

CHAPTER – III
STATE EXCISE DEPARTMENT



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3.1 Administration

The State Excise Department is responsible for collection of revenue under 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) and enforcement of Excise laws. Source of excise revenue comes from ad-valorem levy, establishment charges, various kinds of licence fees on foreign liquor/beer, country spirit, rectified spirit, *etc.* Further, import pass fee, export pass fee, transport pass fee, under bond pass fee, brand and label registration/renewal fee also generate revenue for the Government exchequer.

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.

3.2 Results of Audit

Test check of the records of four units during 2017-18 revealed non-realisation of duties, fees, *etc.* involving ₹10.78 crore in 31 cases which fall under the following categories:

Table 3.1 Results of Audit

(₹ in crore)			
Sl. No.	Category	Number of cases	Amount
1.	Non/Short realisation of duties <i>etc.</i>	05	0.60
2.	Loss of revenue	10	5.53
3.	Other irregularities	16	4.65
Total		31	10.78

During the course of the year, the Department accepted under-assessments and other deficiencies of ₹6.70 crore in 10 cases. An amount of ₹2.70 lakh was realised in one case till January 2019.

A few illustrative cases having financial impact of ₹5.72 crore in terms of under-assessment/short levy/non-levy of tax and other provisions of the Acts are discussed in the paragraphs 3.3 to 3.4.

3.3 Non-realisation of revenue due to lack of monitoring of liquor sale by bonded warehouse

Failure of the Department to monitor the bonded warehouse resulted in non-realisation of revenue amounting to ₹3.86 crore.

[Superintendent of Excise (SE), Khliehriat; December 2017]

The Assam Excise Act, 1910 (as adopted by Meghalaya) 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 Commissioner of Excise (CoE) (Rule 71);
- The receipt and removal of spirits from bonded warehouse shall be done 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);
- 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 test-checked (December 2017) the records of the SE, Khliehriat and noticed that the SE conducted (August 2015) a physical inspection of a bonded warehouse¹ and found 10591 cases in his stock against the 104971 cases as per warehouse stock register. The SE directed the licensee (February 2016) to make payment of excise duty amounting to ₹3.93 crore on 94380 cases of liquor/beer of short stock.

The licensee made a representation to the CoE for payment of due excise duty on instalment basis. Based on the licensee's representation (March 2016), the CoE allowed (May 2016) payment of due excise duty on instalment basis at ₹5 lakh per month and further directing the SE to ensure that the payments were made regularly. The licensee cleared the first instalment in June 2016 and again requested (July 2016) for reduction in instalment to ₹2 lakh per month citing loss in business which was accepted by the CoE. The licensee, thereafter, paid an additional ₹2 lakh in two

¹ SS Bonded Warehouse.

instalments (November 2016) of ₹1 lakh each, thus totalling the payment to ₹7 lakh. No further payments have been made (May 2018).

In this connection, Audit observed as under:

- The officer-in-charge of the bonded warehouse failed to keep a check on the liquor stock in the warehouse and report to the SE on irregularities in the supply of liquor/beer by the bonded warehouse to the retail licensees without payment of excise duty and export passes in violation of Rule 114.
- The Act and Rules *ibid* do not provide for payment of Government revenue in instalments. The CoE, however, allowed payment in instalments to the defaulting licensee and reduced the instalment amount subsequently which was not in order. The instalment amount was set to ₹2 lakh per month which translated to impractical period of more than 16 years to recover ₹3.93 crore of due excise duty. The Excise Act does not provide for levy of interest. Thus, the decision of the CoE in allowing payment of excise duty in instalment was arbitrary as it was against the provision of the Act, which calls for fixing of his responsibility.
- The SE took up the issue of irregular/non-payment of instalments with the licensee and forwarded the same to the CoE (November 2016). The CoE did not initiate any action against the licensee to recover the dues as per Section 35.

Audit further observed that no physical inspections of the bonded warehouse were carried out prior to or after August 2015 as mandated under Rule 125. The licensee disclosed his total sale turnover of ₹2.20 lakh only to the SE for the year 2015-16. No further returns were found on record for the year 2016-17. The licensee subsequently, had not renewed the bonded warehouse license for the period 2017-18 (May 2018), which indicated the closure of business. The SE did not conduct any assessment of the closing stock available in the bonded warehouse. No efforts were made to recover the dues by seizing the liquor stock available in the warehouse².

Thus, failure of the Department to monitor the activities of the licensee as well as the lenient approach adopted in recovery of dues resulted in non-realisation of revenue amounting to ₹3.86 crore.

The case was referred to the State Excise Department, Government of Meghalaya in March 2017 and October 2017. The Department in its reply (January 2019) reiterated the facts of the case and stated that the SE, Khliehriat had been directed (July 2018 and December 2018) to initiate legal action against the bonded warehouse licensee. No further progress about the action taken by the Department to recover the dues under Section 35 of Assam Excise Act was intimated to Audit (June 2019).

² At the time of physical inspection (August 2015), the stock worth minimum of ₹1.53 crore was available in the bonded warehouse.

Audit noticed failure of the SE to monitor the Bonded Warehouse resulting in non-realisation of revenue on verification of records related to one bonded warehouse out of 36 bonded warehouses in the State. The Department should look into the similar issues in other bonded warehouses also.

Recommendation: The Government should fix responsibility on the officials posted in the bonded warehouse for negligence of duty under Rule 114 of the Assam Excise Rule, which allowed the licensee to evade the excise duty. The Government should also look into the reasons for delay in taking action against the licensee and for allowing payment of excise duty in instalments, which was not allowed under excise rules and which led to loss of revenue to the extent of ₹3.86 crore.

3.4 Systemic issues resulting in loss of revenue

Systemic failure of the Excise Department in monitoring the activities of the bonded warehouse licensees resulted in evasion of excise duty amounting to ₹1.86 crore by the licensee of the bonded warehouse.

[CE, Meghalaya & SE, Khliehriat; December 2017]

During audit of records of SE, Khliehriat, it was observed that Deputy Superintendent of Excise (DSE) carried out physical inspection of a bonded warehouse³ on 20 April 2015, wherein the DSE detected huge shortage of Indian Made Foreign Liquor (IMFL)/beer in stock of the bonded warehouse. The DSE detected only 93744 bottles in stock of the warehouse as against 914425 bottles as per stock register. Thus, the licensee had sold 820681 bottles of liquor without payment of excise duty. The shortage of liquor found during inspection was 90 *per cent*. The minimum excise duty evaded by the licensee of the bonded warehouse stood at ₹1.86 crore. The failure of the Department to detect the evasion of excise duty are discussed in subsequent paragraphs:

3.4.1 Failure of internal controls resulting in evasion of excise duty

Rule 56 of the Assam Excise Rules provides that the CoE may decide on appointment of staff in the bonded warehouse/distillery for proper supervision of the operations of the warehouse. Rules 71, 85 and 329 of the Assam Excise Rules stipulate that the licensee of a bonded warehouse shall maintain correct accounts of liquor in the warehouse. The accounts shall remain in the custody of the excise officer-in-charge of the warehouse who shall check them at the end of each day. Further Rule 125 of the Excise Rules provides that the SE (or in his absence, the officer-in-charge of the warehouse) shall take stock of all liquor in the warehouse on the last day of each quarter.

Rule 40 of the Excise Rules *ibid* provides that the officer-in-charge of the bonded warehouse shall grant an export pass authorising removal of liquor from the

³ M/s Banicia Bonded Warehouse.

warehouse only after satisfying himself that proper excise duty has been paid. Further Rule 27 of the Assam Bonded Warehouse Rules provides that no liquor shall be removed from any bonded warehouse except under an export pass issued by the officer-in-charge of the warehouse.

Audit noticed that based on the DSE's report, the Deputy Commissioner⁴ (DC), Khliehriat issued a demand notice (7 August 2015) to the licensee for payment of the excise duty by 31 August 2015. In response, the licensee submitted to the DC (31 August 2015) that she had stopped operating the bonded warehouse since March 2013 and petitioned for exemption from payment of excise duty. The DC sought (10 September 2015) clarification from the SE in response to the petition and the SE submitted a detailed reply (17 September 2015). The DC, thereafter, ordered a magisterial inquiry (29 September 2015) into the activities of the licensee including inspection/verification of the records of the SE's office. Accordingly, the Magistrate carried out an inquiry in October 2015 and submitted an inquiry report (16 November 2015) to the DC.

The magisterial inquiry carried out in October 2015 in response to DC's orders stated that the SE misused his official capacity and violated the provisions of the Excise Act and rules. Also, the bonded warehouse was being operated by another individual⁵, who was not linked/related to the licensee.

Audit examination of the case records of the bonded warehouse revealed that:

- The warehouse licensee had been filing the quarterly returns stock of all liquor in the warehouse to the SE upto March 2013. The last export permit issued to the licensee was in February 2015 against the claim that the licensee stopped operating the bonded warehouse in March 2013.
- The licensee had removed liquor from the warehouse without payment of excise duty and also without export passes. This was in violation of the Excise Rules and the fact that the officer-in-charge allowed such export of liquor from the warehouse without payment of duty and without issuing passes clearly indicated connivance of the excise officials in the whole matter.
- The officer-in-charge (and the SE) failed to report the illegal removal of liquor. The officer-in-charge also failed to report to the CoE that the warehouse was being operated by other individuals as mentioned in the enquiry report of the DC.

Thus, the failure of the SE, Khliehriat to ensure proper check on the functioning of the bonded warehouse resulted in sale of 820681 bottles of IMFL without payment of excise duty. Further, Officer-in-charge of the bonded warehouse failed to keep proper stock of spirit and carry out regular inspection to ensure that there was no loss of excise duty to the Government under Rule 125 of the Assam Excise Rules which resulted in IMFL being removed from the bonded warehouse without passes as

⁴ In districts, the Deputy Commissioner holds the charge of Excise Department as per Section 3 (6) of the Assam Excise Act, 1910.

⁵ Shri Shail Kumar.

mandated under Rule 114 of the Assam Excise Rules. The officer-in-charge of the warehouse and the SE failed in due observance of the provisions of the Act and the Rules which enabled the licensee to remove liquor from the warehouse and sell it to retail outlets without prior payment of excise duty. This resulted in illegal enrichment of the licensee at the cost of the Government exchequer due to negligence of duty and connivance by Excise officials.

3.4.2 Delay in taking action against the licensee to recover the excise duty

Section 35 read with Rule 132 of the Assam Excise Act and Rules made thereunder stipulate that all excise revenues, including any loss which may occur in consequence of default may be recovered from the licensee by sale of his moveable property or as arrears of land revenue, including sale of stock of liquor.

Based on the DSE's report, the SE reported the matter to the CoE in April 2015. No further action was taken by the CoE to fix responsibility on the officials responsible for pilferage of government revenue. Audit also verified from the records of the DC and observed that no further action to file a suit in civil court had been taken by the DC on the inquiry report (December 2017). After a lapse of more than three years since the incident, no action had been initiated by the CoE against the officers concerned also.

Audit observed that at the time of physical verification, the DSE had reported actual stock of 93744 bottles of liquor in the warehouse. Calculated at the minimum rate of ex-bond price and excise duty for each category of IMFL/beer, the stock in hand could have fetched the Government a minimum of ₹64.32 lakh (*Appendix II*). However, the CoE did not take any action to dispose the stock till date (July 2018). Thus, he also failed in his supervisory role as head of the Department. It may be mentioned that with the passage of time, the chances of revenue realisation may become remote due to sedimentation of liquor.

3.4.3 Irregular grant of license

As per Rule 273 of the Assam Excise Rules, an application for bonded warehouse is to be made to the CoE in prescribed proforma supported by proof of age and educational qualifications. It transpired during magisterial inquiry under the supervision of the DC that the licensee of the bonded warehouse was a minor⁶ at the time of issue of license. Hence, the application forwarded to the CoE was required to be summarily rejected. However, the CoE forwarded the application to the Government without exercising due checks and based on his recommendation, the license was granted for operation of the bonded warehouse in January 2011.

Thus, systemic deficiencies in monitoring the operation of the bonded warehouse by the Excise Department, thereby, resulted in evasion of minimum excise duty amounting to ₹1.86 crore.

⁶ As per the deposition submitted by the licensee, she was only 14 years old when the license was granted in her name.

The case was referred to the State Excise Department, Government of Meghalaya in December 2017. The CoE in his reply (January 2019) stated that he had requested (October 2018 and November 2018) the SE to present his views on the report on the magisterial inquiry report. No recovery of the dues for excise duty was reported to Audit (June 2019). In respect of granting the license to operate bonded warehouse to a minor, the CoE stated that the onus of checking the correctness of the license application rested with the officer conducting the initial enquiry, however the CoE did not communicate the action taken against the official concerned for failure to perform his duties (June 2019).

Audit noticed failure of the CE and SE to monitor the activities of the Bonded Warehouse resulting in evasion of excise duty by the licensee on verification of records related to one bonded warehouse out of 36 bonded warehouses in the State. The Department should look into the similar issues in the other 35 bonded warehouses also.

Recommendation: The Government should initiate inquiry to fix responsibility on the

- (i) Official posted in the Bonded Warehouse, who allowed removal of liquor without export passes and payment of excise duty;***
- (ii) SE, Khliehriat, who failed to control illegal operation of the Bonded Warehouse and movement of stock from the Bonded Warehouse without payment of excise duty;***
- (iii) the CoE for failing to take action against the SE, whose involvement in illegal operation of the Bonded Warehouse was established in the enquiry conducted by the Magistrate. The CoE also failed to take action for recovery of revenue from the owner of the Bonded Warehouse.***

Department should ensure that licence should be granted on verification proof of age and educational qualification of the applicant as per rule 273 of Assam Excise Rules.

The Government should also start the process to recover the dues from the licensee as per the Section 35.

