

Chapter VII
Enforcement

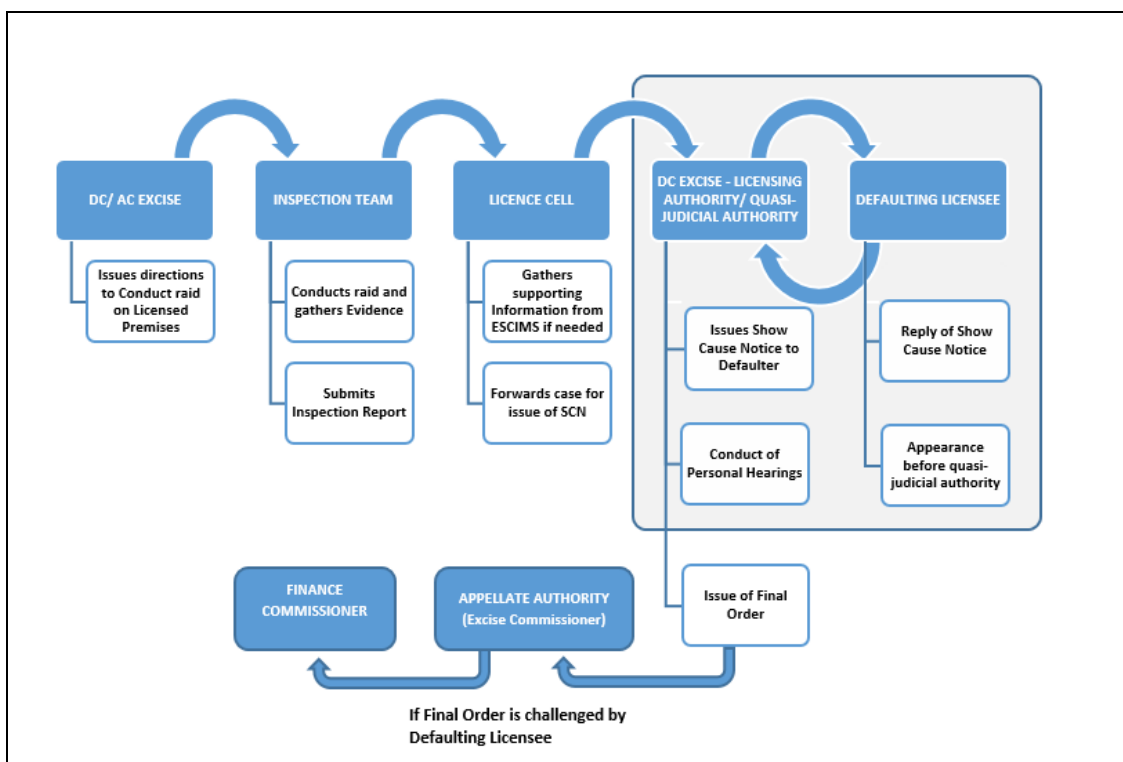
Chapter VII: Enforcement

In exercise of the Quasi-judicial powers vested with the Excise Department, Enforcement Branch has been entrusted with the responsibility of conducting inspections at excise licensed premises and submit its reports along with evidence, for further prosecution, if any violation of Delhi Excise Act/Rules is found during these inspections. Shortcomings were observed at many stages of this process beginning from the planning for inspection to conducting these and subsequent prosecution. The Enforcement inspections were not well planned and coordinated. In the absence of Standard Operating Procedure (SOP), the raids carried out did not follow any reasonable criteria e.g. risk based ranking, system generated red flags, and data discrepancies. Subsequently, it led to weak presentation of cases due to poor evidence collection, deficient Show Cause Notices, inconsistent Inspection Reports, deficient reconciliation methods used in ESCIMS etc. Such unplanned approach renders the Enforcement Branch ineffective in preventing sale of Non-Duty paid liquor and increases the risk of loss of revenue to the Government.

7.1 Introduction

Enforcement Branch is an important wing of Excise Department entrusted with the responsibility of conducting surprise inspections at the Excise Licensed premises and reporting violations (under Excise Act, 2009) thus found. Enforcement teams conduct inspections on the directions of higher authorities or on the basis of complaints against various Licensees. It collects evidence on these violations and prepares an Inspection Report (IR) which forms the basis of further investigation and prosecution as illustrated in the **Chart 7.1**.

Chart 7.1: Investigation and Prosecution Process



The Excise Department is vested with Quasi-Judicial powers of decision making in this regard. The authority issuing the Show Cause Notice and the authority exercising the Quasi-Judicial power is the Deputy Commissioner. Commissioner (Excise) is the Appellate Authority, and in case an appeal is turned down by the Commissioner, the licensee can go to the Court of Finance Commissioner and can further appeal in the Delhi High Court, if unsatisfied with the decision.

The Enforcement Branch maintains yearly registers of inspections conducted by them. Summary of the inspections conducted by the Enforcement Branch for the years 2018-19 and 2019-20 (Inspection registers for the years 2017-18, 2020-21 and 2021-22 were not provided to Audit) is as given in **Table 7.1**.

Table 7.1: Inspections and Violations - Comparison

Period	2018-19		2019-20	
	Number of Inspections	Number of Violations found	Number of Inspections	Number of Violations found
L-15, L16, L17, L18	344	87	98	66
L1/L1F & L31 / L32	12	9	2	1
L6	40	1	55	26
L8	6	1	3	2
L-10	44	10	19	8
L7	26	4	23	13
L-12	14	5	7	6
L3 & L33	0	0	0	0

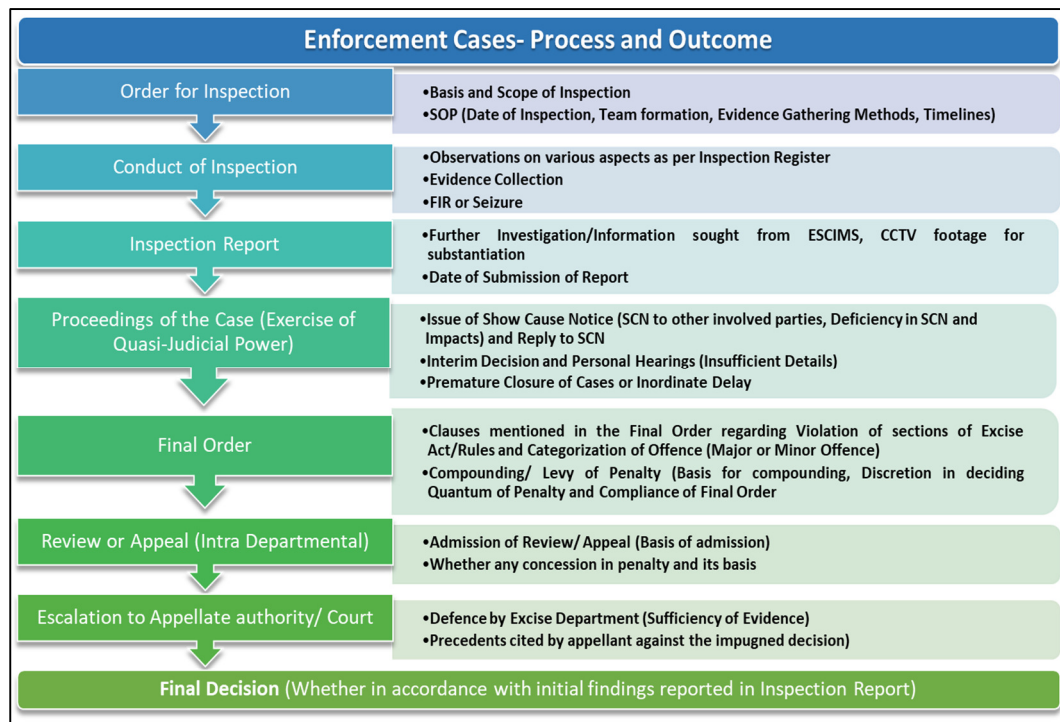
From 37 requisitioned licensee case files, as per sample selection, Audit received 19 licensees cases files only (1 L-1, 2 L-7, 3 L-10 and 12 Restaurants, 1 Club) containing details regarding 38 inspections (hereafter mentioned as “Inspection cases”).

The Government in its reply stated that copy of Inspection Register had been provided for the years 2017-18 and 2020-21. However, the same had not been received by Audit and neither copies of the same was found attached with the reply.

7.2 Deficiencies in Enforcement Process and Outcome

It is imperative to gain an understanding of the Enforcement cases’ process flow and scope of each stage so that lacuna can be identified. The same has been visually represented in the **Chart 7.2**.

Chart 7.2: Enforcement Cases- Process and Outcome



Various deficiencies observed in enforcement process and documentation are discussed in the succeeding paragraph.

7.2.1 Lack of Planning and laid down procedures for Inspection

For enforcement efforts to be effective, proper planning and laid down proceedings for Inspection are necessary. Audit observed that the Department did not give adequate importance to these aspects.

(i) Planning for Inspection

As per the information provided by the Excise Department, no routine inspections are conducted by Enforcement Branch. Instead, surprise inspections are conducted on the directions of higher authority or based on complaints. In all the cases examined by Audit, it was unclear whether the inspection was initiated based on

directions of higher authority or an external complaint and the basis of risk assessment that led to the surprise inspection. No such categorization has been maintained by the Department.

Moreover, planned inspections should be based on tangible intelligence inputs or be data driven. The absence of planned inspection and the non-operation of the EIB module (which contains no data that could have been utilized to plan enforcement raids, as mentioned in **Paragraph 2.4**), poses a risk for the execution of the regulatory function of the Excise Department.

(ii) Absence of Standard Operating Procedure (SOP)

No SOP/ Manual regarding planning and conduct of inspections was formulated. In the absence of any SOP/ Manual, the Inspecting Teams conducted the raids/ inspections in a discretionary, fragmented, and unplanned manner. SOP should address the following critical aspects which were found wanting during audit check:

a) **No Sampling procedure for checking suspected stock-** Sampling procedure was not found in any of the 38 inspection reports test checked by Audit. In some of the inspections, it was mentioned that stock was checked randomly. In some other cases, all the stock was checked. In some cases, it was unclear how many bottles/cases were checked. For those cases where the stocks were checked randomly, method adopted for random selection was not mentioned. In the absence of any documented process, Inspecting Teams were conducting inspections solely on the basis of their judgment and understanding which possess a risk of missing out on critical violations thereby compromising on effectiveness of enforcement function.

b) **Insufficient evidence gathering-** It was observed that evidence gathered was often very poor and did not stand the scrutiny of judicial procedure, resulting in dilution of case or compounding without sufficient justification. Cases with deficiencies in evidence gathering have been discussed in **Paragraph 7.2.2 (iii)**.

c) **Interim Decision-** To reduce the risk of tampering with evidences, decision to be taken like, whether TP needs to be stopped, liquor store sealed or suspension of licensee etc., while the case proceeding is in progress, must be clearly outlined, on the basis of preliminary findings. In one instance, Audit observed that 12 bottles were discovered on the premises of an HCR licensee, with their barcode statuses indicating they were in the "warehouse." The Excise Department failed to block the barcodes of these bottles or halt their Transfer Permits (TPs). Consequently, three months after the inspection, while the investigation was still underway, the same 12 bottles with identical barcodes were dispatched from the warehouse by associating them with a TP, and were subsequently received by the licensee.

d) **Timeline-** Timelines for submission of Inspection Report and supporting evidence and timeline for issuing of Show Cause Notice must be mandated and adhered to.

(iii) Structure of Show Cause Notice- A standard structure of SCN, along with a remarks column, should be mandated which specifically mentions the violations

and Sections of Excise Act/ Rules liable to be invoked without which SCNs can be vague and non-consistent thereby weakening the prosecution process.

(iv) Scope of Inspection not defined

In the absence of a well-defined SOP, it is the duty of the authority ordering the inspection to provide a clear mandate to the Inspecting Team for specific cases. This would primarily include a checklist regarding various aspects to be examined during inspection such as NDPL, MSR Gap, Seats beyond approved capacity, non-maintenance of records, Underage drinking etc. The scope should also provide assurance on certain areas which were checked and specifically mention the areas kept out of the purview of current inspection. In none of the cases, such specific mandate was found.

The Government in its reply stated that Standard Operating Procedure (SOP) was not available but a new SOP was being formulated to incorporate all the audit observations, so that efficiency of enforcement branch may be enhanced. As of February 2023, SOP was not finalised.

7.2.2 Conduct of Inspection

Various deficiencies in Inspection were as under:

(i) Poor maintenance of Inspection Register

Inspection Registers were maintained by the Department in a rudimentary manner, mentioning only the date, licensee name, and whether any violation was found or not. Additionally, Inspection Registers were not maintained in the Enforcement Module of ESCIMS. The Enforcement Module provides for additional data fields on type of violations, penalty levied etc., the regular updations of which would have provided a better picture for monitoring of the cases. This is also essential for maintaining the integrity of the Inspection Records.

(ii) Inconsistency in reporting on stock related aspects

The findings reported during Inspection should mention the areas which were checked, and assurance must be provided on the same. In many cases, stock anomalies were not reported in the Inspection Report. It is unclear whether stock was checked, and assurance obtained during inspection. In seven out of a total of 28 cases for HCR, no comments have been made on stock issues. In certain cases a specific comment has been made in the Inspection report- "No NDPL found". The Inspection Report should clearly state the quantity of stock that was randomly checked and explicitly indicate that NDPL found or not, within the examined stock. The basis for such assurance must be mentioned in the report i.e. sampling procedure to arrive at such conclusion along with the barcode status report. Details of these 28 cases are given in **Annexure X**.

The Government in its reply denied the observation stating that if there were no observations pertaining to stock related aspects then stock is checked and found OK. It further mentioned that the new SOP which is being formulated is likely to address the issue.

The reply is unsatisfactory as the assurance on stock cannot be presumed but should be logically deduced from the inspection carried out, which was not possible in the way inspection reports were prepared.

(iii) Poor Evidence Collection

It was observed that, during the Inspection, adequate importance was not given towards substantiating the findings and maintaining evidence which needs to stand scrutiny of Judicial/ Quasi-Judicial procedure. In the absence of proper evidence, the cases were also not investigated to a logical conclusion.

Invalid/ fake/ no barcodes/ other vend bottle/ Expired stock/ MSR Gap (sale of stock already marked as sold) were found but ultimately the charges could not be established beyond doubt and no decisive action could be taken in most of the cases. No attempt was made to properly investigate the findings of Inspection team. In cases with stock variation, conclusive evidence (in the form of time stamped data, mapping of permits and stock found) should have been taken from ESCIMS to corroborate the exact status of barcode.

As Summary of Observations pertaining to stock anomalies and insufficient evidence collection are as under:

Incomplete details of bottles already shown as sold (declared as MSR Gap) but found again at vends during Inspection - If such stocks which have been declared as MSR Gap in ESCIMS, are found at vends during inspection associated barcodes should be meticulously scrutinized, through time stamped data of barcodes/TP/IP etc., to establish/ rule out the possibility of duplicate/ fake barcode. A total of 8,119 suspected bottles were found during 10 Inspections pertaining to seven retail licensees, out of which 1,632 bottles were already shown as sold and declared as “MSR Gap”. However, out of three inspections checked by Audit, in which suspected bottles were found in the retail vend, only in one case complete details of such MSR gap marked stock was provided. In all other cases, details were missing from the Inspection Report, SCN or ESCIMS report obtained during hearings. Omission of these crucial details, from the case proceedings, by the Excise Department, inevitably leads to dilution of case against the defaulter.

The Government in its reply stated that such MSR gap marked stocks are found regularly as they were left un-scanned during earlier reconciliation process and hence are assumed to be not NDPL.

The reply confirms the audit observation, because firstly MSR gap introduces a significant loophole in the system, which can be easily exploited to sell Non-Duty paid liquor through use of duplicate barcodes of the stock marked as MSR gap, because it can never be verified conclusively whether the stock was actually sold or not, and secondly such inaccurate MSR defeats the purpose of tracking liquor bottles through ESCIMS and barcode scanning.

Suspected bottles not seized - Suspected bottles refers to any irregular stock found at licensee premises including Non-Duty Paid Liquor, “Sold as MSR-gap”, Expired stock not destroyed, “stock of other vends”, “stock in transit”, “excess stock” etc.

Department did not seize these suspected bottles as evidence, which, if left at the premises of Licensee (after sealing), can be tampered by the Licensee. The Department also did not proceed with testing of these suspected bottles to rule out the possibility of spurious liquor.

Hotels/Restaurants have to pay additional Excise Duty on Liquor served to customers by them. Therefore, Hotels and Restaurants are authorized to buy Liquor from L1 Licensees only. 298 bottles of Vends and 12 bottles of L1 Licensees were found during 11 Inspections at HCR. However, neither specific charges of evasion of Additional Excise Duty was levied on these Hotels/Restaurants nor any Show Cause Notice was issued to Retail Vends and Wholesalers.

Expired bottles of Beer are a major health hazard. If these bottles are served to customers in Hotel/Restaurants, they can lead to serious health issues. During two Inspections of retail licensees, 195 Expired bottles were found and during two Inspections of HCR licensees, 143 Expired bottles were found. However, the same were not seized by the Inspecting team.

The details of the bottles seized/not seized during 10 Inspections, checked by Audit are as given in **Table 7.2**.

Table 7.2: Details of Bottles seized during Inspections

Sl. No.	License Type	No. of Licensee	No. of Inspections	No of suspected bottles found during Inspection	No. of bottles Seized
1	Retail License (L7, L10 & L6)	7	10	8119	53
2	HCR	10	12	3592	52
3	L1	1	1	19428	0

The Government replied that it seizes only NDPL bottles and other suspected bottles falling under the category of minor offence which are sealed at the vend premises and used, if needed, during further investigation.

The reply is unsatisfactory as the Inspection Team, without further investigation, cannot decide if the seized bottles are NDPL or not.

With respect to HCR Licensee, Government replied that the expired stock pertains to Safdarjung Club for the period during COVID lockdown. It had been sealed and would be destroyed after conclusion of proceedings.

The details of suspected bottles related to HCR are given in **Annexure XI**.

7.2.3 Anomalies in Inspection Report (IR)

Audit observed the following deficiencies in the documentation of inspections:

- In case of one L-1 Licensee (Inspection of April 2019), batch number had been reported in the IR instead of “case barcodes”.

The Government in its reply stated that for Licensee, barcodes should have been mentioned instead of batch numbers and that SOP was being formulated.

TCS (ESCIMS service provider) gave a report in this regard to the Excise Department. However, the same was not shared with Audit.

- In case of one L-7 Licensee, during inspection (26 November 2020), 20 Cases and 696 bottles of liquor found at vend were shown as already sold to customers through scanning. However, this important aspect was clubbed in the IR with other stock anomalies.
- In case of another L-10 Licensee, there were two Inspection Reports, one signed by the Vend manager and the other unsigned. If such ambiguity is present in the Inspection Report, it puts the case on a weak footing.

Regarding presence of two versions of Inspection Reports, it was replied that signed copy (by Vend Manager) of Visit Report is written in Inspection Register kept at vend and the Detailed Visit Report sent back to the Department does not need to be signed by vend manager.

The reply is not acceptable, as the two Inspection Reports give different versions of the Inspection. One report gives a certificate of “No Non-Duty Paid Liquor found during Inspection” and the other report talks about un-scanned Liquor Bottles. It was also noticed that the first report was further utilized in the prosecution process. Existence of separate versions of Inspection Report is a serious issue which needs to be investigated.

7.2.4 Follow up action on Inspection Reports

For the inspection to be a deterrent for malpractices the violations found during inspections need to be investigated further and the defaulters brought to book. Audit observed that many of the violations were not investigated thoroughly as discussed below:

(i) Irregular stock (ESCIMS & Physical inventory) not investigated

In 10 Inspections, 1077 suspected bottles were found in the premises of seven Retail Licensees. As per ESCIMS logical inventory, out of these 1077 bottles, 330 bottles pertained to L1 Licensees and 15 bottles pertained to other vends. However, no Show Cause Notice was issued to other Licensees (Wholesale and Retail Vends).

55 bottles with ESCIMS status “same barcodes” and bottles with status “Invalid/Not part of ESCIMS” showcases the risk of duplicate barcodes being used to cover up NDPL/Illicit liquor, which should have been dealt with strictly. However, the Inspecting Team did not seize such bottles as evidence to strengthen their case. Also, the Show Cause Notice only present the seized bottles in a combined way as stock variation and the issue was not further investigated.

Bottles belonging to Expired Transport Permit (TP) (stock pertaining to such expired TP are liable to be returned back to respective warehouse) were received and sold at vends, without scanning. It is not clear as to how, despite not returning these bottles to Wholesaler (L1), the bond Inspectors reconciled the stock at Bonded Warehouse. Tracking the Expired TPs is very important as the stock can be easily

diverted to Hotels and Restaurants leading to a loss of Additional Excise Duty (20 per cent/30 per cent of WSP). This aspect was not examined by the Enforcement Branch.

Details of the above mentioned irregular stock relating to retail vends are given in **Annexure XII**.

The Government in its reply denied the possibility of fake barcodes and NDPL without addressing the concerns pointed out by Audit. They also mentioned that the Audit Observations are acknowledged and assured that more care would be taken in future.

(ii) Deficient Show Cause Notice (SCN)

Omission of crucial details from the SCN gives the defaulter first reprieve as he is not held accountable for explanation. The details of some inspections considered in Audit are as under:

- In case of one L-10 Licensee, Inspection dated 11 January 2021, “MSR gap” marked stock was found at the vend but the period during which the bottle was marked MSR (1.5 years ago) was omitted in SCN. This period gives strong indication of fake/duplicate barcode but the licensee pleaded “stock variation”, without mentioning as to how such old stock taken as sold could have been found at its vend.
- In one case of L-7 Licensee, inspection status of some bottles were shown as “received at Bonded Warehouse” and “Damaged at Bonded Warehouse” which clearly means that these bottles belonged to Distillery/Warehouse. But the stock details like brand name and the Distilleries it pertained to, were not mentioned in the Inspection Report and no SCN was issued to Distillery/Warehouses involved.

The Government replied that the Audit Observations have been deeply acknowledged and assured that the observations would be adhered to by IMFL Branch. However, as L-7 licenses have become redundant w.e.f 30 September 2021 due to implementation of New Excise Policy for the year 2021-22, the case cannot be processed further.

The reply is unsatisfactory because the offence had already been committed under Excise Act when the party was a licensee of extant excise regime. Further, the Government has reverted back to the old policy from 1 September 2022.

- In 10 cases of retail vends, 72 bottles sold earlier through scanning, found again in the retail vend at the time of Inspection, highlights the risk of fake/duplicate barcodes being used. However, specific details of the charges were not mentioned in Show Cause Notice.
- In two cases of L-7 licensees, 632 excess bottles were found and 4,784 bottles were missing in comparison with ESCIMS data. The matter was merely presented as a stock variation in SCN. Nothing was mentioned about the status

of 632 excess bottles, whether these were NDPL without barcodes/Illicit liquor/ stock in transit/ stock pertaining to other vends etc.

- In one case relating to L-1 licensee, 19428 bottles were found in excess and 8808 bottles were missing, but SCN showed this issue as just stock variation without getting specific about excess or stock found short at the time of Inspection. SCN was also not specific about the charges made against licensee. Relevant clauses relating to the Delhi Excise Act/Rules, which violated due to the said “stock variation”, were not mentioned in the Show Cause Notice.

In another case of the same licensee where Inspection team had noted batch no. of 20 cases instead of 1-D bar code, even after TCS had provided the status of 1D barcode of these 20 cases, the matter was not raised in the Show Cause Notice, which benefitted the L1 Licensee.

The Government replied that inspection report gives an account of logical inventory whereas physical inventory is nil. Missing bottles are due to the non-scanning at the time of sale. The excess bottle is because an employee replaced a broken bottle by purchasing from outside. The reply is not acceptable as it fails to explain why MSR gap marking was not done for the missing stock.

Government further stated in its reply that inspecting team points out the variation as follows:

1. Sold at vend- stock is sealed and kept separately with directions not to sell the said stock. It is considered stock variation
2. At vend- If found at bar counter then sealed and kept separately with directions not to sell. It is considered stock variation
3. Expired beer- sealed and kept separately with directions not to sell and licensee issued SCN.

The above cases are automatically considered as minor offences and stock is preserved as evidence during departmental proceedings.

4. NDPL- Bottles sealed, seized and handed over to local police with formal complaint and FIR.

The reply is unsatisfactory as it makes no comment regarding the reasons for excess stock. Moreover, in the first three cases, it is automatically considered as a minor offence, whereas, unless ruled out through subsequent investigation, there is a possibility that barcodes found are duplicates and the original stock has already been sold or marked as MSR.

(iii) Show cause notice not issued to other licensees/ vends involved In seven cases, other licensees were involved because of foreign vend bottle or bottle origin, but no SCN was issued to these parties. In such cases, Excise Department failed to perform its regulatory function by not investigating the issue properly and holding all parties accountable. Details are in the **Annexure XIII**.

The Government in its reply acknowledged non-issue of SCN and stated that in future SCN would be issued to all linked licensees.

7.2.5 Punishment not enhanced for repeated violation

Section 53 of the Excise Act mentions provision of “Enhancement of Punishment after previous conviction”. 11 cases were observed where the violations observed in the previous inspection were repeated later. Section 53 was not invoked inspite of repeated violation as per the Inspection report. Details as given in **Annexure XIV**.

The Government in its reply acknowledged that Section 53 had not been invoked in above cases and regretted the same.

7.3 Conclusion and Recommendations

Excise Department has been endowed with quasi-judicial powers, efficient exercise of which is contingent on the transparency, integrity and impartiality of the enforcement function. The Enforcement Branch of the Excise Department, tasked with conducting inspections at licensed premises, suffers from significant deficiencies due to lack of planning, absence of Standard Operating Procedures (SOPs), and poor evidence collection. Effectiveness of enforcement function is one of the most important determinants in plugging revenue leakages, acting as effective deterrence for Excise violations and maintaining an effective regulatory regime. The absence of well-coordinated inspections based on risk assessment, alongside inconsistent and deficient reporting, undermines the effectiveness of enforcement activities which increases the risks of non-duty paid liquor sales. The weaknesses and oversight mentioned above must be factored in and remedied to make the enforcement function effective and accountable. All the cases discussed above merits detailed examination and investigation.

Recommendation 7.1: Enforcement functions should be strengthened starting from formulation of Standard Operating Procedure, meticulous evidence collection and investigation and expeditious disposal of cases.

Recommendation 7.2: Enforcement Registers containing granular data regarding details of the case, should be maintained in ESCIMS, which can help analysis of data to generate actionable intelligence.

Recommendation 7.3: Computerization of Inspection Reports and the process followed thereafter should be done to ensure transparency and accountability.

