

CHAPTER-III: STATE EXCISE

3.1 Results of audit

Test check of the records of the excise offices, conducted during the year 2006-07, revealed underassessments and loss of revenue of Rs. 167.09 crore in 3,404 cases which broadly fall under the following categories:

(Rupees in crore)

Sl. No.	Categories	No. of cases	Amount
1.	Non-lifting of minimum guaranteed quota	12	48.83
2.	Non/delayed settlement of excise shop	1,891	46.10
3.	Non-extension of licences	181	3.03
4.	Unreasonable settlement of shops	50	1.53
5.	Loss of revenue due to low yield of spirit	4	0.47
6.	Undue financial benefit due to unauthorised concession	14	0.41
7.	Non-realisation of advance fee	21	0.23
8.	Other cases	1,231	66.49
Total		3,404	167.09

During the year 2006-07, the department concerned accepted underassessment and other deficiencies of Rs. 48.15 crore involved in 258 cases out of which 246 cases involving Rs. 37.36 crore was pointed out during 2006-07 and the rest in the earlier years. The department recovered Rs. 15 lakh.

A few illustrative cases involving Rs. 80.86 crore are discussed in the following paragraphs.

3.2 Loss of revenue due to non-lifting of minimum guaranteed quota

As per condition 19 of the sale notification issued under the provisions of the Bihar Excise Act (BE Act), 1915, the licensee is required to lift the entire minimum guaranteed quota (MGQ) during the month failing which penalty may be imposed or the licence is to be cancelled under the BE Act. Further, Rule 26 (1) of the Bihar Excise (Settlement of licences for retail sale of country/spiced country liquor) Rules 2004, effective from January, 2005 provides for obtaining a pass for lifting liquor after depositing the issuing fee at the rate of Rs. 2.50 per london proof litre (LPL)¹.

3.2.1 In seven excise districts², it was noticed between February and July 2007 that the retail licensees of excise shops did not lift the MGQ during 2002-03 to 2005-06 involving revenue of Rs. 48.26 crore (Annexure-I) worked out on the basis of MGQ fixed for the respective shops. The departmental authorities did not cancel the licences and fine of Rs. 28.10 lakh only was imposed in case of shops in four excise districts. This resulted in loss of revenue of Rs. 47.98 crore.

3.2.2 In five excise districts³, it was found between March and July 2007 that the licences of retail vend groups of country spirit/spiced country spirit (CS/SCS) shops lifted 32.54 lakh LPL against the MGQ of 66.71 lakh LPL fixed for the year 2005-06. Non-lifting of 34.17 lakh LPL of liquor resulted in loss of revenue of Rs. 85.44 lakh in the shape of issuance fees.

After the cases were pointed out, the department attributed (October 2007) the reasons for non/delayed settlement of excise shops to the fixing of high MGQ and licence fee, making the excise shops unprofitable. The reply is not tenable as the audit observation relates to non-lifting of MGQ which led to the loss of government revenue and not on non/delayed settlement of excise shops as contended.

3.3 Settlement of excise shops

Under the BE Act and the rules framed thereunder, the licences for retail vend of CS, SCS and India made foreign liquor (IMFL) are settled annually by public auction subject to a reserve fee previously sanctioned by the Excise Commissioner (EC) and as per the terms and conditions of sale notification issued for the said purpose. When the sanctioned fee is not obtained, the Collector may in his discretion accept a lower fee not less than the amount arrived at by taking the average of the preceding three years reserve fee enhanced by 10 *per cent* and provisionally settle the shops subject to the approval of the EC. In case the shops remained unsettled, the supply of alcoholic liquor in the areas concerned were to be regulated by the department

¹ Strength of alcohol is measured in terms of 'degree proof'. Strength of alcohol, 13 parts of which weigh exactly equal to 12 parts of water at 51 degree Fahrenheit is assigned 100 degree proof. Apparent volume of a given sample of alcohol when converted into volume of alcohol having strength 100 degree is called LPL.

² Araria-cum-Kishanganj, Bhojpur-cum-Buxar, Gaya, Madhepura, Munger-cum-Jamui-cum-Lakhisarai-cum-Sheikhpura, Purnea and Rohtas-cum-Kaimur.

³ Bhojpur-cum-Buxar, Gaya, Munger-cum-Jamui-cum-Lakhisarai-cum-Sheikhpura, Purnea and Rohtas-cum-Kaimur.

through its own management, as reiterated through the departmental instruction issued in June 1995. The instruction of June 1995 regarding departmental operation of unsettled shops was, however, withdrawn in October 2003 with a direction to the Collectors to review the position of non-profit bearing shops at the beginning of the settlement year and club them with profit bearing shops for settlement. The provision of departmental operation was re-introduced in April 2005 for 10 districts⁴ only.

By an amendment (January 2005) to the provisions relating to settlement of excise shops, the department adopted the policy of settlement of licence for retail vend of CS/SCS shops by grouping all the shops at the sub-division level mainly in one lot with a provision to have more than one group in the interest of revenue. The condition 6 of sale notification further provides that the licences are required to be settled before commencement of the excise year (beginning from 1st April and ending on 31st March of next year). Normally the licences would be settled for one year which may be extended/renewed upto three years.

The BE Act also provides that all dues of excise revenue may be recovered from the person primarily liable to pay by distress⁵ or sale of his movable property or by process prescribed for recovery of the arrears of revenue.

3.3.1 Delayed settlement of excise shops

In 10 excise districts⁶, it was noticed between May 2006 and July 2007 that 219 CS, 153 SCS and 75 IMFL shops were settled after expiry of time ranging between 1 and 11 months. Though these shops could have been operated departmentally till the date of settlement, no efforts were made in this regard. Thus, due to delayed settlement of the shops coupled with non-operation of the shops departmentally, the Government lost revenue of Rs. 11.85 crore (Annexure-II).

After the cases were pointed out, the Superintendent of Excise (SE), Chapra stated (May 2006) that to ensure settlement of CS/SCS shops, the settlement of IMFL shops were deferred while the remaining Assistant Commissioners of Excise (ACEs)/SEs stated between May 2006 and July 2007 that due to non-availability of bidders, settlement of shops were delayed. The reply of the SE, Chapra is not tenable because there is no such provision in the Act/rule. Moreover, effective steps should have been taken for departmental operation of CS/SCS shops and in case of IMFL shops the reserve fee should have been reduced in anticipation of the approval of the EC and shops settled.

3.3.2 Shops remaining unsettled

In eight excise districts⁷ it was noticed between July 2006 and July 2007 that 57 CS, 22 SCS and 25 IMFL shops put to auction, remained unsettled and

⁴ Arwal, Aurangabad, Bhojpur, Gaya, Jehanabad, Nawada, Purnea, Rohtas, Saran and West Champaran.

⁵ A warrant authorising seizure of property to obtain payment of revenue or other dues.

⁶ Araria-cum-Kishanganj, Bhagalpur-cum-Banka, Chapra, Gaya, Katihar, Madhepura, Munger-cum-Jamui-cum-Lakhisarai-cum-Sheikhpura, Patna, Rohtas-cum- Kaimur and Siwan.

⁷ Araria-cum-Kishanganj, Bhojpur-cum-Buxar, Gaya, Madhepura, Munger-cum-Jamui-cum-Lakhisarai-cum-Sheikhpura, Patna, Purnea and Rohtas-cum- Kaimur.

were also not operated departmentally during 2002-03 to 2005-06. This resulted in loss of revenue of Rs. 8.03 crore in the shape of excise duty and license fee (Annexure-III).

After the cases were pointed out, the department stated in October 2007 that in the absence of infrastructure, place and staff, unsettled shops could not be settled. The reply is not tenable as the Government should have provided the infrastructure at the time of issue of instruction for departmental operation for realisation of the revenue by settlement of shops.

3.3.3 Shops remained unsettled after cancellation

In seven excise districts⁸, it was noticed between July 2006 and July 2007 that the licences of 31 CS, nine SCS and 20 IMFL shops were cancelled between April 2002 and December 2005 due to non-payment of licence fee and short lifting of MGQ by the vendors. No initiatives were also taken for departmental management of these cancelled shops. This resulted in loss of excise duty and licence fee amounting to Rs. 2.28 crore (Annexure-IV).

The cases were reported to the Government in August 2007; their reply has not been received (November 2007).

3.3.4 Improper determination of fee

In five excise districts⁹, it was noticed between January and July 2007 that as per the provisions of the BE Act and the rules framed thereunder, the reserve fee of 42 IMFL shops for the period 2005-06 was required to be fixed as Rs. 1.93 crore. However, this was fixed as Rs. 1.55 crore only. The reserve fee so fixed was also less than the average of preceding three years reserve fee enhanced by 10 *per cent*. Thus, due to improper determination of reserve fee, the Government lost revenue of Rs. 38.10 lakh.

The cases were reported to the Government in August 2007; their reply has not been received (November 2007).

3.3.5 Unreasonable settlement of shops

In five excise districts¹⁰, it was noticed between August 2006 and July 2007 that the department decided to settle the IMFL shops in groups for the financial year 2005-06 and realised revenue of Rs. 7.76 crore. The revenue realised during 2004-05 was, however, Rs. 9.29 crore when the shops were settled individually. Thus, revenue realised during 2005-06 was less by Rs. 1.53 crore. The decision to opt for group settlement of shops has thus not proved to be in favour of revenue and led to a minimum loss of revenue of Rs. 1.53 crore.

The cases were reported to the Government in August 2007; their reply has not been received (November 2007).

⁸ Gaya, Katihar, Munger-cum-Jamui-cum-Lakhisarai-cum-Sheikhpura, Patna, Purnea, Rohtas-cum-Kaimur and Samastipur.

⁹ Araia-cum-Kishanganj, Gaya, Madhepura, Patna and Purnea.

¹⁰ Araria-cum-Kishanganj, Bhagalpur-cum-Banka, Bhojpur-cum-Buxar, Gaya and Motihari.

3.4 Omission in applying the provisions of Act/Rules

The BE (Settlement of licence for retail sale of CS/SCS) Rules, envisages that the person participating in auction for settlement of the licence of a shop or group of shops shall deposit advance money equal to one twelfth portion of the determined reserve fee before participating in the auction. The BE Act provides that the holder of any licence granted under the Act may surrender it on the expiry of one month's notice in writing given by him to the Collector with his intension to surrender it, on payment of the reserve fee payable for the licence for the whole period for which it would have been current but for such surrender.

In Bhojpur excise district, it was noticed (April 2007) that the licences for three groups of shops (Arrah Sadar, Piro and Jagdishpur) were settled between April and July 2005 with the bidders who had not deposited the advance money before participating in the auction. The licensees of these three groups of shops later surrendered their licences on 31 December 2005, 31 January 2006 and 30 September 2005 respectively. The surrender was, however, accepted without realisation of licence fee for the whole period for which the licences would have been current but for such surrender. This resulted in non-realisation of revenue of Rs. 3.47 crore as mentioned below:

(Rupees in lakh)

Name of group	Date of surrender	Period for which licence would have been current but for surrender	Amount not realised		
			Advance money	Fee	Total
Arrah sadar	31.12.2005	1 January 2006 to 31 March 2006	47.50	142.50	190.00
Piro	31.01.2006	1 February 2006 to 31 March 2006	14.26	28.52	42.78
Jagdishpur	30.09.2005	1 October 2005 to 31 March 2006	16.33	98.00	114.33
Total			78.09	269.02	347.11

After the case was pointed out, the ACE concerned stated in August 2006 that necessary legal action would be taken after verification. The reply is not tenable as issue of licence without realising advance money and subsequently acceptance of the surrender of licence without realisation of dues was irregular.

3.5 Non-extension of licences

Under the BE Act and the rules framed thereunder, the licences for the vend of CS, SCS and IMFL shops are settled annually by auction by the Collector before the commencement of the excise year. Due to Parliamentary election (February 2004) and the enforcement of code of conduct, annual settlement of the excise shops for the excise year 2004-05 was deferred for three months (April 2004 to June 2004). Further, as per the conditions of the sale notification, the Government reserved the right to change the licence period anytime and the licensees were bound to accept changes, if any, made during the currency of the licence.

In eight excise districts¹¹, it was noticed between January and July 2007 that though the EC issued instructions in March 2004 for extension of licences

¹¹ Araria-cum-Kishanganj, Bhojpur-cum-Buxar, Gaya, Madhepura, Munger-cum-Jamui-cum-Lakhisarai-cum-Sheikhpura, Patna, Purnea and Rohtas-cum-Kaimur.

issued during 2003-04 which were valid upto March 2004, yet the licensees of 75 CS, 53 SCS and 53 IMFL shops did not get their licences extended for three months (April to June 2004) as per the instruction of the EC. The department did not take any action to regulate the supply of liquor where the licences were not extended and take punitive measures against the licensees not complying with the conditions of the sale notification. This also resulted in the loss of revenue of Rs. 3.03 crore (Annexure-V).

The matter was reported to the Government in August 2007; their reply has not been received (November 2007).

3.6 Non-realisation/loss of revenue

The BE Act and the rules framed thereunder provide that the successful bidder must immediately pay the sum required on account of advance licence fee, failing which the settlement shall be cancelled and security money forfeited. Notification for the sale of excise shops issued each year stipulates that when a shop is knocked down, the purchaser is liable for any loss that may accrue to the Government in case it becomes necessary to resettle the shop at lower sum or to keep it unsettled in consequence of his failure to pay the sum at the time of sale. Further, the said notification also provides for deposit of security money equal to the reserve fee of the shop prior to the participation in the bid.

3.6.1 Loss of revenue due to non-operation of spirit shops

Scrutiny of the records of SE, Purnea in March 2007 revealed that during 2003-04 and 2004-05, 29 CS/SCS shops were settled within the due date i.e. prior to the commencement of the excise year. The SEs cancelled the licences between August 2003 and October 2004 as the licensees did not lift any quantity of liquor since the date of settlement. No action was taken either to resettle the shops or to operate these departmentally. This led to the loss of revenue of Rs. 1.20 crore (reserve fee: Rs. 36.22 lakh + excise duty: Rs. 83.43 lakh). Action to recoup the loss from the defaulting licensees as prescribed under the condition of sale notification was also not on record.

The matter was reported to the Government in August 2007; their reply has not been received (November 2007).

3.6.2 Default in the payment of advance fee

In four excise districts¹², it was found between January and June 2007 that the purchasers whose bids were accepted for nine CS, six SCS and six IMFL shops failed to deposit the advance fee as required under the rules and consequently settlements were cancelled between April 2002 and March 2005. These shops remained unsettled from the date of cancellation till the end of the year resulting in non-realisation of licence fee of Rs. 24.92 lakh. Apart from adjusting the partial payment and security deposited by the licensee of one IMFL shop (Patna) amounting to Rs. 1.56 lakh, no action was taken to make good the loss of balance revenue of Rs. 23.36 lakh (Annexure-VI) as envisaged under the rules.

¹² Araria-cum-Kishanganj, Munger-Cum-Jamui-cum-Lakhisarai-Cum-Sheikhpura, Patna and Rohtas-cum-Kaimur.

The cases were reported to the Government in August 2007; their reply has not been received (November 2007).

3.7 Irregular credit to revenue head

Article 284 of the Constitution of India provides that all money (other than Government revenue) shall be paid into the Public Accounts of the State. Further, article 266 directs that no money shall be appropriated out of the Consolidated Fund of the State without legislative approval.

In eight excise districts¹³, it was noticed (January to July 2007) that security deposit of Rs. 23.04 crore (Annexure-VII) for the years 2002-03 to 2005-06 was irregularly credited under the revenue receipts head¹⁴ instead of security deposit head¹⁵. Since amounts deposited into the consolidated fund cannot be forfeited, the department was unable to forfeit security deposit of Rs. 87.67 lakh on account of default by the licensees of IMFL shops. Besides, credit of security deposit into the revenue receipts head resulted in inflated depiction of the revenue collection figures.

After the case was pointed out, the department accepted the audit observation and stated in October 2007 that instructions were issued to all excise districts to credit the amount of security deposit under head '8443 - Civil Deposit-Security Deposit' instead of revenue head '0039 - State Excise'.

3.8 Loss of revenue due to short lifting of/yield of alcohol from molasses by distilleries

The Molasses Control Act, 1947 provides for the control of the distribution, supply, storage and price of molasses produced by factories in the State of Bihar. The Bihar Molasses Control (Rules), 1955 framed under the provision of the Act, stipulates that every distillery shall submit an indent (by 31 October) to the Controller of its estimated requirement of molasses during the 12 months commencing from 1 January following. According to the indent and after making such verification, the Controller allots molasses to the distillery.

As per the rules framed by the Board of Revenue in January 2000, the distiller shall be responsible for maintaining a minimum yield of 92 LPL of alcohol from each quintal of fermentable sugar present in the molasses consumed for production of alcohol. To ensure this, composite samples of molasses are required to be drawn by the excise officer-in-charge of the distillery and sent to the chemical examiner for examination.

3.8.1 Scrutiny of the spirit production register, molasses consumption register and chemical examiner reports regarding fermentable sugar contents in two distilleries in Bhagalpur and Hathidah (September 2006 and July 2007) revealed that the distilleries failed to maintain the prescribed minimum yield of alcohol from molasses consumed during 2005-06. This resulted in loss of revenue of Rs. 43.39 lakh in the shape of excise duty as mentioned below:

¹³ Araria-cum-Kishanganj, Bhojpur-cum-Buxar, Gaya, Madhepura, Munger-cum-Jamui-cum-Lakhisarai- cum Sheikhpura, Patna, Purnea and Rohtas-cum-Kaimur.

¹⁴ '0039 - State Excise'.

¹⁵ '8443 - Civil Deposit'.

Year	Name of distillery	Quantity of molasses distilled (in quintals)	Minimum yield of alcohol required (in LPL)	Actual yield of alcohol (in LPL)	Shortfall (In LPL)	Rate per LPL (In Rupees)	Loss of excise duty (Rupees in lakh)
2005-06	Mc Dowell Distillery, Hathidah, Patna	69,392.71	17,19,316.31	16,80,198.50	39,117.81	100	39.12
2005-06	SCI Distillery Rajaun, Banka	31,405.00	8,82,748.29	8,70,554.60	12,193.69	35	4.27
Total		1,00,797.71	26,02,064.60	25,50,753.10	51,311.50		43.39

After the case was pointed out, the SEs stated between September 2006 and July 2007 that action would be taken after examination of records. The replies are, however, silent regarding inaction by the SEs till this was pointed out in audit.

3.8.2 During 2005-06, the Government allotted quota of 1,35,720 quintals of molasses to one distillery in Hathidah against which 79,806.75 quintal of molasses was lifted by the distillery leaving a balance of 55,913.25 quintals. Considering the prescribed minimum content of fermentable sugar in molasses, short lifting of molasses resulted in loss of production of 11,182.65 LPL of alcohol and the Government was deprived of revenue of Rs. 11.18 lakh.

The matter was reported to the Government in August 2007; their reply has not been received (November 2007).

3.9 Recovery of arrears of revenue

3.9.1 Blocking of government revenue

Scrutiny of the records in three excise districts¹⁶ between March and June 2007 revealed that though 101 licences of various categories of excise shops did not deposit advance licence fee amounting to Rs. 1.73 crore (Annexure-VIII) during 2002-03 to 2005-06, as required under the sale notification issued every year, yet certificate proceedings were not initiated by the department leading to blocking of revenue.

3.9.2 Loss of interest due to delay in filing of certificate case

Under the Public Demand and Recovery Act, 1914, interest upon public demand to which the certificate relates, shall be charged at the rate of 12 *per cent* per annum from the date of signing of the certificate upto the date of realisation. Any delay in the institution of certificate proceedings would result in loss of revenue in the shape of interest.

It was noticed between June and July 2007 in two excise districts that arrear of demands relating to the period 1980-81 to 2003-2004 amounting to Rs. 21.84 lakh was outstanding against which the department instituted certificate cases

¹⁶ Bhojpur - cum - Buxar, Munger-cum-Jamui-cum- Lakhisarai-cum-Sheikhpura and Purnea.

after delays ranging from 1 to 22 years. Thus, due to delayed institution of certificate proceedings there was a loss of revenue of Rs. 36.31 lakh by way of interest as mentioned below:

(Rupees in lakh)

Name of excise districts	No. of shops	Year to which excise revenue relates	Year in which certificate cases instituted	Total arrear	Arrear recovered	Delay	Loss of interest at the rate of 12 per cent per annum
Munger-cum-Jamui-cum-Lakhisarai-cum-Shekhpora	28	1980-81 to 2000-01	2002-03 to 2003-04	20.97	NIL	3 to 22 years	35.37
Gaya	2	1992-93 and 1994-95	1994-95 and 1995-96	0.87	NIL	1 to 2 years	0.94
Total	30			21.84			36.31

The cases were reported to the Government in August 2007; their reply has not been received (November 2007).

3.10 Non-identification of new sites for surrendered shops

The EC issued instruction in October 2003 stipulating that the proposal for surrender of excise shops should be submitted along with the new profitable sites in respect of shops which remained unsettled.

Scrutiny of the records in Gaya excise district in July 2007 revealed that the proposal for surrender of 11 CS shops which remained unsettled were accepted in December 2003 without any recommendation for new profitable sites. Absence of a proposal for new sites resulted in blocking of revenue amounting to Rs. 25.20 lakh during the year 2004-05 (worked out on the basis of licence fee and duty on MGQ for the year 2003-04).

The matter was reported to the Government in August 2007; their reply has not been received (November 2007).