

## **CHAPTER – III : STATE EXCISE**

### **3.1 Results of audit**

Test check of records of 12 State excise offices conducted in audit during the year 2005-06 revealed non/ short realisation of excise duties, excess allowance of godown loss and other irregularities amounting to Rs. 15.51 crore in 200 cases, which broadly fall under the following categories:

(Rupees in crore)			
Sl. No.	Category	Number of cases	Amount
1.	Non/short realisation of licence fee	105	0.44
2.	Non/short realisation of excise duty	4	0.10
3.	Excess allowance of godown loss	1	0.03
4.	Non/short realisation of establishment charges	10	0.19
5.	Other irregularities	79	1.89
6.	Review on “Receipts in State excise department”	1	12.86
<b>Total</b>		<b>200</b>	<b>15.51</b>

During 2005-06, the department accepted short/non realisation of licence fees amounting to Rs. 4.68 lakh pointed out during the year and recovered the same.

A review on “**Receipts in the State Excise Department**” involving financial effect of Rs. 12.86 crore is given in the following paragraph :-

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## **3.2 Receipts in the State Excise Department**

### **Highlights**

- Short realisation of excise duty of Rs.31.11 crore due to wrong classification of India made foreign liquor (IMFL) brands.

**(Paragraph 3.2.8)**

- Non/short lifting of country spirit against permits resulted in loss of revenue Rs. 8.89 crore.

**(Paragraph 3.2.9)**

- Inadmissible godown loss allowed to bonded warehouses/distilleries resulted in loss of revenue Rs. 1.65 crore.

**(Paragraph 3.2.12)**

- Allowing transit loss in excess of permissible limit resulted in loss of revenue of Rs. 76.21 crore.

**(Paragraph 3.2.13)**

### **Recommendations**

**3.2.1** Government may consider taking following measures to augment the revenue:

- classification of brand of IMFL may be streamlined and enforced,
- develop strong internal control mechanism including internal audit for effective monitoring of tax laws administration at different levels of the Commissionerate,
- rules/notifications as amended from time to time by the Government need to be circulated and implemented immediately so as to avoid loss of revenue to Government.

### **3.2.2 Introduction**

In Assam all excisable items such as beer, country spirit, extra neutral alcohol (ENA) and other spirit are imported from outside the State. India made foreign liquor (IMFL) is manufactured and bottled in the state and also imported from outside the state. The import of such goods is regulated according to the provision of the Assam Excise Act, 1910, (AE Act) and the Assam Excise Rules, 1945, (AE Rules) and various administrative orders issued from time to time. The Assam Bonded Warehouse Rules, 1965, (ABW Rules) regulate the establishment and working of bonded warehouses.

### 3.2.3 Organisation set up

The Excise Department is headed by the Commissioner of Excise who is assisted by an Additional Commissioner, one Joint Commissioner, one Deputy Commissioner and one chemical examiner at headquarters. At the district level and in the sub division, there are 24 superintendents of excise (SEs) and 33 deputy superintendents of excise (DSEs), who are assisted by inspectors of excise for enforcement of excise laws and rules.

### 3.2.4 Scope of Audit

Review on the topic covering the period from 2000-01 to 2004-05 was conducted in eight<sup>1</sup> out of 24 SEs offices, and in the office of the Commissioner of Excise during October-December 2005.

### 3.2.5 Audit objectives

Audit was conducted to ascertain

- whether the provision of Acts/Rules were followed scrupulously.
- effectiveness of internal control to plug the leakage of revenue.

### 3.2.6 Trend of revenue

Year wise budget estimates and actual collection of revenue for the period from 2000-01 to 2004-05 were as under:

Year	Budget estimates	Actual collection of revenue	Variation (+) excess (-) shortfall	Percentage of variation
2000-01	164.00	137.56	(-) 26.44	(-) 16
2001-02	142.46	150.91	(+) 08.45	(+) 06
2002-03	163.83	121.67	(-) 42.16	(-) 26
2003-04	137.49	129.29	(-) 08.20	(-) 06
2004-05	150.07	144.06	(-) 06.01	(-) 04

The shortfall of 16 *per cent* during 2000-01 is due to flash floods during July to September 2000 which were not foreseen at the time of preparation of budget estimates. The decrease of 26 percent during 2002-03 was due to reduction in rates excise duty to discourage smuggling and increase the sale of liquor in Assam.

Reasons for increase in collection in 2001-02 in comparison to 2000-01 and in 2004-05 in comparison to 2003-04 though called for were awaited (October 2006).

<sup>1</sup> Cachar, Dibrugarh, Jorhat, Kamrup Nagaon, Sivasagar, Sonitpur and Tinsukia.

### **3.2.7 Internal control mechanism**

**3.2.7.1.** Inspection is an important part of internal control mechanism for ensuring proper and effective functioning of all systems for timely detection of deficiencies and their prevention and optimising the revenue collection. The Commissioner of Excise, Guwahati was required to inspect the offices of SEs once in each year. However, no record was made available to audit to prove that such inspections were ever conducted in the districts covered under review.

As per executive instructions appended to AE Act and Rules, Deputy Commissioner (DC), SE and inspector of excise were required to inspect field offices, bonded and country spirit warehouses etc. with prescribed periodicity as follows:

Sl. No.	Designation of officer meant for inspection	Norms of inspection
1.	Deputy Commissioner	Annually (each warehouse)
2.	Superintendents of Excise	200 days in a year
3.	Inspector	20 days in a month

Scrutiny of the inspection registers maintained in the warehouses revealed that neither the DCs nor the SEs had conducted any inspection of the warehouses during the period of review.

**3.2.7.2.** Internal audit is an important tool for appraisal of deficiencies in the activities viz assessment, realisation, implementation of Acts/Rules and guidelines for improving accounting, quality of assessment, correct implementation of Acts/Rules for better collection of revenue and plugging various loopholes within the organisation. But no internal audit was in existence in the department.

### **3.2.8 Short realisation of excise duty due to wrong classification of IMFL brands**

As per Government notification dated 24 September 1997 as amended from time to time excise duty is to be realised on the basis of cost price of different brands of IMFL. But the term “cost price” has not been defined in the AE Act. According to the AGST Act, purchase price means money or money value consideration paid or payable by a dealer for import of goods, including any sum charged for anything done by the dealer with or in respect of such goods at the time of or before delivery of such goods. Licensee of a bonded warehouse is a dealer in AGST Act. Therefore, import permits (IP) fee/transport pass fee, which are required to be paid by a bonder before importing/transporting the goods (IMFL) from outside/within the State form an element of the cost price (purchase price)

The classification of IMFL brand is determined on the basis of cost price. The rates of excise duty payable by the warehouse bonder for different brands of IMFL are enumerated below :

(In rupees)

Sl. No.	Name of IMFL brands	Basis of classification (Cost price per case)	Rate of excise duty	
			Up to 30.4.2002	From 1.5.2002
1.	General	Up to 549	486	340
2.	Regular	550 to 649	580.50	405
3.	Luxury	650 to 1099	742.50	472

Scrutiny of records in respect of 16<sup>2</sup> bonded warehouses under eight<sup>3</sup> SEs revealed that excise duty was realised on the basis of cost price without taking into consideration the import permit fee/transport pass fee at the rate of Rs.30 per case paid by the wholesalers, before importing/transporting of IMFL, and realised from the retailers. The import fee/transport pass fee should have been merged with the cost price for determining the classification of brand for levy of excise duty. Thus, due to wrong classification of brand of IMFL Government was deprived of excise duty of Rs.31.11crore during the period from 2000-01 to 2004-05 as detailed below:

Range of cost price of IMFL (per case)		Classification of brand		Excise duty (per case)			Difference of excise duty (per case)	No. of cases of IMFL sold	Short levy of Excise duty (Rs. in crore)
Without IP fee	With IP fee	Classified as	Should have been classified	Period	Realised	Realisable			
(In Rupees)				(In Rupees)					
520 to 549	550 to 579	General	Regular	1.4.2000 to 30.4.2002	486	580.50	94.50	4,55,630	4.30
				1.5.2002 to 31.3.2005	340	405	65	3,00,958	1.96
620 to 649	650 to 679	Regular	Luxury	1.4.2000 to 30.4.2002	580.50	742.50	162	11,13,723	18.04
				1.5.2002 to 31.3.2005	405	472	67	10,15,728	6.81
<b>Total</b>								<b>31.11</b>	

After this was pointed out in May 2006 the Commissioner of Excise stated that classification of IMFL brands are made on the basis of cost price excluding excise levies for the purpose of levy of excise duties. As such import permit/transport pass paid was not included in the cost price. The reply of the department is not tenable as the import permit/transport pass fees are also the elements of the cost price on which brand of IMFL should be determined for levy of excise duty.

<sup>2</sup> 1. M/s Centenary Distillery, 2. M/s NSSSS, 3. M/s Abhijet International, (Guwahati). 4. M/s Gaytri Distillery & Bonded W/H .5. M/s Hotel Bellerina Bonded W/H 6. M/s Mohit Enterprises Bonded W/H, (Tinsukia). 7. M/s Bitupan Chaliha Bonded W/H, 8. M/s Juri & Co. Pvt. Ltd., 9. Zarang India Pvt. Ltd (Dibrugarh). 10. M/s DPM Boruah Bonded W/H 11. M/s RBS Bonded W/H (Sivasagar). 12. M/s Ajoy Dutta Bonded W/H, 13. M/s Borgohain Enterprises Bonded W/H, 14. M/s McDowell & Co. Ltd. (Jorhat). 15. M/s AD Bonded W/H (Hojai). 16. Borak Bonded W/H (Silchar).

<sup>3</sup> Dibrugarh, Jorhat, Kamrup, Nagaon, Silchar, Sivasagar, Tezpur and Tinsukia

**3.2.9 Failure to enforce effective monitoring at commissionerate level led to short/non lifting of country spirit.**

According to Rule 78 of AE Rules, the licensee or his agent shall on each occasion of import or transport and storage of the country spirit within the time mentioned in the pass, furnish satisfactory proof to the officer granting the pass that specified quantity of country spirit has been delivered in full to the officer incharge of the country spirit warehouse. As per import permit, a licensee is required to execute lifting of the specified quantity of country spirit from the exporting authority within 60 days from the date of issue of import permit. Otherwise he is to furnish non execution certificate (NEC) for non lifting of spirit in the event of default on the part of concerned distillery for non supply of quantity mentioned in the permit. In case of default, the licensee shall be liable to pay a sum equal to the amount of the duty payable on the quantity short/non lifted.

As per Rule, quarterly returns are required to be submitted to SEs by the officer incharge in the warehouse who in turn forwarded the same to the DC and from DC to Commissioner of Excise for taking necessary action in this regard.

Scrutiny of records of four<sup>4</sup> country spirit warehouses revealed that against the authorised permits to lift 36.68 lakh bulk litre (BL) of spirit, the licensees lifted only 9.89 lakh BL of spirit during the period from 2000-01 to 2004-05 resulting in short/non lifting of 26.79 lakh of spirit BL (44.47 lakh LPL<sup>5</sup>). The concerned licensee could not furnish any NEC from the exporting authority for short/non lifting of quantity nor any extension/surrender/cancellation of the permits was accorded by the concerned authority for non lifting of the approved quantity within the specified period as mentioned in the permits.

Thus, failure on the part of the Commissioner to excise effective monitoring through quarterly returns received from DCs led to short/non lifting of 26.79 lakh BL of country spirit involving loss of excise duty amounting to Rs.8.89 crore.

**3.2.10 Non realisation of licence fee**

Under the AE Rules read with ABW Rules (as amended) licensee of wholesale, retail foreign liquor and bonded warehouse shall pay in advance an annual fee at the rates prescribed from time to time for renewal of licences. As per instruction No. 141, if the licensee fails to pay licence fee in time, his shop is to be close with the approval of commissioner till the fee is paid and on failure to pay fees promptly, the licence is to be cancelled.

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<sup>4</sup> Jorhat, Nazira, Silchar and Tinsukia

<sup>5</sup> london proof litre

**3.2.10.1.** Test check of records of SEs Jorhat, Kamrup, Nagaon and Tinsukia revealed that five licensees holding licences of wholesale, bonded warehouses, compounding and blending and bottling plants did not pay licence fees for the years falling between 2000-01 to 2004-05 for renewal of their licences. No action was taken by the commissioner to close these units and to cancel their licences. This resulted in non realisation of licence fee of Rs. 45 lakh.

**3.2.10.2.** Scrutiny of records of SE Kamrup revealed that two distilleries viz M/s Himalayan Distillery and M/S Seven Sisters Trade and Distillery Pvt. Ltd. who were granted licences for compounding and blending, bottling and wholesale by Government in March 2001 had neither paid the renewal licence fee nor surrendered their licences during the years 2002-03 and 2003-04; whereas, during the year 2004-05, the department granted fresh licences to them without realising the renewal licence fees for above two years. In case of M/s Seven Sisters Trade and Distillery Pvt. Ltd., Government on 3 May 2003 allowed registration fees paid by the distillery during 2001-2002 to be adjusted as renewal licence fees for the year 2003-04 which was irregular. Thus, Government suffered a loss of revenue of Rs.12 lakh due to irregular issuance of fresh licences.

### **3.2.11 Blockage of excise duty due to non disposal of IMFL/beer**

Instructions no. 272, provides that if a licensed vendor, on expiry of his licence is unable to dispose of the intoxicant in his possession under AE Rules, he shall, on the requisition of the collector, surrender the same to such officer as the collector may appoint in this behalf; and the person to whom a new licence has been granted or to any licensed vendor of the intoxicant within the district shall, buy the said intoxicant at such price as the collector may determine to be ordinarily saleable by him in one month.

Test check of records of SE, Kamrup revealed that one distillery and one bonded warehouse were not functioning from February 2004. The inspection/verification report of the concerned authority revealed that 3,998 cases of IMFL/beer were lying in stock. No action was taken by the competent authority to transfer this stock to other licensee. This resulted in blockage of excise duty of Rs 11.68 lakh.

### **3.2.12 Loss of revenue as godown loss**

ABW Rules read with Assam Distillery Rules, 1945 do not allow godown loss in respect of IMFL/beer in bonded warehouse and also of spirit in the distilleries. Under instruction 70, the officer in charge of the warehouse is to verify the stock of IMFL and beer quarterly (January, April, July and October) and submit quarterly report to the SE who shall then forward the same to the DC with necessary remarks.

Test check of records of SEs Kamrup, Jorhat and Nagaon revealed that 2.34 lakh LPL of IMFL and 1.11 lakh BL of beer were shown as godown loss/breakage in nine<sup>6</sup> bonded warehouses and two<sup>7</sup> distilleries during the period from May 2000 to March 2005. The SEs incharge had not submitted any return to DC for monitoring the wastages. This resulted in loss of excise duty of Rs.1.65 crore.

**3.2.13 Lack of checks facilitated irregular allowance of transit loss and consequential loss of revenue**

As per ABW Rules, as amended wastage not exceeding one *per cent* shall be permissible for actual loss in transit by leakage or evaporation or breakage of vessels/bottles containing liquor. The transit loss is determined by deducting actual quantity of liquor received in the destination from quantity despatched. Further, if the wastage exceeds the prescribed limits, the licensee shall be liable to pay the duty at its prescribed rate, as if wastage in excess of the prescribed limit had actually been removed from the bonded warehouse.

Test check of records of seven<sup>8</sup> bonded warehouses and one distillery<sup>9</sup> under the control of SEs, Kamrup, Jorhat and Silchar revealed that these bonded warehouses and distillery transported 9.01lakh LPL of IMFL/ENA and 3.13 lakh BL of beer during the period between May 2000 and November 2004. The department allowed 1.30 lakh LPL of IMFL/ENA and 0.18 lakh BL of beer as transit loss against permissible limit of 0.09 lakh LPL of IMFL and 0.03 lakh BL of beer respectively. Thus incorrect allowance of transit loss of 1.21 lakh LPL of IMFL/ENA and 0.15 lakh BL of beer in excess of prescribed limit resulted in loss of revenue of Rs.76.21 lakh.

**3.2.14. Loss of revenue due to warehouse going dry.**

The AE Rules and clause XV of the standard agreement, provide that a contractor shall maintain such minimum stock of spirit in the warehouse as may be fixed from time to time. The contractor shall be liable to make up the stock from any source or to compensate any loss to Government revenue which may be incurred owing to his failure to maintain adequate/minimum stock of country spirit.

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<sup>6</sup> 1. M/s NSSSS B/H 2. M/s KDC B/H 3. M/s Megha Assam B/H 4 M/s .PRS B/H 5. M/s Hill View B/H 6. M/H Abhijit B/H 7.Centenary B/H 8.Borgohain B/H 9.M/S A.B. Bonded Warehouse.

<sup>7</sup> M/s Centenary and M/s North Eastern Distillery.

<sup>8</sup> 1. M/s NSSSS B/H 2. M/s KDC B/H 3. M/s Megha Assam B/H 4 M/s .PRS B/H 5. M/s.Borgohain B/H 6.M/S A.Dutta. Bonded W/H, Jorhat.7. M/s Union Bonded W/H, Silchar

<sup>9</sup> M/s Kornak distillery Pvt. Ltd.

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Scrutiny of records of two country spirit warehouses of Jorhat and Kamrup revealed that these warehouses remained dry for 80 days<sup>10</sup> at different spells (ranging between 5 to 16 days) during the period from 2000-01 to 2003-04. No efforts were made by the contractors to replenish stocks from other warehouses. This resulted in loss of minimum excise duty of Rs. 33.23 lakh.

### 3.2.15 Non realisation of licence fee at revised rates

Government of Assam, vide notification dated 08 February 2002, enhanced the existing licence fee of distillery, compounding & blending, bottling, bonded warehouse, wholesale, IMFL-off/on, beer-off/on and club etc. As per notification these rates shall come into force on date of publication in gazette i.e. 22 February 2002.

Test check of records of eight SEs<sup>11</sup> revealed that revised licence fee was not recovered for the period from 22 February 2002 to 31 March 2002 from one distillery, eight compounding and blending units, eight bottling plants, 31 bonded warehouses, 31 wholesale warehouses, 848 IMFL off/on, 19 beer off/on licensees and 25 clubs. This resulted in non recovery of licence fee of Rs. 21.72 lakh calculated proportionately for the period from 22 February to 31 March 2002.

After this was pointed out, SEs, Dibrugarh, Jorhat, and Tinsukia replied that since the licence fee is to be recovered in advance the licence fee at the rates prescribed for 2001-02 was recovered. The revised rate of licence fee as enhanced on 22 February 2002 was recoverable from licensees for the subsequent years. The replies are not tenable as the SEs were responsible to implement the revised rates from the date of publication of the notification in the gazette.

<sup>10</sup>

Sl. No.	Name of the W/H	Period for which stock gone dry to zero	Total days	Excise duty involved
1.	Jorhat Country Spirit W/H	<b>(2000-01)</b>		
		(i) 13.7.00 to 17.7.00	5	0.36
		(ii) 9.9.00 to 13.9.00	5	0.35
		(iii) 22.10.00 to 25.10.00	4	2.61
		(iv) 17.11.00 to 1.12.00	15	8.57
		(v) 7.1.01 to 21.1.01	15	6.86
		<b>(2001-02)</b>		
(i) 18.10.01 to 31.10.01	14	8.23		
(ii) 1.11.01 to 8.11.01	8	4.14		
2	Guwahati (Kamrup Spirit W/H)	<b>(2003-04)</b>		
		19.5.03 to 1.6.03	14	2.11
<b>Total</b>			<b>80</b>	<b>33.23</b>

<sup>11</sup> S.Es, Kamrup, Silchar, Nagaon, Tinsukia, Dibrugarh, Sivasagar, Jorhat and Sonitpur.

**3.2.16 Gallonage fees at revised rates remained unrealised**

Government notification dated 18 March 2005 enhanced the rates of gallonage fee to be realised in advance on the basis of the permitted quantity at the time of issue of permit or pass.

Scrutiny of records of SE Kamrup revealed that 78 licensees of IMFL retail shops did not deposit the gallonage fees amounting to Rs.5.01 lakh from 18 March 2005 to 21 March 2005 at revised rate. No demand notices were issued to the defaulters. This resulted in non realisation of gallonage fee of Rs. 5.01 lakh.

**3.2.17 Non realisation of establishment charges/availability fees**

ABW Rules provide that Commissioner of Excise shall appoint such excise officer and establishment as he thinks fit to the charge of bonded warehouses. The licensee shall pay establishment charges (pay and allowances, leave salary and pension contribution) at prescribed rates at the end of each calendar month. From 18 March 2005, licensee of bonded warehouse shall pay availability<sup>12</sup> fee only at the prescribed rate.

Test check of records of four<sup>13</sup> SEs revealed that 14 bonded warehouses and two bottling plants had neither paid establishment charges/availability fees amounting to Rs.14.71 lakh for the period between April 2002 and March 2005 nor were these demanded by the SEs (except SE Kamrup). This resulted in non realisation of establishment charges/availability fee of Rs. 14.71 lakh.

**3.2.18 Short accountal of IMFL**

Under ABW Rules, on arrival of a consignment at the warehouse, the officer incharge shall open the same immediately and enter in the stock register after verifying the same with the passes covering the consignment. As per executive instructions, the SEs are required to take stock of spirit warehouses within their charge towards end of each quarter.

Scrutiny of 'monthly statements' of IMFL and stock register of two<sup>14</sup> bonded warehouses under the jurisdiction of SE, Nagaon revealed that closing balance of 2.06 lakh LPL of IMFL shown in March 2002 and April 2002 was carried forward as 1.73 lakh LPL of IMFL as opening balance for the months of April 2002 and May 2002 respectively by these warehouses. Thus, there was short accountal of 0.33 lakh LPL of IMFL in both warehouses This resulted in loss of revenue of Rs.23.83 lakh

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<sup>12</sup> Availability fee is a fee in lieu of establishment charge to be paid by the bonder at the end of each calendar month with effect from 18 March 2005 on total sold quantity IMFL/beer during a month.

<sup>13</sup> Kamrup, Sibsagar, Silchar and Tinsukia

<sup>14</sup> Nogaon A/B bonded warehouses and A/D bonded warehouses

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**3.2.19 Conclusion**

There was no adequate machinery to ensure that brands were correctly classified, allowances and exemptions were correctly granted, licence fees were timely realised and stock and issue registers were properly maintained. In the absence of internal audit there was no scope for the departmental authorities to detect and prevent the deficiencies/lacuna as highlighted above.

**3.2.20 Acknowledgement**

Audit findings, as a result of review were reported to the Department/Government on 2 March 2006. They were requested to attend the meeting of Audit Review Committee for comprehensive appraisal (ARCCA) so that view point of Government/department would be taken into account before finalising the review. The meeting of ARCCA was held on 29 June 2006 and attended by the Commissioner and Secretary to the Government of Assam, Excise Department. The minutes of meeting were sent to department/Government on 13 July 2006 the reply of which is awaited (October 2006).