



**Chapter IV**  
**State Excise**



## CHAPTER - IV STATE EXCISE

### 4.1 Tax Administration

The Kerala State Excise is the law enforcement agency for excise in the state of Kerala. Kerala Excise has its headquarters in Thiruvananthapuram. 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. An individual has no fundamental right over the manufacture and trade of liquor. Absolute right on liquor is vested with the State. Government formulates Abkari policy of the State every year. The policy formulated by the State Government is implemented by the Excise department.

### 4.2 Internal Audit

The Internal Audit Wing (IAW) 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 2022-23, IAW audited all 84 units planned for audit. During 2022-23, out of the 2,215 outstanding observations, department cleared 504 audit observations (22.75 per cent).

### 4.3 Results of Audit

There were 22 auditable units during 2022-23 in the State Excise department. Out of these, nine units were selected for audit. Scrutiny of the records of these units during 2022-23 disclosed 31 cases of non/ short realisation of excise duty and Licence fee and other irregularities involving ₹6.68 crore. In addition, a Subject Specific Compliance Audit on 'Enforcement Activities of the State Excise Department' was undertaken during the year. The cases pointed out 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 they also remain undetected till the next Audit is conducted.

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 ₹15.94 crore in 32 cases fall under the following categories are given in **Table – 4.1**.

**Table – 4.1: Details of under assessment of tax and other irregularities**

Sl. No.	Categories	Number of cases	Amount (₹ in crore)
1	Subject Specific Compliance Audit on ‘Enforcement Activities of the State Excise Department’	1	9.26
2	Non levy of fee and fine on unauthorised reconstitution of Board of Directors of Companies	5	3.07
3	Irregular transfer of Foreign Liquor Licence	5	1.97
4	Non collection of additional annual Rental from toddy shops	1	0.43
5	Others	20	1.21
<b>Total</b>		<b>32</b>	<b>15.94</b>

Source: Compiled by AG (Audit II).

During the course of the year, department accepted short levy and other deficiencies involving ₹0.26 crore in six cases pointed out by Audit. Department realised an amount of ₹0.26 crore in six cases during the year 2022-23.

#### **4.4 Subject Specific Compliance Audit on ‘Enforcement Activities of the State Excise Department’**

##### **4.4.1 Introduction**

The Kerala State Excise department is a law enforcement agency which administers laws relating to liquor, narcotic drugs and psychotropic substances and medicinal preparations containing alcohol and narcotics. The Department also collects revenue on liquor by regulating the manufacture, production, purchase, possession, sales and transportation of liquor. Department is responsible for controlling Abkari/ Narcotic related crimes through raids, detection, investigation and prosecution of offences as per law, and prevention of trafficking of Narcotic Drugs and Psychotropic Substances (NDPS) and illicit liquor.

##### **4.4.2 Organisational Structure**

The State Excise department is headed by Additional Chief Secretary, Taxes (Excise) at Government level. The Commissioner of Excise is the head of department and is assisted by Additional Excise Commissioner (Enforcement), Additional Excise Commissioner (Administration), four Joint Excise

Commissioners<sup>44</sup> and Deputy Commissioner (Abkari) at Commissionerate level. The Department is divided into three zones (South, Central and North) under the control of Joint Excise Commissioners (Zonal). Deputy Excise Commissioner is the head of the Excise Division Office at district level, assisted by Assistant Excise Commissioners (Enforcement). Excise Division Office is divided into Excise Circle Offices mainly functioning at *Taluk* level, headed by Circle Inspector of Excise and Circle Offices are further subdivided into Excise Range Offices under the control of Excise Inspector.

#### **4.4.3 Audit Objectives**

The Subject Specific Compliance Audit was conducted to ascertain whether:

- the provisions in the Acts, Rules and Annual Abkari policies were enforced effectively and in a timely manner to prevent the unlawful activities on use of intoxicants;
- the State Excise department has adequate manpower and physical resources to carry out the enforcement activities effectively;
- the awareness/ de-addiction programmes were carried out effectively.

#### **4.4.4 Audit Criteria**

The criteria for Audit were derived from:

- Kerala Abkari Act 1 of 1077.
- Various rules relating to production, manufacture, storage, possession, sale, transportation etc., of country liquor and foreign liquor.
- Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985.
- NDPS Rules, 1985.
- NDPS (Kerala) Rules, 1988.
- The Spirituous Preparation (Industrial Trade and Commerce) Control Act, 1955.
- Kerala Excise Manual.
- Annual Abkari Policies of Government of Kerala.
- Government Orders, Circulars, Notification etc.

#### **4.4.5 Audit Scope and Methodology**

The Subject Specific Compliance Audit was conducted from June to November 2023 covering the period from 2020-21 to 2022-23. Out of 14 districts of the State, Audit selected four<sup>45</sup> districts from three zones by adopting statistical sampling method- Simple Random Sampling Without Replacement (SRSWOR)

<sup>44</sup> Excise Crime Records Bureau, Excise Intelligence and Investigation Bureau, Awareness Programme Co-ordination and Internal Audit Wing.

<sup>45</sup> Kasaragod, Palakkad, Ernakulam and Alappuzha.

through IDEA<sup>46</sup> software. Audit methodology involved scrutiny of records maintained at Government Secretariat, office of the Commissioner of Excise, and at the offices of the Deputy Excise Commissioner of selected districts and its sub-units. Details of units selected for detailed scrutiny are given in **Appendix – XIII**. In addition, data was also collected from Chief Chemical Examiner's Laboratory and Kerala State Beverages Corporation.

An Entry Conference was held online on 22 June 2023 with the Joint Secretary to Government, Taxes (Excise) department and the Commissioner of Excise where the objectives and scope of the Subject Specific Compliance Audit were discussed and an Exit Conference was held on 03 September 2024 with Additional Chief Secretary, Taxes (Excise) and the Commissioner of Excise, where the audit findings were discussed. The views expressed by the State Government during the Exit Conference and the written replies to the draft report have been suitably incorporated in the relevant paragraphs.

#### **4.4.6 Audit Findings**

The State Excise department plays a significant role in controlling Abkari/NDPS crimes in the State and envisions a drug and addiction free Kerala through proactive and empathetic enforcement, promoting responsible use of alcohol and also seeks to achieve excellence in all areas of its operations by ensuring transparency at all levels, maximising citizen friendly approach and ease of doing business and modernisation to match the highest expectations of the citizens.

Audit verified the enforcement activities of department and the important Audit findings are discussed in paragraphs below:

##### **4.4.6.1 Detection of Abkari/ NDPS Crime Cases**

The Additional Excise Commissioner (Enforcement) coordinates the enforcement activities at the State level. At district level, the enforcement activities are monitored by the Deputy Excise Commissioner of Excise Division Office with the assistance of an Assistant Excise Commissioner (Enforcement). Control Rooms with toll-free numbers are functioning at State and District levels to receive complaints on use of intoxicants. An Excise Intelligence and Investigation Bureau (EI&IB) has been set up in the department to gather and hand over intelligence inputs to the enforcement units. Search/ raids are carried out by the enforcement units based on complaints/ intelligence inputs received.

Year wise details of Abkari/ NDPS offences detected during the last three years are given in **Table – 4.2** below:

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<sup>46</sup> Interactive Data Extraction and Analysis.

**Table – 4.2: Year-wise details of Abkari/ NDPS offences**

Year	Abkari	NDPS	Total
2020-21	17,695	3,487	21,182
2021-22	19,516	3,857	23,373
2022-23	32,667	11,464	44,131

Source: based on data furnished by department.

Audit verified the effectiveness of measures taken to detect illegal use of intoxicants and noticed deficiencies like non-utilisation of inputs of the EI&IB, inaction on complaints received from general public on illegal use of intoxicants etc., which are discussed in following paragraphs.

- **Utilisation of inputs of Intelligence/ Investigation wing**

Government formed<sup>47</sup> EI&IB in each district for collection and dissemination of information on illegal activities in intoxicants to the Enforcement units, for taking timely action. As per Para 20, Chapter XXV of Kerala Excise Manual Vol. II, Excise Officers in charge of Range, Circle, Squad and EI&IB units must maintain an IB Information Register (IB Input Register) to record the details of information with date and time, along with the name and details of informant, if the informant is willing to disclose the same.

Audit cross verified the details of IB Input Registers maintained at EI&IB of selected districts with that of selected Excise Circle Offices and Excise Range Offices and found that out of the total 2,507 IB inputs transferred from EI&IB units, only 1,823 inputs were received/ registered at the sub-offices. Receipt of 684 IB inputs, and details of action taken on the registered 483 IB inputs, was not recorded in the Register maintained at Circle/ Range offices. Hence, Audit was unable to ascertain whether any action was taken on 1,167 IB inputs.

Details of intelligence inputs, and action taken thereupon, are given in **Appendix – XIV**. Non-utilisation/ non-receipt of IB inputs may have resulted in non-detection of offences relating to intoxicants, considering that offences were detected in 1,091 of 1,340 inputs on which action was taken.

It was noticed that out of the 2,507 IB inputs provided by four EI&IBs, 1,232 inputs (49.14 *per cent*) were related to Kasaragod District alone. Audit also found that, of the 949 IB inputs registered and investigated in Kasaragod, offences were detected in 906 (95.47 *per cent*) cases, whereas, only in 74 (33.04 *per cent*) cases offence was detected when 224 inputs registered and investigated in Palakkad district. This indicates that the quality of inputs from various EI&IBs varies significantly.

On this being pointed out, Government stated (October 2024) that it is not necessary that every IB input would result in detection of crime. Some inputs are very general in nature and majority of them are meant to invite department's attention to some activities in a particular area. These kinds of inputs are immediately attended to and also kept for follow-up action. In respect of non-

<sup>47</sup> Vide GO(MS) No. 95/04/TD dated 08 June 2004.

recording and non-documenting of inputs, a verification is being undertaken to assess the cause.

The reply is not acceptable as IB inputs are inputs given by department officials who were assigned the duty of collection and dissemination of information on illegal activities in intoxicants to the Enforcement units. Hence, their input cannot be general and meant to invite department attention. Their inputs, unlike the inputs from general public, should be more specific. Moreover, a circular<sup>48</sup> was issued by the department, outlining guidelines for documentation and follow up procedures on information received from other offices based on draft Audit observation.

- **Attending complaints from the general public**

The Excise department receives complaints from the general public, mainly through a toll-free number maintained for the purpose. As directed vide Circular No. EXC2/2022/EXCISE dated 01 January 2022, details of all complaints on illegal activities in intoxicants received through telephonic messages should be registered and intimated to the jurisdictional unit/ office concerned, for action. Scrutiny revealed that out of 537 complaints registered in the selected four Divisional offices, 39.66 *per cent* of complaints (213 nos.) were not registered at sub-units, 20.67 *per cent* of complaints (111 nos.), though registered, were not attended at sub-units, and 18.06 *per cent* of complaints (97 nos.) earmarked for detailed investigation were not yet attended. Details are given in **Appendix – XV**.

Though the public is utilising this facility expecting timely action, department is not giving due importance to the complaints received. The Division Office is not ensuring timely action on complaints received and transferred to sub-units.

On this being pointed out, Government stated (October 2024) that majority of complaints turned out to be untrue and quite a number are often seen to be engineered to settle certain scores. As regards non-registration of complaints, the complaints received at Head Offices are forwarded to various offices, and hence, figures of one sub-office will never match with the figures of Head Offices.

The reply is not acceptable as the details of complaints registered and attended by the sub-offices should match with the details available at the Division Office since the complaints are recorded at Divisional Offices and subsequently transferred to sub-offices for action. However, in the sampled Divisional Offices, the data was not matching.

- **Functioning of Control Rooms**

The Excise department had introduced (January 2022) Striking Force, Highway Patrol and Kerala Excise Mobile Intervention Unit (KEMU) for urgent enforcement activities and for inquiring into the information received. A Control Room functions 24 hours at Division Office to coordinate these patrol

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<sup>48</sup> Circular No. I/394924/2024 dated 25 September 2024.

units. The Control Room and each Patrol unit is under the control of the Deputy Excise Commissioner.

The functional areas of Patrol units are

- i) KEMU- functioning at border districts,
- ii) Striking Force - functioning only at night,
- iii) Highway Patrol - functioning in each district.

The Commissioner of Excise issued (January 2022) detailed guidelines for proper functioning of Striking Force and Control Room. As per the guidelines, complaints received at Control Room should be documented and handed over to the Patrol units. Likewise, complaints received directly by the Patrol units should also be documented at the control room. Each unit should inform the starting and completion of duty to the control room, besides contacting the control room at intervals of two hours, to update their duty points and duty details.

From the records maintained at Control Rooms of selected districts for the audit period, Audit noticed that:

- i) though there is clear direction in the guidelines to document the activities of Patrol units, the Control Rooms, in violation to the directions, do not maintain any registers for documentation of duty points of Patrol units or frequent contact with Patrol units.
- ii) responsibility of Control Room was entrusted to a Civil Excise Officer (CEO) instead of a Preventive Officer.
- iii) though the complaints received in the Control Room were registered in the Control Room Register, the action taken/ disposal status of the complaints was not seen updated. Further, Control Room Register was not inspected by the Deputy Excise Commissioner every month.
- iv) there is no mechanism like Beat Books<sup>49</sup> or surprise checking to monitor and document the functioning of night Patrol units.

On this being pointed out, Government stated (October 2024) that a General Diary is being maintained at all Control Rooms (State/ Division/ Taluk), and regular monitoring of Control Rooms is being done at all levels. Monthly Reports in this regard are being collected and reviewed in District-level and State-level Conferences. It was further replied that the State-level Control Room is held under the charge of a Circle Inspector of Excise, whereas the District-level Control Rooms are generally put under the charge of a Preventive Officer. But, owing to the non-availability of Preventive Officers due to various

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<sup>49</sup> Beat Book is a book kept in various sensitive spots for documenting the details of patrolling viz., location, time, details of work etc. by the officials.

reasons, the charge of District-level Control Rooms is sometimes entrusted to Civil Excise Officers.

The reply is not acceptable as Audit found during scrutiny of registers maintained in Control Rooms that the evidence of inspections was not recorded in the Control Room Registers.

#### **4.4.6.2 Investigation of Abkari/ NDPS offences**

The Excise Range Offices, Circle Offices, Anti Narcotic Squads, etc., are responsible for the investigation and timely submission of charge sheets in Abkari/ NDPS cases at Courts of Law concerned. The activities are monitored by Deputy Excise Commissioner and AEC (Enforcement). AEC (Enforcement) is also the investigating officer of major cases in the district. Pendency in charge-sheeting of Abkari/ NDPS cases in the State as on 31 March 2023, is detailed in **Table – 4.3** below.

**Table – 4.3: Pendency of charge-sheet**

<b>Period of pendency</b>	<b>Abkari cases</b>	<b>NDPS Cases</b>	<b>Total</b>
Less than one year	2,786	1,194	3,980
1-2 year	590	147	737
2-5 years	67	26	93
More than 5 years	51	2	53
<b>Total</b>	<b>3,494</b>	<b>1,369</b>	<b>4,863</b>

Source: based on data furnished by department.

Audit noticed procedural lapses/ delays in completion of investigations, which are discussed in following paragraphs.

- **Delay in completion of investigation**

As per Section 50 of Abkari Act, every investigation shall be completed without unnecessary delay. As per Section 36A(4) of NDPS Act, 1985, in case of persons accused of NDPS offences punishable with imprisonment for a term of not less than ten years, maximum remand period shall be 180 days. The Excise Commissioner also issued instructions (January 2021) that all major cases should be charge-sheeted within the remand period itself. In respect of NDPS offences involving ‘commercial quantity’, the Excise Commissioner directed all officials to invoke Section 36A(4) of NDPS Act, so that 180 days of remand period will be available for charge-sheeting.

Test check of records relating to major offences (Sessions Court cases) under Abkari/ NDPS Acts revealed that the stipulated time limit to charge sheet, after completion of investigation, was not complied in 36 cases, as detailed in **Appendix – XVI**. Moreover, Section 36A(4) of NDPS Act was not invoked in any case. It was also noticed from the syllabus of the training programme of State Excise Academy & Research Centre that training to ensure timely completion of investigation was not imparted to the officials.

On this being pointed out, Government stated (October 2024) that delay in receiving the Chemical Analysis Report from the Chief Chemical Examiner's Laboratory is one of the main reasons for delay in completion of investigation. Timely instructions are being issued to Investigating and Supervising Officers to complete investigations without unnecessary delay.

The reply indicates a systemic deficiency needing Government's attention to arrest unnecessary delay in furnishing of Lab Reports and resultant delay in investigations.

• **Non-invoking of all relevant sections on detection of NDPS offences**

The NDPS Act provides punishment for consumption of drugs (Section 27), for attempts to commit offences (Section 28), for abetment and criminal conspiracy (Section 29), for preparation in respect of Commercial quantity (Section 30), for offences after previous conviction (Section 31), etc. Narcotic Control Bureau (NCB) issued a Handbook to enable the Field Officers to have a correct interpretation and application of various provisions of NDPS Act. The handbook describes the procedures to be followed in detailed investigation relating to:

- i) investigation of different offences involved,
- ii) identification of the conspirators/ abettors who facilitated the crime,
- iii) source, distribution and destination of the drug,
- iv) mode of transport, payment,
- v) whether a gang or syndicate was involved, etc.

Audit noticed that 1,596 crime cases involving 'small quantity'<sup>50</sup> of contrabands were booked in selected districts. However, none of the penal provisions stipulated under Section 27 to 31 of NDPS Act, other than that for possession of intoxicants (Section 20, 21 and 22 of NDPS Act), were invoked. Unless detailed investigation is carried out, perpetrators involved in these offences cannot be identified.

Due to the failure in conducting detailed investigations, only the accused in 'small quantity' contrabands was penalised. Department chose to not investigate the matter further, thereby missing out an opportunity to apprehend the perpetrators involved in abetment, conspiracy, preparation and distribution of drugs. It was noticed that department's training programme did not cover training on booking of offences invoking all relevant provisions under Abkari/ NDPS/ PITNDPS Acts.

On this being pointed out, Government stated (October 2024) that the penal provisions of NDPS Act, other than the provisions for possession of intoxicants, can be invoked strictly in accordance with the facts of the case and evidence

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<sup>50</sup> Any quantity lesser than the quantity specified by the Central Government by notification in the Official Gazette. Vide S.O.1055 (E) dated 19 October 2001, Government of India specifies the quantities of 239 narcotic drugs.

gathered during detection and investigation of the case. Unnecessary invocation of sections of NDPS Act, beyond the facts and evidence, will be a wrongful action which can invite strictures from the Courts.

The reply is not acceptable as detailed investigations in ‘small quantity’ cases, whose numbers are significant, have not been carried out owing to non-invocation of penal provisions of NDPS Act. Consequently, such cases continue to rise while the suppliers up in the chain evade punishment.

- **Preventive detention of offenders under PITNDPS Act**

Section 3 of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (PITNDPS Act) empowers the State Government to direct detention of any person so as to prevent him from engaging in illicit traffic of narcotic drugs and psychotropic substances.

Audit observed that:

- i) PITNDPS Act with provisions for preventive detention was enacted in 1988. Though, the number of NDPS cases in the State shows an increasing trend (Table 4.2), Excise department could not detain any offenders invoking provisions of this Act so far.
- ii) The Excise Department requires an authority from the Government for preventive detention of offenders, for which proposal is to be furnished by the department. Audit noticed that till 2022, no such proposal was furnished. The proposals furnished in 2022 were returned by the Government on grounds of procedural lapses. It was further noticed that 12 out of the total 62 proposals for preventive detention were submitted to Government after lapse of the mandatory 45-day period, as detailed in **Appendix – XVII**.

Government replied (October 2024) that action in deserving cases is being initiated under PITNDPS Act. Online training programmes on procedures to be followed for invocation of PITNDPS Act, are being planned.

**Recommendation 1:**

**Department may impart proper training to enforcement officials regarding booking of offences invoking all relevant provisions under Abkari/ NDPS/ PITNDPS Acts and ensure the timely completion of investigation.**

- **Unnecessary remand of the Accused due to delay in obtaining Chemical Analysis report:**

The Chemical Examiner's Laboratories analyse the samples of contraband, liquor, toddy etc., and their reports are important in proving the offences detected by Excise department. Rule 14 of the Narcotic Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022 stipulates that the Chemical Laboratory shall submit its report to the Magistrate's Court within fifteen days from the date of receipt of the sample, with a copy to the Investigating Officer.

Section 21, 22 and 27 of NDPS Act prescribes rigorous imprisonment (RI) for unauthorised manufacture, possession, sale, consumption etc., of psychotropic substances, wherein, the period of imprisonment depends upon the quantity involved in contravention, i.e., one year for 'small quantity', and 10 to 20 years for quantity greater than 'small quantity'. In respect of narcotic drugs and psychotropic substances, the Central Government has specified<sup>51</sup> the quantum to be considered as 'small quantity' or 'commercial quantity'. Vide First Schedule of Cr. PC, offences punishable with imprisonment for less than three years are 'Bailable Offences'. Accordingly, NDPS offences involving 'small quantity' are bailable offences, whereas contraventions involving 'greater than small quantity' are non-bailable. For example, a contravention involving Methamphetamine up to two gram is considered as 'small quantity'<sup>52</sup> and is bailable, whereas contravention of same quantity of MDMA<sup>53</sup> is considered as greater than small quantity<sup>54</sup>, and is non-bailable. Hence, for requisite conviction, it is very important to ascertain and prove the type of contraband, which can be done only through a chemical analysis. Delay in receipt of Chemical Analysis Report from Chemical Laboratories not only delays the investigation, but also, results in unnecessary remand of the accused.

Audit noticed that the fifteen days' time frame for furnishing chemical analysis report, stipulated under Rule 14 of the NDPS (Seizure, Storage, Sampling and Disposal) Rules 2022, was not complied in any of the test checked cases. Delays of up to seven months were noticed in test checked institutions. It was also noticed that in 23 instances, the accused were remanded for possession of 'small quantity' (0.5 gm to 2 gm) of MDMA, whereas, the chemical analysis report, received much later, identified the contraband as Methamphetamine. Thus, the delay in furnishing Chemical Analysis Report resulted in unnecessary remand of the accused, some instances of which are detailed in **Appendix – XVIII**.

Rule 15 of the Rules *ibid*, states that after chemical analysis, the remnants of samples should be returned within three months of analysis by the laboratory, to the office from which they were received. The duplicate samples kept with the Inquiry Officer, along with the remnants, should be deposited in the designated warehouses. It was, however, noticed that the remnants were not taken back by

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<sup>51</sup> Notification No. S.O. 1055(E) dated 19 October 2001.

<sup>52</sup> Sl. No. 159 of Notification.

<sup>53</sup> 3,4-Methylenedioxyamphetamine.

<sup>54</sup> Sl. No. 134 of Notification.

the Excise department in any of the test checked cases and were retained at the Chemical Examiner's Laboratories.

On this being pointed out, Government stated (October 2024) that Kerala has only three chemical analysis laboratories which cater to the demand of several agencies and Excise department is one among them. Therefore, occurrence of delay in submission of reports is very usual. A systemic improvement to enhance capability and capacity of laboratories is needed.

The reply is not tenable as the fate of the accused in NDPS offences are strongly dependent on the chemical analysis report and delay in getting the result on time may lead unnecessary incarceration and human right violations.

#### **4.4.6.3 Prosecution of offences**

The State Excise department books crime cases under various sections of Abkari and NDPS Acts. Abkari offences are bailable as well as non-bailable. While, bailable Abkari offences are disposed of by the Competent Authorities of Excise department or by the Judicial Officers by way of compounding the offence, the non-bailable Abkari offences are disposed of by the Sessions Court after conducting a trial. In case of NDPS offences, both bailable and non-bailable offences are disposed of by the judiciary. As on 31 August 2023, total 18,937 Abkari/ NDPS cases were pending disposal at various Courts in the State.

- **Acquittal of accused in Abkari cases due to procedural lapses**

Section 50(2) of Abkari Act states that as soon as investigation into the offences under this Act is completed, the Abkari Officer shall forward a report to the Magistrate, in accordance with sub section (2) of Section 173 of Code of Criminal Procedure, 1973. The Magistrate shall inquire into such offence and commit to Sessions Court, if the offence is exclusively triable by that Court, or, try the person accused thereof in like manner as provided in Cr.PC.

Audit test checked 38 out of 194 cases disposed during the period from April 2020 to March 2023 in the selected Districts, and noticed that in 33 cases, the accused were acquitted by Sessions Court due to departmental lapses like incorrect certification of inventory by Executive Magistrate, lack of uniform procedure in sampling, failure of the Prosecution to prove liquor sale, etc. Details of Abkari cases disposed of by the Courts and reasons for acquittal are given in **Appendix – XIX**.

In the report submitted to Government, the Additional Excise Commissioner (Enforcement) observed that the conviction rate under Abkari Act is as low as 10 *per cent* of the cases booked. The report focussed on the necessity of training officials in sampling, preparation of *Mahazar*<sup>55</sup>, etc.

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<sup>55</sup> *Mahazar* is a report prepared by the officer detecting an Abkari/ NDPS case wherein all actions/ procedures performed by the officer before and after the seizure of contraband, place/date/time and cause of action, details of seized articles/evidences, names of persons or officials involved, list of witnesses, etc., are recorded and signed by two or more witnesses.

Thus, the failure to obtain convictions was a result of procedural lapses on part of the department officials. This laxity will have serious repercussions as conviction of offenders also act as a deterrent to more offenses being committed.

On this being pointed out, Government stated (October 2024) that acquittal cases are monitored at Excise Headquarters level and a checklist, to rectify mistakes, has been prepared from various court judgements and issued to Officers for preventing mistakes which led to acquittal.

The reply is not tenable as department has not yet prepared a course schedule to impart training in respect of preparation of *mahazar* and sampling.

**Recommendation 2:**

**The Department needs to**

- (i) impart periodical training to all Excise Officials on Court procedures and preparation of cases/ papers for the same, for ensuring building of foolproof cases and to minimise acquittals.**
- (ii) establish a robust mechanism to monitor the use of inputs received from different sources and to expedite the receipt of chemical analysis report from designated Chemical Laboratories.**

#### 4.4.6.4 Enforcement in Toddy and Foreign Liquor Sector

Licence for production and sale of toddy, licences/ permits for import and possession of spirit, and, for manufacture, storage and sale of IMFL/ Beer are issued under the Kerala Abkari Act, 1077, and rules framed thereunder.

- **Non-demand and collection of Additional Permit Fee**

Rule 11A of the Tree Tax Rules states that, a toddy-shop licensee can transport toddy from one district to another under a Transport Permit, subject to remittance of Permit Fee at the rate of rupee one per litre and Additional Permit Fee of rupee one per litre (introduced by Government with effect from 23 October 2021). Hence, the licensee who is transporting toddy to other divisions is required to remit permit fee and additional permit fee, in addition to Tree Tax<sup>56</sup>.

Scrutiny of records of Excise Division Office, Palakkad and Excise Circle Office, Chittur revealed that against the additional fee leviable of ₹846.53 lakh, demand notice was issued only for ₹36.65 lakh, of which ₹15.41 lakh was collected. The Deputy Commissioner of Excise, Palakkad, who issued Inter Division Permits, did not demand the additional permit fee at the rate of rupee one per liter (except in 73 cases). Non collection of additional fee works out to ₹831.12 lakh as detailed in **Appendix – XX**.

On this being pointed out, Government stated (October 2024) that demand notices were issued to the licensees with retrospective effect, against which, the

<sup>56</sup> Tree Tax is a tax levied under the Tree Tax Rules, for the grant of licences for tapping toddy from toddy producing trees (*viz.*, Coconut, Palmyra and Sago trees).

licensees filed writ petitions before the Kerala High Court. The High Court has since stayed the proceedings for recovery of additional permit fees.

The reply is not acceptable. Audit objection is about non-collection of additional permit fee at the time of issue of permits. The matter before the Honourable High Court is on recovery of fees demanded retrospectively.

- **Functioning of Liquor Testing Laboratories**

Rule 33 of Foreign Liquor Rules, 1953, prescribes the procedure for taking samples from Foreign Liquor shops, chemical analysis etc. As per existing (February 1995) directions, Circle Inspectors and Range Inspectors of Excise shall conduct monthly surprise checks at all licensed premises and take liquor samples, which shall be promptly analysed by the Chief Chemical Examiner/ Regional Chemical Examiner. Three Mobile Liquor Testing Laboratories are functioning under the department, one for each Excise Zone, which enables Enforcement Officers to conduct an on-the-spot detection of foreign ingredients and percentage of ethyl alcohol contained in Alcoholic Beverages sold by the licensees.

Audit test checked the Mobile Liquor Testing Laboratory functioning under the Joint Excise Commissioner (Central Zone) and the details of samples taken from Foreign Liquor shops and toddy shops functioning in the selected four districts, its Chemical analysis reports received from the Chemical Analysis Laboratories. It was revealed that:

- i) For mobile liquor testing, samples were collected for analysis from Toddy Shops alone, whereas, the Excise Commissioner had directed (09 September 2013 and 03 July 2018) to collect samples from all licensees, viz., Toddy shops, Foreign Liquor Shops, Beer/ Wine Parlours, Bar Hotels and liquor serving Clubs, for analysis;
- ii) During the period 2022-23, samples for chemical analysis were taken only from 69 out of 208 FL-3 licensees as detailed in **Appendix – XXI**. The chemical analysis report was not obtained in 102 cases.
- iii) Targets for collection of toddy and foreign liquor samples were not fixed.

On this being pointed out, Government stated (October 2024) that random sampling and testing of foreign liquor is done at various points in the supply chain, whereas the same is not being done for toddy. Hence, the mobile testing labs are meant for toddy sector and there is only one lab for each zone, these labs cannot be expected to take samples from all shops. Fixation of targets for sample collection is not practical as the samples are randomly collected, which also acts as surprise checks.

The reply is not acceptable as the Excise Commissioner had directed (September 2013 and July 2018) to collect samples from all licensees, and samples were collected from FL shops too during 2022-23. Hence, the

contention that the Mobile Testing Labs were meant for toddy sector alone, is untrue.

- **Granting of FL-4A club licence without verification**

As per Rule 13 (4A) of Foreign Liquor Rules, 1953, FL-4A club licences may be issued to existing clubs for serving liquor to its members, subject to the condition that the Club should have been registered as a Society, and the land and buildings should be in the name of such Society.

Audit test checked 17 out of 23 FL-4A club licences granted in the four selected districts. It was noticed that FL-4A club licence was issued to United Club, Alappuzha, which did not have a land on its own but possessed a government land leased out for the purpose of construction of club and used as playground. The lease deed clearly stipulated that the land assigned should not be used for any other purposes. As the land is not in the name of the Club, it cannot legally serve liquor to its members and therefore, issue of FL-4A licence to United Club Alappuzha is irregular.

On this being pointed out, Government stated (October 2024) that the Village Officer has certified that the land is Government's land which is leased out to the Club and is under possession of the Club and Alappuzha Municipality has issued an Ownership Certificate to the effect that the buildings on the said land are under the ownership of the Club's Secretary. It was also stated that department on verification of the documents furnished by the Club found that the land and building are under the possession and ownership of the Club and hence, FL-4A licence was issued.

The reply is not acceptable. One of the conditions for issuing FL-4A licence is that the land and buildings should be in the name of the Society. As cited by the Village Officer, and evident from records, the land held by the Club is Government's land and leased out to the Club for special purpose and hence is not under Club's ownership.

- **Transfer of Foreign Liquor licences under the guise of reconstitution/ change of name**

Rule 19(ii) and (iii) of the Foreign Liquor Rules, 1953 deals with the reconstitution of partnership by addition or deletion of members or reconstitution of Directors in a Company, on payment of rupee one lakh. Para 18 of Chapter XIX of the Kerala Excise Manual Vol. II stipulates that fixed fee licences shall not be transferred from the name of one person to another and if there is a need for a change in the fixed fee licences, the proper procedure for the holder is to surrender the licence and to treat the case of the proposed transferee as a fresh applicant. The licence fee for FL-3 licence was ₹35 lakh during 2023-24.

Audit verified 45 cases in the four selected districts dealing with permissions granted by the Excise Commissioner during 2022-23 for reconstitution of directors/ partners of companies/ partnership firms and found that in two cases the permission was granted by misinterpreting the Foreign Liquor Rules. In both

cases, the ownership of the property of hotel was transferred from one company to another company. Hence, it was not a reconstitution of directors of a company but transfer of ownership from one company to another company. The proper way of transfer of licence in such case is to surrender the existing licence and get a fresh licence issued in the name of the new owners, if they are eligible. Omission to do so had resulted in short levy of licence fee of ₹64.00 lakh, as detailed in **Table – 4.4**.

**Table – 4.4: Short levy of licence fee**

Licence No.	Name of the original licensee	Ownership changed to	Order No. Amount Realised	Licence fee applicable (₹ in lakh)	Short realisation (₹ in lakh)
P-15/2022-23	Krishnanunny C.S. of Govardhana Restaurant, a unit of Sahadevan Sons Pvt. Ltd.	Rejin. K A of M/s Malampuzha Hotels	PPRRAMBD/2023/ 00006 dated 05 June 2023; ₹3,00,000	35.00	32.00
P-34/2023-24	Arunraj of Hotel Sreevalsam Residency, a unit of Sree Valsam Hotels & Resorts Pvt. Ltd	Dominic Savio Varghese, partner of M/s TMJ Hotels and Resorts LLP.	PPPRAMBD/2023/ 00001 dated 28 August 2023; ₹3,00,000	35.00	32.00
<b>Total short realisation</b>					<b>64.00</b>

Source: based on data furnished by department.

On this being pointed out, Government stated (October 2024) that the Excise Manual is a guideline for the officers of the Excise department and it cannot overrule a legislation. The provisions of Rule 19(i) allow transfer of licence under the prior permission of Commissioner and Rule (iv) stipulates the fee for change of name of licensee and hence the licence granted under FL Rules can be transferred from the name of one person to any other person/ firm. The fee for transfer of licence is mentioned in Rule 19(iii) and hence, the transfer of ownership was sanctioned by levying fee of ₹1.00 lakh and change of name was allowed by levying ₹2.00 lakh. Hence, the permissions granted by the Commissioner is in order.

The reply is not acceptable. The ‘transfer of licence’ laid down in Rule 19(ii) of the Foreign Liquor Rules deals with cases where the board of directors of a Company is reconstituted by way of addition or deletion of directors of that Company and fee prescribed under Rule 19(iii) is for reconstitution of directors of the Company. As there is no clear provision in Foreign Liquor Rules, 1953, to override the guidelines laid down in Kerala Excise Manual in the case of sale of Licences from one holding company to another, the guidelines are applicable in such cases.

- **Unauthorised reconstitution of Board of Directors of Companies and Partnership firms, holding FL Licences**

Rule 19(i) of Foreign Liquor Rules, 1953 restricts transfer of a licence obtained under the Rules without the previous sanction of the Commissioner of Excise. Rule 19(ii) and (iii) of Foreign Liquor Rules, 1953, clarifies that the reconstitution of partnership by addition or deletion of members or reconstitution of Directors in a Company shall be deemed to be a ‘transfer of licence’ and can be allowed on payment of rupee one lakh. If any unauthorised reconstitution is detected, the Commissioner shall impose a fine of rupees three lakh under Section 67 of the Abkari Act and may regularise such irregular reconstitution after accepting the fine so imposed.

**i) Reconstitution of director board of Companies**

Audit cross-verified the data of 61 companies holding FL-11 and FL-3 licences in selected districts, with the database in the website of Ministry of Corporate Affairs, GoI, which contain the master data and signatory/ director details of companies, and found that two<sup>57</sup> companies made six instances of reconstitution of board of directors without prior approval of Commissioner of Excise. These reconstitutions were not yet regularised by collecting fee and fine. The non-levy of fee and fine amounted to ₹24 lakh<sup>58</sup>.

**ii) Reconstitution of Partnership firms**

Audit cross-verified the data of 281 Partnership firms holding FL-11/ FL-3 licences in selected Districts with the records of Registrar of Firms, GoK and found that two<sup>59</sup> partnership firms made two instances of reconstitutions of their partnership without the prior approval of Excise Commissioner out of which one is not yet regularised and the other was regularised without collecting fine. The non-levy of fee and fine involved in these reconstitutions amounted to ₹7.00 lakh<sup>60</sup>.

On this being pointed out, Government stated (October 2024) that two of the four licences pointed out by Audit have regularised the unauthorised reconstitution, while notices have been issued to the remaining licensees to submit application for regularisation. Further reply awaited (October 2024).

- **Renewal of FL-3/ FL-11 licences without star classification**

Rule 13(3) of Foreign Liquor Rules, 1953 stipulates that FL-3 licences may be issued to hotels which have obtained three-star, four-star, five-star, five-star deluxe, heritage, heritage grand or heritage classic classification from the Ministry of Tourism, Government of India. Government of Kerala, citing huge backlog in issuing star classification by Ministry of Tourism, issued (latest in

<sup>57</sup> Casino Hotels (25 January 2021, 01 February 2021, 03 September 2021, 15 November 2021 and 03 December 2021) and Harbour View Residency (10 May 2022) of Ernakulam District.

<sup>58</sup> Fee ₹1 lakh each + Fine ₹3 lakh each = ₹(6x1) lakh + ₹(6x3) lakh = ₹24 lakh.

<sup>59</sup> Ranimatha Arcade (01 April 2022) and Malayattur Residency (01 February 2021) of Ernakulam District.

<sup>60</sup> Fee ₹1 lakh for one instance + Fine ₹3 lakh each = ₹1 + ₹6 lakh = ₹7 lakh.

March 2023) directions, without amending the Rule provision, to the State Excise Commissioner to renew FL-3/ FL-11 licences to hotels whose classification was expired, if applications for Star Classification renewal have been submitted to the Ministry of Tourism on time.

Audit verified licence renewals in the selected districts and found that licences of 144 licensees were renewed on production of application submitted to Ministry of Tourism as detailed in **Appendix – XXII**, of which eight licences were renewed continuously for four years and another 10 licences for three years. Since submission of a valid Star Classification certificate is an obligatory condition for grant/ renewal of FL licence, the renewal of FL licences by department, on the basis of a copy of the application submitted to Ministry of Tourism, is irregular.

On this being pointed out, Government stated (October 2024) that direction has been issued to all divisional Deputy Excise Commissioners to examine and report the circumstances leading to the continuous renewal of licences of eight Hotels for four years, and 10 hotels for three years, without a valid Star Classification. In other cases, licences were renewed in accordance with Government sanction to renew the licences of those institutions who have timely applied for renewal of Star Classification to the Tourism Ministry, but whose applications were not processed by the Ministry on time.

The reply is not acceptable. The renewals are to be done as per stipulations of Abkari Act, and any relaxation therein should have Legislature's approval.

**Recommendation 3:**

**Department may establish a monitoring mechanism with respect to issuance and renewal of various Abkari licences.**

**4.4.6.5 Disposal of Seized Vehicles and other Contrabands**

Audit reviewed the disposal of seized vehicles, spirit and other contrabands in the four<sup>61</sup> selected Excise Divisions and found the following:

- **Delay in disposal of seized vehicles**

Section 53A of the Abkari Act stipulates that liquor/ drug/ materials/ conveyances seized under Section 34 of the Act shall be disposed, within one month<sup>62</sup> of orders issued by an authorised officer not below the rank of an Assistant Excise Commissioner, in public auction or e-auction. Section 52A of NDPS Act, 1985 states that vehicles involved in NDPS cases can be disposed after preparation of inventory as stipulated in the Act and certified by the Magistrate of the concerned Court.

Audit reviewed the disposal of seized vehicles in the four selected Excise Divisions and found that, out of the 3,127 seized vehicles involved in Abkari/

<sup>61</sup> Palakkad, Ernakulam, Kasaragod, Alappuzha.

<sup>62</sup> Rule 16 of Kerala Abkari (Disposal of confiscated articles) Rules, 1996.

NDPS cases, available for disposal during the audit period, only 496 vehicles were disposed, leaving 2,631 vehicles pending for disposal as on 31 March 2023. Details of seized vehicles and its disposal is given in **Appendix – XXIII**. Further, since these vehicles were retained in open spaces, they were prone to corrosion, mechanical failure, theft etc., and delay in auction would lead to realisation of value lower than the current realisable value of the vehicle.

On this being pointed out, Government stated (October 2024) that, after seizure of vehicles under Abkari/ NDPS Act, the Chemical Analysis Report of *thondy*<sup>63</sup> articles which is necessary for confiscation, is delayed. Further, documents like Registration Certificates of vehicles, Valuation Certificates from the Mechanical Engineer, and Enquiry Reports are required for disposal of vehicles. Moreover, outdated/ damaged vehicles may not get sold in public auction even after repeated attempts on MSTC<sup>64</sup> platform. All these factors result in delays in disposal of seized/ confiscated vehicles.

The reply highlights systemic deficiencies requiring Government attention. Delay in conducting auction results in vehicles becoming outdated/ damaged and thus remaining unsold in auction. Audit found that at the beginning of the year 2020-21, 1,595 seized vehicles were pending for disposal and altogether only 496 vehicles were disposed during the audit period which means more than 1,000 vehicles remain unsold were kept in open spaces for more than four years, and this may be the cause for outdate/ damage of vehicles.

- **Preparation of inventory and disposal of *Thondy* articles**

Section 53A read with Section 67B of the Abkari Act, deals with the preparation of inventory of *thondy* articles, and their production before an Authorised Officer. As per Rules 4A and 5 of Kerala Abkari (Disposal of confiscated articles) Rules, 1996, contrabands, including spirit, seized in Abkari crime cases is to be disposed of after seizure in such manner as prescribed.

Scrutiny at the four selected Excise Division Offices, revealed that Inventory Register was not maintained properly and the details of certification of inventory was not recorded. Audit inspected *Thondy* rooms of selected Excise Range Offices and found that seized liquor and other contrabands were kept without disposal. For example, a truckload of 5,490 litres of foreign liquor<sup>65</sup>, seized in 2003, was dumped in a large room in the Excise Complex at Hosdurg.

On this being pointed out, Government replied (October 2024) that the matter is being examined to ensure compliance and stop the repetition of mistakes. Further reply awaited (November 2024).

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<sup>63</sup> Vernacular term for 'seized articles'.

<sup>64</sup> MSTC Limited is a Central Public Sector Undertaking under the Ministry of Steel, Government of India, involved in diversified e-commerce services.

<sup>65</sup> Involved in Abkari Crime No. 06/2003 of ERO Neeleshwaram.

**Recommendation 4:**

**Department may establish effective mechanism to dispose of the seized vehicles and other inventory items involved in Abkari and NDPS offences within the time limits prescribed.**

**4.4.6.6 Under utilisation of Infrastructure**

Article 40(b) of the Kerala Financial Code, Volume-1 stipulates that every Government servant who incurs or authorises the incurring of any expenditure from public funds should see that the expenditure should not be *prima facie* more than the occasion demands.

Audit noticed that in the following instances, though expenditure was incurred, department is not getting its intended services.

- **Non-utilisation of Modern Interrogation Rooms available at Zonal Offices**

Department established Modern Interrogation Rooms<sup>66</sup> in three Zones viz., Kollam, Ernakulam and Kannur, at a cost of ₹22.49 lakh, for scientific questioning of the accused in Excise cases. The facilities available there include an interrogation room, an officer's cabin to watch the actions of the accused in the interrogation room without his knowledge, Audio and Video recording of the interrogation, remote viewing of interrogation, laptop for interrogator etc. Audit noticed that the Interrogation Room constructed (August 2022) at Central Zone, Ernakulam, was utilised only in two instances<sup>67</sup>. When an interrogation room with the latest scientific equipment was available, the department chose to leave it unutilised. The accused could have been transported and interrogated in these rooms which would have brought greater benefit in analysing and strengthening the case.

Department replied (December 2023) that the Zonal Interrogation Room was not utilised, as the accused were interrogated at subordinate field offices itself for gathering evidence. Government further replied (October 2024) that preliminary interrogation is made at the spot of crime detection, for gathering evidence. During the limited time of custody of the accused, post detection of cases, it is not practical to bring the accused to the Zonal Interrogation Room. However, instructions have been issued to utilise the facilities of Modern Interrogation Room in the investigation of crimes demanding thorough interrogation.

The replies corroborate Audit finding that scientific methods, though available, were not utilised for interrogation of accused. The officials are still using the conventional method of interrogation in subordinate field offices, where no scientific facilities are available.

<sup>66</sup> Administrative Sanction (01 July 2021).

<sup>67</sup> 10 May 2023 and 19 July 2023.

- **Injudicious expenditure on purchase of boat**

M/s Steel Industrials Kerala Ltd. (SILK), a Government of Kerala undertaking, manufactured a boat with seating capacity of 20 persons, for the use of Excise Enforcement Wing, working under Excise Range Office, Kuttanad, at a cost of ₹35.02 lakh (April 2014). Audit found that this boat is now docked at Kuttanad Range office. The reason for docking is reported (August 2019) by Excise Circle Inspector, Kuttanad as the boat is of large size and during summer seasons, when the water level decreases, the bottom of the boat touches the canal-bed and during monsoons, the top of the boat touches the bridges across the canals. Hence, the boat is not suitable for raid and patrolling through small canals having bridges across them.

On this being pointed out, Government stated (October 2024) that Kuttanad is a below sea-level waterlogged land, and a boat is very much essential for patrolling and crime-detection. As there was large scale illicit distillation of arrack in Kuttanad Range area, the boat was purchased in 2014 to carry requisite Excise manpower and huge quantities of seized articles like wash, arrack, barrels etc. However, during extreme weather and monsoon seasons, difficulties are faced to operate the boat. Department has held discussions with Inland Water Transport department and District Tourism Promotion Council to exchange this boat with two small boats.

The reply confirms the Audit observation that the expenditure on purchasing the boat was incurred without ascertaining the field conditions *vis-à-vis* departmental requirements.

**Recommendation 5:**

**The Department may:**

- (i) **issue strict instructions to the officials to use the modern interrogation room for interrogating the accused to bring greater benefit in analysing and strengthening the cases;**
- (ii) **take steps to utilise the boat for meaningful purposes.**

#### 4.4.6.7 Idling of Human Resources

(i) Excise Circle Offices are functioning at *Taluk* level and the enforcement activities are being co-ordinated through Excise Range Offices under them. Government created (December 2017) six new Excise Circle Offices including one at Vellarikkundu under EDO, Kasaragod. However, no Range Offices have been allotted to ECO, Vellarikkundu. Hence, for the last six years, this office is functioning with one Circle Inspector, two Preventive Officers and one Civil Excise Officer without any enforcement related work.

On this being pointed out, Government stated (October 2024) that the proposal for formation of new Excise Range Office at Vellarikkundu was rejected for the reason that new posts cannot be created at present.

Government reply thus corroborates the Audit observation of wastage of human resources.

(ii) Excise units are functioning in every Distilleries/ Compounding, Blending and Bottling Units/ Warehouses for supervising their activities. Audit noticed that in three<sup>68</sup> defunct Distilleries, department took 47 to 76 months to withdraw Excise officials posted there. Thus, the officials trained in enforcement activities were kept inadequately utilised, with mere duty to guard unsold stock of IMFL, spirit and other manufacturing materials, as detailed in **Appendix – XXIV (A)**.

On this being pointed out, Government replied (October 2024) that, the Excise staff were retained at premises of these licensees till the completion of uninstallation of machineries and destruction of raw materials to prevent any malpractice/ till expiry of licence period. It was also stated that the posts were specifically created for distillery/ brewery and the service ends, as and when the posts are abolished. Hence, the issue of idling does not arise.

Government contention is not acceptable, as it is evident that the staff were retained without any work, particularly at M/s United Spirit, Cherthala and M/s United Brewery, Cherthala, when they could have been utilised for enforcement activities at other stations/ units. Moreover, the present status of utilisation of the staff withdrawn from the distilleries were not furnished by Government to substantiate that their service ends upon their withdrawal.

(iii) For strengthening of enforcement activities and for reducing alcohol consumption and drug abuse among tribal people, Government formed Special Excise Squads (Janamaithri Excise Squads) at tribal areas *viz.*, Attappadi (August 2013), Mananthavadi (March 2016), Devikulam (July 2017) and Nilambur (July 2017). These Special Excise Squads were empowered to detect and investigate offences. Audit noticed that vide circular (January 2018), the Excise Commissioner directed the squads to handover crime cases detected by them to other offices for investigation. Audit visited Janamaithri Excise Squad at Attappadi and found that they were not registering crime cases. Without being assigned duties and responsibilities, there is no justification for continuance of Janamaithri Special Squads with a staff strength as given in **Appendix – XXIV (B)**.

On this being pointed out, Government replied (October 2024) that Janamaitri Excise Squads were set up in Tribal areas with the objective of spreading awareness and weaning the Tribals away from liquor and other intoxicants. The Squads were executing only enforcement activities initially, but upon finding that mere enforcement was not sufficient, the Janamaitri Squads were directed to concentrate on awareness programmes only, and transfer enforcement cases to the Range Offices of their region. The Squads are now engaged in achieving their objective by conducting awareness programmes, providing facilities and

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<sup>68</sup> United Spirits Ltd., Kanjikkode; United Spirits, Cherthala; United Breweries, Cherthala.

engaging tribals in beneficial activities like attending coaching classes organised by the Squads for obtaining Government jobs.

Government reply confirms that Janamaithri Squads consisting of Excise officials trained for enforcement activities are not engaged in enforcement functions.

**Recommendation 6:**

**Department may take necessary steps to establish atleast one Excise Range Office under Excise Circle Office, Vellarikkundu and to utilise idle manpower available anywhere in the department, for enforcement activities.**

#### 4.4.6.8 Inadequate Internal Control

Internal Control Mechanism provides reasonable assurance of enforcement of Acts, Rules and departmental instructions. It helps in prevention of frauds and other irregularities, thereby ensuring a reliable financial and managerial information system with adequate safeguards against evasion of revenue.

Setting up an Internal Control Mechanism is the responsibility of the department.

Audit noticed that:

- i) Excise Commissioner has directed<sup>69</sup> Deputy Excise Commissioner to inspect Excise Circle Office and Excise Range Office at least once in every three months. Audit found that only 11 out of 22 sub offices in the selected four districts were inspected by the Deputy Excise Commissioners during the year 2022-23.
- ii) Rule 7 of NDPS (Seizure, Storage, Sampling and Disposal) Rules, 2022 stipulates that department shall designate an Inspecting Officer for each godown established under Rule 4 of the said rules and the Inspecting Officer shall make periodical inspection of the godown, at least once in every quarter. Audit found that, although ten godowns were established (May 2022) in the State, the designated Inspecting Officer for each godown has not yet been (March 2024) notified.

Owing to inadequate inspection, issues like irregular maintenance of basic records, delay in charge sheeting in crime cases, shortfalls in inspection of liquor shops and sample collection from licensees, etc., were not attended.

On this being pointed out, Government replied (October 2024) that strict directions have been given to concerned officers to conduct periodical inspection of sub offices. Action is being taken to notify the designated Inspecting Officer for each godown established under Rule 4 of NDPS (Seizure, Storage, Sampling and Disposal) Rules, 2022.

<sup>69</sup> Circular No.EXC10/2022/EXCISE dated 26 March 2022.

**Recommendation 7:**

**Department may establish a robust system to ensure that all the internal control mechanisms of the department are functioning as envisaged.**

**4.4.7 Conclusion**

The Subject Specific Compliance Audit on Enforcement activities of the State Excise department was undertaken to ascertain whether the Excise department achieved its goal of making Kerala a drug and addiction free State and promoting responsible use of alcohol, through proactive and empathetic enforcement.

A review of the functioning of enforcement of department disclosed shortfall in establishing both Abkari and NDPS offences. This was mainly due to non-utilisation of inputs about the offences received from various sources, delay in completion of investigation, gathering of samples from offence scene/ licensee premises, delay in obtaining chemical analysis reports etc. These procedural lapses resulted in acquittal of accused.

The review also disclosed compliance deviation in granting various Abkari licences like FL-3 (Bar) licence, FL-11 (Beer Parlour) licence, FL-4A (serving liquor in clubs) licence, Toddy tapping licence. These deviations caused revenue loss to the exchequer to the tune of ₹9.26 crore. Delay was also found in disposal of seized articles involved in Abkari/ NDPS offences. Department was found idling some of their human resources and incurring unfruitful expenditure.

### Illustrative cases observed during the audit of selected units

Some illustrative cases observed during the audit of selected auditable units are mentioned in the succeeding paragraphs.

#### 4.5 Loss of revenue due to non-collection of additional annual rental from toddy shops

**Non-realisation of additional annual rental from toddy shops resulted in short collection of ₹0.43 crore.**

As per GO(P)/38/2020/TD dated 12 March 2020, Government of Kerala notified privilege of vending toddy, fixing the annual rental for toddy shops for the financial years 2020-21, 2021-22 and 2022-23 at the rates appended with the notification. Government amended (October 2021) Rule 4(1) of the Kerala Abkari Shops Disposal Rules, 2002, incorporating ‘additional annual rental’ in addition to the fixed annual rental, which has to be remitted by the grantee or licensee at the rate of ₹1,000 per shop and in the case of toddy shops entrusted to the workers' committee formed by the toddy shop workers and tappers at the rate of ₹250 per shop. The additional annual rental has to be remitted by way of Demand Draft drawn in favour of Deputy Commissioner of Excise of the division concerned.

On scrutiny (September 2022) of the records in the Office of the Excise Commissioner, Audit noticed that out of 5,170 toddy shops in the State, 4,865 toddy shops were handed over, including 690 shops entrusted to the Workers Committee. Audit observed that during the year 2021-22, neither these 4,865 toddy shops remitted additional annual rental, nor the Division Officers concerned demanded it. This resulted in short collection of ₹43.48 lakh as shown below in **Table – 4.5**.

**Table – 4.5: Additional Annual Rent**

Sl. No.	Particulars	Number	Rate of additional annual rental (₹)	Amount due (₹ in lakh)
1	Toddy shops sold (other than DM/workers committee)	4,175	1,000	41.75
2	Toddy shops entrusted to workers' committee	690	250	1.73
	<b>Total</b>	<b>4,865</b>		<b>43.48</b>

Source: based on data collected from department.

On this being pointed out (May 2023), Government stated (July 2023) that instruction has been given to the Excise Commissioner to collect the same and steps are being taken by the Excise Commissioner to issue notice to the licensees concerned to collect the amount in accordance with the law. Department further intimated (December 2023) that additional rent of ₹32.31 lakh have been

collected from individual Toddy Shop licensees, and ₹2.38 lakh from individual shops run by representatives of Workers' Committee. Further progress is awaited (November 2024).

*It is recommended that department may ensure adequate monitoring mechanism to ensure that issuance of demand notices and collection of due rent are made in time.*

#### **4.6 Unauthorised reconstitution of Board of Directors of company holding Foreign Liquor licence**

**Non-imposition of fine for unauthorised reconstitution and non-collection of fees for regularisation resulted in non-realisation of ₹4.00 lakh.**

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 Akbari Act, the Excise Commissioner (EC) may impose a fine of rupees three lakh each on any person or persons holding a licence 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 requisite fee from the licensee.

On Audit scrutiny (December 2022) in the Office of the Deputy Commissioner of Excise, Idukki, with reference to the database maintained by the Ministry of Corporate Affairs, Audit observed that the company, 'Green Oasis Regency Hotels Pvt. Ltd.' having hotels with FL-3/FL-11 licences, had reconstituted its Board of Directors during the period 2019-22. But the reconstitution was made without the permission of the EC. Non-imposition of fine for unauthorised reconstitution and non-collection of fee for regularisation resulted in loss of revenue of ₹4.00 lakh as shown in **Appendix – XXV**.

The matter was reported (November 2023) to Government and Government stated (April 2024) that, based on the audit observation, notice was issued to M/s Green Oasis Regency Pvt. Ltd. to regularise the unauthorised reconstitution. Government also stated that, upon verification, it was noticed that the company had reconstituted the Director Board six times. In addition, the Director Board was modified by changing the designation of Director Board members twice. For these violations, department imposed a fee of ₹0.06 crore and a fine of ₹0.24 crore. The company remitted the fee of ₹0.06 crore but has filed petition<sup>70</sup> before the Honorable High Court against imposition of fine of ₹0.24 crore. The case is pending for final judgement.

*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.*

<sup>70</sup> WP(C) 42797/2023.

#### 4.7 Loss of revenue due to irregular transfer of Foreign Liquor licence

**Irregular transfer of Foreign Liquor licences instead of issuing fresh licences resulted in short collection of ₹0.27 crore.**

Rule 19(i) of Foreign Liquor Rules, 1953, read with Para 18 of Chapter XIX of the Kerala Excise Manual Vol. II, stipulates that, if there is a need for a change in the case of fixed fee licences, the proper procedure for the holder is to surrender the licence and to treat the case of proposed transferee as a fresh applicant. As per Rule 13(3) of FL Rules, 1953, the licence fee for FL-3 (Bar) licence to hotels (three-star and above) was ₹30 lakh during 2021-22.

Upon obtaining three-star classification, the FL-3 licence, granted to Shri. E M Jose, proprietor of Gemini Tourist Home, was reinstated in April 2009 and was renewed up to 2021-22.

During Audit scrutiny (November to December 2022) of records pertaining to Excise Division Office, Idukki for the period 2019-22, it was noticed that in December 2021, the Excise Commissioner accorded sanction for the transfer of FL-3 licence held by Shri. E M Jose to a partnership firm having the same name 'Gemini Tourist Home', with Shri. E M Jose as managing partner and Smt. Shiji Jose as partner. The sanction was provided by levying rupee one lakh for reconstitution and rupees two lakh for change of name of licensee under Rule 19(iii) and 19(iv) of Kerala Foreign Liquor Rules, 1953.

Audit observed that, instead of directing the licensee to surrender the licence and to treat the proposed transfer of licence as a fresh application, FL-3 licence granted to a proprietor, was transferred to a partnership firm treating it as a reconstitution. This had resulted in short levy of ₹0.27 crore as shown in **Table – 4.6.**

**Table – 4.6: Loss of revenue due to irregular transfer of Foreign Liquor licence**

(₹ in lakh)

Name of licensee	To whom licence was transferred	Date of order by which transfer was effected	Fee collected by department for transfer	Fees to be collected treating the Firm as fresh applicant	Short Levy of fee
E M Jose (Proprietor of Gemini Tourist Home)	E M Jose and Shiji Jose (Partners of the Firm 'Gemini Tourist Home')	06 December 2021	3.00	30.00	27.00

Source: based on data furnished by department.

On this being pointed out (July 2024), Government stated (September 2024) that under Foreign Liquor Rules, Government have fixed the criteria for reconstitution of partnership and directorships of companies holding FL

licences. Citing provisions of Rule 19(i) and 19(iv) of FL Rules, Government contended that the licence granted under FL Rules can be transferred from the name of present licensee to any other person/ firm. Under Rule 19(i) of FL Rules, the Excise Commissioner is competent to allow the sale, transfer or sub-rent of licence granted under FL Rules. Rule 19(ii) clarifies that reconstitution will also come within the purview of transfer of licence. Rule 19(iii) and 19 (iv) of Foreign Liquor Rules prescribe fees for reconstitution and change of name of the licensee respectively. Hence, the order of the Excise Commissioner is in order. The Excise Manual is a guideline for the officers of the Excise department which cannot override the provisions of Abkari Act and has no force of a statutory provision.

The reply is not acceptable. Reconstitution can happen only when there is an addition/ deletion of members in an existing Firm. In this case, the Gemini Tourist Home, to whom the licence was issued, was existing as a Proprietorship Concern. It was subsequently converted into a Partnership Firm which is not a 'reconstitution' comes under the provisions of Rule 19(iii). The licence in the name of Shri. E M Jose is granted in his capacity as the Proprietor of Gemini Tourist Home, and the same cannot be transferred to the Partnership Firm of same name, i.e., Gemini Tourist Home, by changing the name(s) in the licence. Transfer of licence in such manner is not provided under Rule 19 of Foreign Liquor Rules, as it deals with reconstitutions/ name changes/ transfer of ownerships within the same concern only. Transfer of licences from one individual/ concern to another is not covered in Foreign Liquor Rules. However, Excise Manual lays down guidelines for such cases and since there is no explicit provisions in the Act/ Rules, department is bound to follow the guidelines.

*It is recommended that in such cases of transfer of licences, 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 licences are fulfilled by the applicants.*