The Uttar Pradesh Excise Act, 1910 and Rules³ made thereunder govern the levy and collection of excise duty on liquor for human consumption and applicable license fee.

The Principal Secretary (State Excise) is the administrative head of the State Excise Department (Department) at the Government level. The Department is headed by the Excise Commissioner (EC) who is assisted by two Additional Excise Commissioner (AEC). The Department has five zones headed by Joint Excise Commissioners (JECs) who is assisted by 18 Deputy Excise Commissioner (DEC). Assistant Excise Commissioners (AEs) head the districts they are assisted by Excise Inspectors (EIs) to oversee and regulate levy/collection of excise duties and allied levies. Additional District Magistrate (Finance & Revenue) is in charge of collection and account of excise receipts under over all the administrative control of the District Collector.

The organisational setup of the Department is as under:

Chart 2.1 Organisational setup



¹ CL formed 51 per cent, IMFL 33 per cent, Beer 13 per cent and others three per cent of total excise revenue of 2016-17.

² License fee is applicable on licensees of CL, IMFL, Beer, Bars, Distilleries, Breweries, Pharmacies, etc. and on other manufacturing units using alcohol as raw material.

³ Uttar Pradesh Excise (Settlement of licenses for retail sale of foreign liquor) (excluding Beer and wine) Rules 2001.

UP Excise (Settlement of licenses for retail sale of foreign liquor) (excluding Beer and wines) (Third Amendment) Rules 2002.

UP Excise (Wholesale and retail vend of foreign liquor) (Thirteenth Amendment) Rules 2002.

UP Excise (Settlement of licenses for retail sale of country liquor) Rules 2002.

UP Excise (Settlement of licenses for country liquor bonded warehouse) Rules 2003.

UP Excise (Settlement of retail licenses for model shop of foreign liquor) Rules 2003.

2.2 Results of audit

During 2017-18, Audit test checked 4,006 cases (30 per cent) out of 13,144 total cases in 82⁴ units out of 231 auditable units (35 per cent) of the Department in which irregularities amounting to ₹ 190.96 crore in 2,332 cases (58 per cent) were found. The Department generated a revenue of ₹ 14,273.49 crore during 2016-17, of which the audited units had collected ₹ 9,125.01 crore (64 per cent).

Audit scrutiny revealed short realisation of excise duty, non-realisation of license fee/ interest etc. amounting to ₹ 190.96 crore in 199 paragraphs as shown in **Table 2.1**.

Table - 2.1

Sl. No.	Categories	Number of paragraphs	Amount (₹ in crore)	Share in per cent to the total objected amount
1.	Short realisation of excise duty	8	80.46	42.13
2.	License fee/ interest not realised	159	110.29	57.76
3.	Other irregularities ⁵	32	0.21	0.11
Total		199	190.96	

Source: Information available in the Audit office.

The Department accepted (between April 2017 and September 2019) 717 cases amounting to ₹ 53.80 crore pointed out in the year 2017-18. The Department reported (between April 2017 and September 2019) recovery of ₹ 7.52 crore out of which three cases of ₹ 90.04 lakh is related to the year 2017-18 and the rest of the cases pertain to the earlier years.

This chapter discusses 860 cases worth ₹ 62.57 crore. The Department accepted 667 cases amounting to ₹ 52.90 crore. Out of these some irregularities have been repeatedly reported during the last five years as detailed in **Table - 2.2**. Most of the audit observations are of a nature that may reflect similar errors/omissions in other units of the concerned State Government Department, but were not covered in the test check conducted during the year. The Department/Government may therefore like to internally examine all other units with a view to ensuring that they are functioning as per requirement and rules.

Table - 2.2

Nature of observation	2012-13		2013-14		2014-15		2015-16		2016-17		Total	
	Cases	Amount	Cases	Amount								
Failure to cancel the selection of shops and forfeiture of basic license fee and security deposit	639	53.68	-	-	32	3.66	1,007	37.43	14,334	1,297.07	16,012	1,391.84
Sale of Beer without Beer bar license	1,370	16.80	87	1.31	-	-	364	6.70	720	13.59	2,541	38.40
Short levy of license fee on model shops	393	7.51	-	-	2	0.36	-	-	44	2.49	439	10.36

Source: Information available as per Audit Report (Revenue Sector).

⁴ This consists of Excise Commissioner (HOD), 47 District Excise Officer and 34 Distilleries.

⁵ Non-maintenance of cash book, Imposition of less rent on warehouse, Non-execution of bond, less imposition of stamp fee on rented warehouse, Non completion of MFS register, and slow progress in arrear recovery.

Recommendation:

The Department may initiate systemic measures to ensure that persistent irregularities that are routinely found during Audit do not recur.

2.3 Failure to cancel the settlement of shops and forfeiture of basic license fee/ license fee and security deposit

The Department failed to act on the recommendation made by the Public Accounts Committee for timely deposit of Basic License Fee and License Fee on settlement of shops. The Department did not initiate any action for cancellation of settlement, and forfeiture of basic license fee/license fee (₹ 28.35 crore) and security (₹ 30.50 crore) totalling to ₹ 58.85 crore, in contravention to the rules.

The various Uttar Pradesh Excise (Settlement of Licenses of Retail Sale) Rules⁶ stipulate that the amount of Basic License Fee⁷ (BLF)/License Fee⁸ (LF) shall be deposited in full within three working days, half of the security⁹ amount within 10 working days and the remaining amount within 20 working days of the receipt of information of the selection of shop. In case of default, the settlement of shops would be cancelled, and the amount of BLF/LF, security deposit are required to be forfeited, and these shops need to be resettled.

Previous Audit Reports for the years 2012-13, 2014-15, 2015-16 and 2016-17 had highlighted instances of such persistent losses amounting to ₹ 1,391.84 crore in 16,012 cases. In a similar issue highlighted in Para 3.8.8.1 of Audit Report (Revenue Sector) 2012-13, the Public Accounts Committee has made recommendation (May 2015) to the Principal Secretary, Excise to take action against the defaulting licensees and ensure that similar irregularity is not repeated in future.

To evaluate the corrective measures taken by the Department in this regard, Audit test checked the records of 15 out of 47 District Excise Offices. Audit noticed that licensees of 714 out of 4,851 liquor shops (14.72 *per cent*) in 15 districts, which were settled or renewed during the years 2015-16 to 2017-18, did not deposit the entire amount of security deposit and BLF/LF within the prescribed time frame involving an amount of ₹ 58.85 crore (BLF/LF ₹ 28.35 crore and security deposit ₹ 30.50 crore). The delay ranged from 02 to 327 days. No action was, however, initiated by the concerned District Excise Officers (DEOs) as envisaged under the Rules according to which no relaxation is allowed. Inaction on extant such delays in deposit of due amount resulted in non-forfeiture of an amount of ₹ 58.85 crore.

The Department stated during the exit conference (December 2018) that the re-settlement of shops was very time-consuming. Hence, such delays were generally allowed by the DEOs at the local level.

⁶ UP Excise (Settlement of Licenses for Retail Sale of Foreign Liquor) (excluding Beer and Wine) Rules 2001.

UP Excise (settlement of licenses for retail sale of Beer) Rules 2001.

UP Excise (settlement of licenses for retail sale of country liquor) Rules 2002.

UP Excise (settlement of retail licenses for model shop of foreign liquor) Rules 2003.

⁷ BLF- ₹ 23 per BL (2013-14), ₹ 24 per BL (2014-15) and ₹ 25 per BL (2015-16, 2016-17 and 2017-18).

⁸ LF- ₹ 184 per BL (2013-14), ₹ 204 per BL (2014-15), ₹ 227 per BL (2015-16) and ₹ 226 per BL (2016-17 and 2017-18).

⁹ 10 *per cent* of the license fees fixed for the shop.

Audit analysed that even after allowing 15 more days as the time that an allottee normally takes to complete the formalities for depositing the dues, as stated by the Department during the exit conference (December 2018), the amount involved was worked out to ₹ 52.90 crore (BLF/LF ₹ 25.78 and security deposit ₹ 27.12) in 667 liquor shops of 15 DEOs. The delays in deposit ranged between 16 days and 327 days. Therefore, a major percentage of delays (93.42 per cent) were beyond the 15 days' grace period being allowed by the DEOs (**Appendix-I**).

Recommendations:

- 1 The Department should ensure adherence to the provisions of the Act/Rules and the recommendation made by the Public Accounts Committee, to safeguard the financial interests of the State.**
- 2 The Department should adopt a transparent bidding system and devise a mechanism to settle licenses of liquor shops in case the highest bidder fails to comply with allotment conditions.**

2.4 Sale of Beer without Beer bar license

Non-issue of Beer bar license for retail sale of bottled Beer led to loss of revenue of ₹ 2.36 crore in respect of 119 licensees.

Foreign liquor, as defined in UP Excise (Settlement of Licenses for Retail Sale of Foreign Liquor) (excluding Beer and Wines) (Third Amendment) Rules, 2002, includes Malt Spirit, Whiskey, etc., but does not include Beer. As per the United Provinces Excise Act, 1910, and the UP Excise (wholesale and retail vend of foreign liquor) (Thirteenth Amendment) Rules, 2002, a Beer Bar license, in form FL 7B, is required for retail sale of Beer in the premises of hotels, *dak bungalows* or restaurants. FL 6A composite and FL 7 licenses cover sale of only Draught Beer¹⁰.

Previous Audit Reports for the year 2012-13 to 2013-14 and 2015-16 to 2016-17 had highlighted persistent losses amounting to ₹ 38.40 crore in 2,541 cases. On previous occasions, the State Government had insisted that foreign liquor included Beer, and that no separate licenses was required. Audit had maintained that as United Provinces Excise Act, 1910¹¹ rules pre date 2002 rules, the present definition of foreign liquor excluded bottled Beer. Therefore, a separate license was required for its sale.

Audit test checked consumption details of hotels/restaurant bars and other records in 10 out of 47 District Excise Offices and noticed that 119 out of 362 licenses of the hotels/restaurant bars, settled or renewed during the years 2015-16 to 2017-18 under FL 7 category, had sold bottled Beer in addition to IMFL. FL 7B licenses required under the 2002 rules to sell bottled Beer were not issued to them. In spite of having information, the AECs of these districts did not take required action. As a result, the Government was deprived of license fee of ₹ 2.36 crore (as shown in **Appendix-II**).

Audit reported the matter to the Department (August 2017 to March 2018). During the exit conference (December 2018), the Department stated that in compliance to the Audit observations of the previous years, and to resolve the

¹⁰ Draught Beer, is beer served from a cask or keg rather than from a bottle or can.

¹¹ Chapter I: Preliminary and Definitions: Section 3(10) and 3(11)

matters arising out of different definitions of foreign liquor, a new license FL-7 for sale of Beer had been introduced in the Excise Policy 2019-20 against the existing two licenses FL-7A and FL-7B and by increasing the license fee of the new composite license. Audit acknowledges the acceptance made by the Department regarding objections raised by the Audit in amending the rules which have a prospective effect. But the Department did not state how the loss of license fee pointed out by the Audit will be recovered (August 2019).

2.5 Short levy of license fee on model shops

The license fee of model shops was not fixed as per the norms prescribed in the Excise Policy resulting in short levy of license fee of ₹ 1.36 crore.

As per the State Excise Policy, the license fee for a model shop¹² was to be fixed at the amount of accumulated highest license fee of settled retail shops of both foreign liquor and Beer in the town for the same year. But it could not be less/more than the minimum/maximum prescribed limit in the Excise Policy as detailed in **Table – 2.3**.

Table – 2.3

(₹ in lakh)			
Year	Date of notification	Minimum license fee	Maximum license fee
2013-14	28 February 2013	11.00	30.00
2014-15	29 January 2014	12.65	34.50
2015-16	12 January 2015	14.55	39.70
2016-17	17 February 2016	14.55	39.70
2017-18	17 February 2016	14.55	39.70

Source: Information from excise policy issued by the Government

Previous Audit Reports had highlighted persistent losses amounting to ₹ 10.36 crore in 439 cases during the period from 2012-13, 2014-15 and 2016-17.

To check the level of compliance with the above provisions, Audit test checked 44 out of the 46 model shops in seven DEOs in the state. In case of 27 model shops renewed during 2013-14 to 2017-18, the license fee was not observed to have been fixed as per the extant provisions of the Excise Policy. The details of all 27 model shops are available in **Appendix-III**.

The noncompliance can be understood from the following case of a model shop¹³ in Etah *nagar palika*:

The actual levied highest license fee of IMFL shop ¹⁴ -	₹ 22.40 lakh.
The actual levied highest license fee of Beer shop ¹⁵ -	₹ 7.15 lakh.
Total accumulated highest license fee of the model shop would be -	₹ 29.55 lakh.
The model shop license fee fixed by Etah DEO in case of Thandi Sadak, Etah Model Shop -	₹ 24.45 lakh.
Difference (as per the accumulated highest license fee) -	₹ 5.10 lakh.

¹² Model shop is a licensed liquor shop having at least 600 sq. ft. carpet area and consumption facility.

¹³ Thandi Sadak Etah Model Shop.

¹⁴ Agra Chauraha Jalesar, Etah.

¹⁵ Agra Chauraha Jalesar, Etah.

Thus, in this shop above, the State Government suffered a loss of ₹ 5.10 lakh. On the lines above, in all 27 model shops in seven towns/districts, the loss worked out to ₹ 1.36 crore (**Appendix-III**).

Audit reported the matter to the Department (September 2017 to March 2018). During the exit conference (December 2018), the Department stated that the license fee for the new model shop in a town should be assessed and classified as per *nagar nigam, nagar palika, nagar panchayat and gramin* area of the shop, but the Audit had made the observation considering license fees of all shops in the district. Further, in compliance to the Audit observations of previous years, the maximum limit of license fee for the model shop have been deleted in the Excise Policy 2019-20.

The reply of the Department is factually incorrect as the Audit has calculated license fee of model shops considering highest license fee of foreign liquor and beer shops located in the same *nagar palika* only.