

CHAPTER-V STATE EXCISE

5.1 Tax Administration

The Kerala State Excise is the law enforcement agency for excise in state of Kerala, India. Kerala Excise has its headquarters in Thiruvananthapuram. The department administers laws related to liquor, narcotic drugs and psychotropic substances, medicinal preparations containing alcohol and narcotics. The principal duties of the department are protection, augmentation and collection of excise revenue and enforcement of the acts and various rules made thereunder. The duties of the department are broadly classified as collection of revenue, enforcement activity to prevent illicit liquor production, sale and trafficking and Campaign against alcoholism. Liquor includes spirits of wine, arrack, spirits, wine, toddy, beer and all liquid consisting of or containing alcohol. Individual has no fundamental right over the manufacture and trade of liquor. Absolute right on liquor is vested with the State. The government formulates Abkari policy of the state every year. The policy formulated by the state government is implemented by the Excise Department.

The Department is headed by the Excise Commissioner (EC). The Department is divided into three⁵⁶ zones, which are headed by the Joint Excise Commissioners (JEC), South, Central and North zone. The divisions at the district level are working under the Deputy Excise Commissioners (DEC). Excise Circle Inspectors (ECI) and Excise Inspectors (EI) under the control of the DEC of the respective districts are deputed to oversee collection of excise duties, License fees, etc.

5.2 Internal Audit

The Internal Audit Wing in State Excise Department is under the direct control of the Excise Commissioner. The Wing consists of one Joint Commissioner of Excise assisted by one Assistant Excise Commissioner, three Superintendents, three Excise Inspectors and six Preventive Officers. Offices in districts in which more vehicles are seized, collectable revenue are pending and delay in collection is noticed are prioritised in internal audit. During 2021-22, out of the 58 units planned for audit, the IAW audited 55 units. During 2021-22, out of the 2,285 outstanding observations, the department cleared 563 audit observations (24.64 per cent).

⁵⁶ South zone (Alappuzha, Kollam, Kottayam, Pathanamthitta and Thiruvananthapuram), Central zone (Ernakulam, Idukki, Palakkad and Thrissur) and North zone (Kannur, Kasaragod, Kozhikode, Malappuram and Wayanad).

5.3 Results of Audit

There were 25 auditable units during 2021-22 in the State Excise Department. Out of these, 13 units were selected for audit. Scrutiny of the records of these units during 2021-22 disclosed 29 cases of non/ short realisation of excise duty and License fee and other irregularities involving ₹10.32 crore. These cases are illustrative only as these are based on the test-check of records. Audit pointed out some of the similar omissions in the earlier years also. Not only do these irregularities persist, but also they remain undetected till the next Audit is conducted. The Government needs to improve the internal control system including strengthening of Internal Audit so that occurrence/ recurrence of the lapses can be avoided. Under assessment of tax and other irregularities involving ₹10.32 crore in 29 cases fall under the following categories are given in **Table - 5.1**.

Table – 5.1
Details of under assessment of tax and other irregularities

(₹ in crore)

Sl. No.	Categories	Number of cases	Amount
1	Non levy of fee and fine on unauthorised reconstitution of Board of Directors of Companies	3	1.49
2	Irregular transfer of foreign liquor License	6	1.69
3	Others	20	7.14
Total		29	10.32

During the course of the year, the Department accepted under-assessment and other deficiencies involving ₹0.39 crore in 8 cases pointed out by Audit. The Department realised an amount of ₹0.22 crore in four cases during the year 2021-22.

A few illustrative Audit observations involving ₹6.33 crore is mentioned in the succeeding paragraphs.

5.4 Loss of revenue due to non-levy/ non-remittance of additional security amount

Non-realisation of additional security amount fixed by the Government resulted in non-levy of ₹2.51 crore.

Government enhanced⁵⁷ (July 2017) the additional security amount of distilleries by fixing the amount as one *per cent* of annual excise duty remitted by the licensee and the annual excise duty as the average of excise duty remitted during last three years.

On scrutiny of the records (March 2022) at the Office of the Circle Inspector of Excise at Travancore Sugars and Chemicals Ltd. for the period 2018-21, Audit noticed that additional security amount to be paid by the Company as fixed by the Government is ₹2.51 crore as shown in **Table - 5.2**.

Table – 5.2

Particulars	2017-18	2018-19	2019-20
Quantity of sales of IMFL as per production and sales details	14681448BL (11011086 PL)	14299686 BL (10724764 PL)	13343220 BL (10007415 PL)
Excise duty (₹237 per proof litre) (₹)	260,96,27,382	254,17,69,068	237,17,57,355
Excise duty remitted for rectified spirit sales as per ledger account of the company (₹)	3,66,948	3,43,727	9,76,852
Total Excise duty (₹)	260,99,94,330	254,21,12,795	237,27,34,207
Annual Excise duty (average of excise duty remitted during 2017-18, 2018-19 and 2019-20) (₹)	250,82,80,444		
Additional security amount (1% of annual excise duty)	2,50,82,804		
	₹2.51 crore		

However, the company has not remitted the due amount of additional security, which resulted in loss of revenue of ₹2.51 crore.

On this being pointed out (October 2022) Government stated (March 2023) that M/s Travancore Sugars & Chemicals Ltd., Thiruvalla is a company owned by Government of Kerala. The matter is being examined by the Government and final report would be furnished.

It is recommended that cases of similar nature should be examined and remedial action taken. Also responsibility should be fixed so as to avoid granting undue benefit to the distilleries.

⁵⁷ Vide GO (Rt) No.560/2017/TD dated 11 July 2017.

5.5 Loss of revenue due to irregular transfer of Foreign Liquor License

Irregular transfer of foreign liquor licenses instead of issuing fresh licenses resulted in short collection of ₹2.17 crore.

As per Para 18 of Chapter XIX of the Kerala Excise Manual Vol.II, Licenses shall not be transferred from the name of one person to another. Such transfers will help the pernicious habit of trading of Licenses and have to be discontinued, except for very strong reasons. If there is a need for a change in the case of such Licenses, the proper procedure for the holder is to surrender the License and to treat the case of the proposed transferee as a fresh applicant. As per Rule 13 (3) of FL Rules, 1953, the License fee for FL-3 (Bar) license to hotels (three star and above) was ₹30 lakh during 2020-21 (₹28 lakh during 2019-20) and as per Rule 13 (11), that of FL-11 (Beer/ Wine Parlour) license was Rupees four lakh.

Audit Scrutinised (during 2021-22) all the 75 cases of reconstitution in the Office of the Deputy Commissioner of Excise, Kannur, Alappuzha, Kozhikkode, Palakkad and Pathanamthitta. It was noticed during Audit that in nine cases, the Excise Commissioner (EC) accorded sanction for the transfer of licenses held by FL-3 licensees by levying the fee of Rupees one lakh for reconstitution and Rupees two lakh for change of name of licensee as per Rule 19 of KFL Rule, 1953.

Audit observed that Rule 19 of the FL Rules is applicable to the reconstitution of the Board of Directors within the company and is not meant for transfer of license. Non-compliance to the provisions of FL Rules by allowing transfer of license, instead of directing the licensees to surrender the license and issuing a new license, resulted in short levy of ₹2.17 crore as detailed in **Appendix XXII**.

On this being pointed out (October 2022) the Government stated (March 2023) that license granted under FL Rules can be transferred from the name of present licensee to any other person/ firm after realising payment of Rupees two lakh under Rule 19(4) of FL Rules and if licensee has to surrender the license, fresh license could not be issued due to the distance restrictions from the educational institutions and religious institutions which have come into existence subsequent to the grant of original license.

The reply is not acceptable on the grounds that Rule 19 stipulates fee for the change of name of licensee due to the reconstitution of the Directors of a company. Such transfers will only help the pernicious habit of trading licenses and have to be discontinued.

Eventhough the matter was pointed out in the Report of the Comptroller and Auditor General of India for the year ended March 2021, the issue still persists.

It is recommended that in such cases of transfer of licenses, instead of regularising the cases by levying required amount, cases have to be considered as fresh applications. It has to be ensured that all the mandatory conditions required for granting fresh licenses are fulfilled by the applicants.

5.6 Unauthorised reconstitution of Board of Directors of companies holding Foreign Liquor license

Non-imposition of fine for unauthorised reconstitution and non-collection of fees for regularisation resulted in non-realisation of ₹1.32 crore.

As per Rule 19 (iii) of Foreign Liquor Rules, reconstitution of partnership/directors of a company may be allowed on payment of Rupee one lakh. As per Section 67(2) read with 67(3) of Abkari Act, the Excise Commissioner (EC) may impose a fine of Rupees three lakh each on any person or persons holding a license or permit for violation by reconstitution, alternation or modification without the permission of the EC. The EC may regularise such irregular constitution on payment of fine and application from the licensee.

Audit test checked (December 2021) the details of reconstitution of Board of Directors of 178 companies, with reference to the database maintained by Ministry of Corporate Affairs and noticed that 21 companies having hotels with FL-3/ FL-11 licenses, had reconstituted their Board of Directors during the period 2018-21 without permission from the EC. Non imposition of fine for unauthorised reconstitution and non-collection of fee for regularisation resulted in non-realisation of revenue of **₹1.32** crore as detailed in **Appendix XXIII**.

On this being pointed out (September 2022) the Government stated (March 2023) that the Deputy Commissioners concerned have issued notices to the licencees of all FL3/ FL11 hotels to regularise the unauthorised reconstitution mentioned in Audit.

Even though the matter was pointed out in the Report of the Comptroller and Auditor General of India for the year ended March 2021, the issue still persists.

It is recommended that the Department may periodically cross verify the data available with the website of the Ministry of Corporate Affairs or other institutions to identify the unauthorised reconstitutions and action has to be taken to fix responsibility in cases of granting undue benefit to the hotels.

5.7 Short collection of FL3 license fee from Hotels by allowing ineligible remission

Grant of irregular remission to the hotels resulted in non-realisation of license fee ₹0.33 crore.

FL 3 license authorises the sale of foreign liquor in various categories of star hotels on payment of an annual rental of ₹30 lakh. Rules 13, 14 and 18 of Foreign Liquor Rules, 1953 deals with various aspects of license. As per Rule 14, full annual fee of ₹30 lakh shall be paid even in cases where license is granted for part of an year. Considering the Covid lock down, the Government issued certain relaxation in this regard.

As per GO(Rt) 280/2020/TD dated 29 April 2020, Government accorded sanction to grant extension of time upto 31 May 2020 for renewal of licenses for the financial year 2020-21 in the special circumstances of the lockdown in the state due to outbreak of Covid 19. In addition, Government accorded (25 February 2021) sanction to grant remission of prorata license fee of Bar hotel for a period of 59 days when they remain closed from 24 March 2020 to 21 May 2020, while remitting the license fee of ensuing year.

During Audit scrutiny (October to December 2021) of Excise Division Office, Thiruvananthapuram for the period 2018-21, the details of remission (as per GO dated 25 February 2021) granted to all 162 hotels possessing FL3 license were checked. Audit noticed that eight licensees renewed their license for the year 2020-21 on dates subsequent to 21 May 2020, but were granted remission of license fee for the entire period of 59 days. As they were not holding valid FL licenses during the period from 01 April 2020 to 21 May 2020, granting remission of prorata license fee for that period (51 days) is not in order. This resulted in short collection of FL3 license fee amounting to **₹0.33** crore as given in **Appendix XXIV**.

The case was reported to Government (August 2022), and the Government stated (February 2023) that notices were issued to the eight hotels for remitting the amount deducted while renewing the license.

It is recommended that the Department should verify the records before collecting license fee so as to avoid undue benefit to the licensees. Cases of similar nature should be examined and remedial action taken.