

# **Chapter- III**

## **State Excise**



## CHAPTER-III

### STATE EXCISE

#### 3.1 Tax administration

The Principal Secretary (Excise and Taxation) administers State GST and Excise at the Government level. The Commissioner of State Taxes and Excise (CSTE) is the Head of the Excise and Taxation Department and is assisted by three Additional CSTE, two Joint CSTE, and five Deputy CSTE. There are 12 Deputy CSTE at District level in the field, assisted by 119 Assistant CSTE. In addition, there are State Taxes and Excise Officers and Assistant State Taxes and Excise Officers in the field to control all the activities of Department and other allied staff for administering the relevant tax laws and rules.

#### 3.2 Results of Audit

There were a total 13 auditable units (DCSTEs) in the Department. Out of these, audit selected 10 units involving receipt of ₹ 1,423.72 crore during the year 2019-20. Test check of 911 cases out of the total 1,804 cases relating to State Excise Department revealed evasion of excise duty/loss of revenue due to injudicious fixation of Ex-distillery price (EDP)/short allotment of Minimum Guarantee Quota (MGQ), non/short recovery of retail excise duty/bottling fee/application fee/additional retail excise duty/interest/penalty and other irregularities involving ₹ 313.97 crore in 119 cases as detailed in **Table 3.1**.

*Table 3.1: Results of audit*

Sr. No.	Categories	Number of cases	₹ in crore
			Amount
1.	Evasion of excise duty/loss of revenue due to injudicious fixation of EDP/Short allotment of MGQ	12	102.80
2.	Non/short recovery of retail excise duty/bottling fee/application fee/additional retail excise duty/ interest/penalty etc.	54	135.88
3.	Other irregularities	53	75.29
<b>Total</b>		<b>119</b>	<b>313.97</b>

*Source: Inspection Reports*

During the year 2019-20, the Department accepted under-assessment and other deficiencies worth ₹ 82.32 lakh in seven cases pertaining to audit findings of earlier years and recovered the same. The Department also accepted under-assessment and other deficiencies of ₹ 3.16 crore in 12 cases related to audit findings of 2019-20.

Significant cases (five paragraphs) involving an amount of ₹ 96.59 crore are discussed in the following paragraphs.

### 3.3 Non-levy of penalty and additional penalty on short lifting of Minimum Guaranteed Quota

*The Department did not levy penalty of ₹58.50 crore for short lifting of 19,13,244 proof litres of liquor against benchmark of 100 per cent by the licensees of 765 vends. Additional Penalty of ₹2.32 crore was also leviable for short lifting against benchmark of 85 per cent.*

Para 4.3 of the Excise Announcement (EA) 2018-19 of the Government of Himachal Pradesh, stipulates that each licensee shall be required to lift 100 per cent of Minimum Guaranteed Quota (MGQ) both of Country Liquor (CL) and Indian made Foreign Liquor (IMFL) as fixed for each vend. Failing this, he shall be liable to pay a penalty equivalent to the Retail Excise Duty (RED) on the un-lifted quota, which has fallen short of 100 per cent MGQ. If the lifting falls further short of 85 per cent of the MGQ, the licensee shall be liable to pay an additional penalty equivalent to 10 per cent of the RED. The concerned district in-charge is to review the lifting of MGQ on a quarterly basis and ensure recovery of the penalty as well as additional penalty on un-lifted MGQ.

Scrutiny of records of seven DCSTEs<sup>1</sup> revealed that 765 out of 1064 vends under these DCSTEs had lifted 1,51,12,002 proof litres<sup>2</sup> (pls) of liquor against the fixed annual MGQ of 1,70,25,246 proof litres, thus falling short by 19,13,244 proof litres, during the year 2018-19. Penalty of ₹ 58.50 crore was required to be levied on these 765 licensees for short lifting of quota. Further, 288 vends out of these 765 vends lifted quota below 85 per cent benchmark by 7,31,857 proof litres. Additional penalty of ₹ 2.32 crore was also leviable on these 288 licensees.

#### MGQ fixed, short-lifted and penalty/additional penalty levied

Types of Liquor	MGQ fixed (in pls)	MGQ lifted (in pls)	MGQ lifted short of 100 per cent (in pls)	Rate of RED leviable per proof litre	Penalty (in ₹)	MGQ lifted further short of 85 per cent (in pls)	Additional Penalty (in ₹)
1	2	3	4 = 2 - 3	5	6 = 4 x 5	7	8 <sup>3</sup>
CL	91,61,051	83,73,894	7,87,157	241	18,97,04,796	2,24,783	54,07,346
IMFL	78,64,195	67,38,108	11,26,087	351	39,52,58,134	5,07,074	1,77,83,339
<b>TOTAL</b>	<b>1,70,25,246</b>	<b>1,51,12,002</b>	<b>19,13,244</b>	-	<b>58,49,62,930</b>	<b>7,31,857</b>	<b>2,31,90,685</b>

In violation of the provisions of the EA, DCSTE/ACSTEO had not reviewed the quota lifting position of MGQ on a quarterly basis, even though Audit has pointed out the same deficiencies in the last six years. Thus, failure on the part of DCSTE/ACSTEO to strictly enforce

<sup>1</sup> Baddi: 70 vends ₹ 7.68 crore; Kangra 152 vends ₹ 0.98 crore; Mandi 176 vends ₹ 17.10 crore; Sirmour 39 vends ₹ 9.05 crore; Solan 81 vends ₹ 14.51 crore; Shimla 137 vends ₹ 8.13 crore and Una 110 vends ₹ 3.36 crore.

<sup>2</sup> Strength of alcohol is measured in terms of 'Degree Proof'. Strength of such alcohol 13 parts of which weigh exactly equal to 12 parts of water at 51 Degree F. is assigned 100 Degree proof. Apparent volume of a given sample of alcohol when converted into volume of alcohol having strength 100 Degree is called LPL or PL.

<sup>3</sup> Formula for CL: Quantity lifted short of 85% x ₹ 241 x 0.1, Formula for IMFL: Quantity lifted short of 85% x ₹ 351 x 0.1

government rules resulted in non-realisation of penalty and additional penalty of ₹ 60.82 crore (₹ 58.50 crore + ₹ 2.32 crore).

The matter was reported to the Government in January 2021; the Government replied (September 2021) that recovery of ₹ 25.08 crore had been made by four DCSTEs.

**The Department may fix accountability for the repeated failures in this regard and review the position of remaining vends to ensure recovery of due license fee amounts in light of the above observations.**

### 3.4 Short recovery of Retail Excise Duty

*The Assessing Authorities did not take any action either to seal vends or cancel/suspend the permit, to recover the short deposited license fee of ₹ 31.27 crore from 36 licensees.*

As per Excise Announcement (EA) 2018-19 of the Government of Himachal Pradesh, Retail Excise Duty (RED) to be paid by a particular vend shall be determined based on the Minimum Guaranteed Quota (MGQ) of liquor fixed for each vend for the whole year. The fee so fixed will be levied in 12 monthly instalments to be paid by the last day of each month and last instalment for the month of March has to be paid in full by 15 March. If the licensee fails to pay the RED by the last day of the next month, or the last instalment by 15th March, the DCSTE in-charge of the District or any other officer authorised by him would ordinarily seal vend on 1<sup>st</sup> day of the following month or 16<sup>th</sup> March as the case may be. The defaulting allottee shall be liable to make up the loss of revenue to the government and it will be recoverable from him as Arrears of Land Revenue (ALR).

During 2019-20, scrutiny of M-2 registers<sup>4</sup> of eight DCSTEs<sup>5</sup> showed that against RED of ₹ 98.53 crore due from 36 licensees for the year 2018-19, the Department could realise RED of only ₹ 67.26 crore. None of the DCSTEs took steps to cancel/suspend the permits or seal the vends of the defaulting licensees. Only DCSTE Solan declared ₹ 10.12 crore as ALR for seven licensees. Thus, failure to follow the rules, resulted in short recovery of RED of ₹ 31.27 crore.

The matter was reported to the Government in January 2021; the Government replied (September 2021) that recovery of ₹ 7.87 crore from 36 licensees had been made and efforts are being made to recover the balance amount.

**The Government may consider setting up a mechanism for periodic review of recoveries from the licensees on monthly basis to safeguard its revenue and responsibility may be fixed for not following the set provisions of the Act/Rule.**

<sup>4</sup> A register showing the quantity of Foreign Spirit including IMFL and CL issued for sale, amount of additional license fee payable and received during the month.

<sup>5</sup> Baddi: one unit: ₹ 6.97 crore, Chamba: one unit: ₹ 0.60 crore, Kangra: two units: ₹ 0.23 crore, Kullu: two units: ₹ 1.03 crore, Mandi: two units: ₹ 0.09 crore, Sirmour at Nahan two units ₹ 8.37 crore, Solan: 17 units: ₹ 12.07 crore and Una: nine units: ₹ 1.91 crore.

### 3.5 Non-Verification of Treasury Challans

***Failure to undertake reconciliation of challans with treasury receipts in Government Accounts i.e. e-kosh website, and acceptance of forged challans, resulted in loss of government revenue of ₹2.72 crore***

The retail licensee deposits the retail excise duty/license fee for lifting of quota from the wholesaler directly in the bank under head 0039-State Excise Duty. On presentation of the challans, for the amount so deposited, to the Excise Department, the Excise and Taxation Inspector issues permit for lifting of liquor. All such challans deposited by licensee are entered in a prescribed register called M-2 register<sup>6</sup>. Rule 2.2(v) of Himachal Pradesh Financial Rules Vol-I 1971 stipulates that when Government money is deposited into the treasury, Head of the office should compare such amounts deposited into the treasury with the entries made in the M-2 register and should satisfy himself that the amount has actually been credited into Government account. He should also obtain a consolidated statement (TA-2) from the treasury by the 15<sup>th</sup> of every month for all remittances made during the previous month which should be compared with the amount posted in M-2 register. These provisions have been made to detect *inter-alia* false/fraud challans and correctness of classification. After the computerization of treasury work, the challans can be verified online through *e-kosh*<sup>7</sup> portal of the HP Government.

Scrutiny of records of DCSTE Una in July 2019 revealed that ₹ 107.30 crore was stated to have been realized during 2018-19 but the reconciliation with treasury had not been done by the Department. On cross verification of the receipts with treasury records i.e. *e-kosh* by Audit, it was noticed that 55 receipts/challans, amounting to ₹ 35.64 lakh, submitted by two licensees to the DCSTE and entered in M-2 register for the year 2018-19, were not appearing in the treasury records. On this being pointed out (July 2019), DCSTE cross verified (between July 2019 and September 2019) all receipts/challans submitted by licensees with treasury records and found that 291 receipts/ challans submitted by two licensees to the DCSTE involving amount of ₹ 2.72 crore were forged. The department lodged an FIR (September 2019) with the Police Station State Vigilance and Anti-Corruption Bureau, Una and recovered an amount of ₹ 29.30 lakh (Feb 2020). Further, 10 cheques for ₹ 87.24 crore were deposited by one licensee in August 2019 and when these were presented to bank (28-29 August 2019), the same were dishonoured by the bank (29-30 August 2019). Department stated that proceedings were initiated against the licensee under section 138 of the Negotiable Instruments Act, 1881 and the matter is pending with the Hon'ble District Court at Una.

Had the Department undertaken reconciliation of receipts/challans submitted by licensees with treasury records as stipulated in the rules, such irregularities could have been detected at the initial stage.

<sup>6</sup> M-2 register: register maintained at each district headquarter showing annual, monthly license fee due and paid by the licensee.

<sup>7</sup> E-Kosh: the website of H.P. govt. showing the receipts of all deposits made into the Govt. Account by each department

Further, test check of records of six DCSTEs<sup>8</sup> for the period 2014-15 to 2018-19 (between July 2019 and March 2020) showed that these DCSTEs had also not undertaken reconciliation of receipt entries made in the M-2 register with the treasury records. In the absence of such reconciliation, there was no check to verify that the entries for amounts received from licensees had actually been deposited in the treasury and credited into Government account, and there was a risk of forged receipts/challans being accepted as in the case of DCSTE, Una.

In this regard, it may be highlighted that reconciliation was not being undertaken despite the fact that details of all challans deposited into Government Account were available on the web portal (*e-kosh*) of the Directorate of Treasuries.

The para was issued to the Government in April 2021; the Government accepted (September 2021) the audit observations and stated that all challans being submitted by licensees were now being verified from the *e-Kosh* portal of the Directorate of Treasuries. Further, necessary action is being pursued in the case.

**The Government may issue instructions for verifying the receipts on the treasury portal before allowing lifting of the quota in order to safeguard against fraud.**

### 3.6 Non-levy of interest on delayed payment

*Interest amounting to ₹89.70 lakh on delayed payment of license fee and ₹44.55 lakh on delayed payment of bottling fee was not demanded by the Department from the licensees of 282 vends & seven bottling plants/ distilleries respectively, resulting in non-levy of interest to that extent.*

As per the Excise Announcement (EA) 2018-19 of the State Government if the licensee is unable to lift the MGQ within a month, he shall be required to pay the full instalment of Retail Excise Duty (RED) for that month by the last day of the month, and RED for the month of March shall be paid in full by 15 March. Para 4.5(a) further, provides that if the licensee fails to pay the amount of RED or part thereof on due dates, interest at the rate of 14 *per cent* up to one month and 18 *per cent* per annum from the date of expiry of one month's period thereafter shall be leviable. If the licensee fails to pay the RED by the last day of the next month, or the last instalment by 15th March, the DCSTE in-charge of the District or any other officer authorised by him would ordinarily seal vend on 1<sup>st</sup> day of the following month or 16<sup>th</sup> March as the case may be. Rule 9.5(6a) of the Punjab Distillery Rules, 1932 as applicable to Himachal Pradesh provides that bottling fee at the rates prescribed shall be payable on quarterly basis i.e. within seven days of the expiry of each quarter of the financial year. Rule 9.5(8) further provides that in the event of failure to pay the bottling fee or part thereof by the due date, interest at the rate of 12 *per cent* per annum for a period of one month from the date of default, and if the default in the payment of fee exceeds one month, then interest at the rate of 18 *per cent* per annum from the initial date of default in payment, shall be payable till the default continues.

<sup>8</sup> DCSTEs: Baddi, Nurpur, Shimla, Sirmour, Solan and Una

Scrutiny of records of four DCSTEs<sup>9</sup> for the year 2018-19 revealed that out of 536 vends, the licensees of 282 vends had deposited RED of ₹ 47.01 crore after the due dates. The delay ranged between two and 196 days. In 45 cases the delay in depositing RED was more than 100 days<sup>10</sup>. Therefore, these licensees were liable to pay interest of ₹ 89.70 lakh on the delayed payments under Para 4.5(a) of the EA.

Similarly, seven bottling plants/ distilleries under three DCSTEs<sup>11</sup> had deposited bottling fees of ₹ 7.17 crore with delay ranging from three to 389 days. Interest of ₹ 44.55 lakh was not levied on the belated payment of the bottling fees as required under Para 4.5(a) of the EA.

Thus, total interest of ₹ 1.34 crore (₹ 89.70 lakh on RED and ₹ 44.55 lakh on bottling fees) was not recovered by the Department for the years 2016 to 2019. DCSTEs/AAs did not review the same deficiencies even though this was pointed out repeatedly in Audit in the last five years, indicating negligence in applying the provisions of EA and failure to prevent revenue loss. The concerned DCSTEs had neither raised any demand for the same nor did they seal vends as per the provisions of the EA.

The matter was reported to the Government in January 2021; the Government replied (September 2021) that recovery of ₹ 20.75 lakh had been made by five DCSTEs.

**The Government may consider conducting periodic review of recoveries from retailers, distilleries, breweries, bottling plants to safeguard its revenue.**

### **3.7 Low yield of spirit (Extra Neutral Alcohol) from molasses**

***Low yield of spirit (Extra Neutral Alcohol) from molasses resulting in loss of ₹43.95 lakhs.***

Rule 9.37 of the Punjab Distillery Rule (PDR) 1932, as applicable to Himachal Pradesh provides that one mound of molasses (0.373 quintals) shall be considered equal to 3.5 London Proof Gallons of country spirit {15.391 proof litres (pls)}. Rule 9.101 provides that if the wastage in any distillery is found to be excessive, the Financial Commissioner may prescribe a scale of wastage and the licensee shall pay duty in respect of all losses attributed to wastage in excess of the scale fixed.

Audit scrutiny of records of two DCSTEs<sup>12</sup> revealed that two distilleries used 75,747 quintals of molasses for manufacturing spirit (Extra Neutral Alcohol or ENA) during 2017-18 and 2018-19. As opposed to the expected yield of 31,25,528 pls<sup>13</sup> under the Rule, these distilleries reported actual yield of only 26,10,023 pls of spirit. Thus, 5,15,505 pls of spirit was short

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<sup>9</sup> RED - DCSTEs: Baddi 32 Vends; ₹ 27.28 lakh, Chamba four Vends; ₹ 7.1 lakh, Shimla 229 Vends; ₹ 49.20 lakh and Solan 17 Vends; ₹ 6.13 lakh.

<sup>10</sup> DCSTE Baddi: 34 cases; DCSTE Chamba: nine cases; DCSTE Shimla: one case; DCSTE Solan: one case.

<sup>11</sup> Bottling fees - DCSTEs: Baddi four manufacturers; ₹ 34.01 lakh, Nurpur two manufacturers; ₹ 9.91 lakh and Sirmour one manufacturer; ₹ 0.63 lakh

<sup>12</sup> DCSTE Baddi and Una

<sup>13</sup> Strength of Alcohol is measured in 'Degree proof'. Strength of such alcohol; 13 parts of which weigh exactly equal to 12 parts of water at 51 degree Fahrenheit is assigned 100 degree proof. Apparent volume of a given sample of alcohol when converted into volume of alcohol having strength of 100 degree is called LPL or PL.

produced, involving excise duty of ₹ 43.95 lakh<sup>14</sup> calculated with rates specified in the Excise Announcements of the ETC, as depicted in the table below:

**Production of spirit from molasses**

Year	Quantity of molasses used (in quintals)	Expected yield of spirit as per Rule 9.37 (in pls)	Actual yield of spirit (in pls)	Shortfall in production (in pls)	Conversion of shortfall from proof litres to bulk litres (in bls <sup>15</sup> )	Rate of excise duty applicable per bls <sup>16</sup> (per cent)	Excise duty leviable (in ₹)
1	2	3	4	5 = (3-4)	6 = (5/1.68)	7	8 = (6*7)
2017-18	36,231	14,94,990	12,62,550	2,32,440	1,38,357	13.50	18,67,820
2018-19	39,516	16,30,538	13,47,473	2,83,065	1,68,491	15.00	25,27,365
<b>Total</b>	<b>75,747</b>	<b>31,25,528</b>	<b>26,10,023</b>	<b>5,15,505</b>	<b>3,06,848</b>		<b>43,95,185</b>

On this being pointed out, the Department stated (September 2020) that the quality of molasses in Himachal Pradesh is not as good as compared with other states, causing low production of spirit against the norms. Further, the distilleries concerned are very old and are being run by outdated technology. The Department assured that a pilot study would be done within three months and a committee would be formed to examine the possibility of revising the production norms as the norms fixed in 1932 would no longer be realistic in today's scenario. The reply is not tenable as the issue was also highlighted in Audit Reports in 2009 and 2017. The Government stated in 2017 that it was not possible to adhere to the norms of yield fixed under PDR, 1932 anymore and that steps would be taken to re-fix the norms. However, the Department had not taken any steps to revise the production norms from molasses till the date of Audit.

The Government intimated (March 2021) that directions have been given to the department for necessary action.

<sup>14</sup> DCSTEs Baddi: ₹ 4.40 lakh and Una: ₹ 39.55 lakh

<sup>15</sup> one bls = one pls/1.68; (conversion needs to be done since yield from molasses is given in PDR, 1932 in proof litres, while excise duty is prescribed in the Excise Announcements on basis of bulk litres)

<sup>16</sup> Under Excise Announcements brought out by ETC each year

