

CHAPTER-III : STATE EXCISE

3.1 Results of audit

Test check of the records of the excise offices, conducted during the year 2007-08, revealed short lifting of minimum guaranteed quota, non/delayed settlement of excise shops, loss of revenue *etc.* and other deficiencies of Rs. 149.60 crore in 149 cases which fall under the following categories:

(Rupees in crore)

Sl. No.	Categories	No. of cases	Amount
1.	Short lifting of minimum guaranteed quota	38	67.41
2.	Non/delayed settlement of excise shop	37	29.82
3.	Loss/wastage of molasses in storage, transit and working	03	15.29
4.	Loss of revenue due to low yield of spirit	02	2.46
5.	Non-realisation of license fee	04	0.90
6.	Other cases	65	33.72
Total		149	149.60

During the year 2007-08, the department accepted underassessment and other deficiencies of Rs. 47 lakh involved in four cases which was pointed out during 2007-08.

A few illustrative cases involving Rs. 53.85 crore are discussed in the following paragraphs.

3.2 Loss of revenue due to short lifting of minimum guaranteed quota

As per condition 19 of the sale notification issued under the provisions of the Bihar Excise (BE) Act, 1915, the licensee is required to lift the entire minimum guaranteed quantity (MGQ) during the month failing which the licence is to be cancelled. Further, the Bihar Excise (Amendment) Act, 2006 provides that in case of a breach of any of the conditions of the licence which cause loss of revenue to the State, in addition to the total amount of revenue involved, an equal amount shall be imposed as penalty.

During test check of the records in four excise districts¹ between September 2007 and February 2008, it was noticed that during 2006-07, the retail licensees of excise shops lifted 23.10 lakh london proof litre (LPL)² of India made foreign liquor (IMFL) and 17.74 lakh bulk litre (BL) of beer only against their allotted MGQ of 37.91 lakh LPL of IMFL and 48.93 lakh BL of beer. Thus, the licensees did not lift 14.81 lakh LPL of IMFL and 31.19 lakh BL of beer, worked out on the basis of MGQ fixed for the respective shops. This resulted in loss of revenue of Rs. 39.44 crore including leviable penalty after adjusting forfeiture of security deposit of Rs. 17.10 lakh by the Superintendent of Excise (SE), Katihar.

After the cases were pointed out, the Assistant Commissioner of Excise (ACE), Patna stated in November 2007 that duty cannot be imposed against short lifting according to apex court's order³ and further stated that in the interest of the revenue, the licences were continued after imposing composition fee under section 68 because further settlement of shops was doubtful, however, action is being taken for forfeiting the security deposit. The SE, Katihar stated in October 2007 that the licences had been cancelled after forfeiture of the security deposit amount of Rs. 17.10 lakh. The SE, Jehanabad-cum-Arwal stated in September 2007 that short lifting of liquor occurred due to the delayed settlement of the shops although their security deposit would not be refunded while the SE, Bhagalpur-cum-Banka stated in January 2008 that reply would be sent after examining the matter. The above replies were not tenable as in case of breach of conditions of license, in addition to total amount of loss, an equal amount was leviable as penalty under BE (amendment) Act, 2006 and in these cases the penalty leviable is much more than the security which has been/is being forfeited. Further, the apex court's judgment (August 1970) referred by the ACE, Patna is not applicable in this case as it predates the amendment made in the BE Act in 2006.

The cases were reported to the Government between February and May 2008; their reply has not been received (October 2008).

¹ Bhagalpur-cum-Banka, Jehanabad-cum-Arwal, Katihar and Patna.

² 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.

³ Case no. 1970(2) Supreme Court-467: Bimal Chandra Banerjee Vs. State of Madhya Pradesh.

3.3 Loss of revenue due to non/delayed settlement of excise shops

Under the BE Act and the Rules framed thereunder, the licences for retail vend of country spirit, spiced country spirit and 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 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 through its own management, as reiterated through the departmental instruction issued in June 1995. The instruction of June 1995 regarding the 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 of country spirit/spiced country spirit shops was re-introduced in April 2005 for 10 districts⁴ only.

By an amendment (January 2005) to the provisions relating to the settlement of the excise shops, the department adopted the policy of settlement of licence for retail vend of country spirit/spiced country spirit 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. Condition 6 of sale notification for the year 2006-07 further provides that the licences are required to be settled before commencement of the excise year (beginning from 1 April and ending on 31 March of next year). As per the provisions, the licences are to be settled for one year which may be extended/renewed upto three years.

3.3.1 During test check of the records in five excise districts⁵ between September 2007 and March 2008, it was noticed that 25 out of 135 country spirit, eight out of 61 spiced country spirit and nine of 199 IMFL shops put to auction, remained unsettled and were also not operated by the department during 2006-07 except 11 country spirit shops in Jehanabad district. This resulted in loss of revenue of Rs. 5.91 crore of excise duty worked out on the basis of MGQ fixed for the concerned excise shops for the year 2006-07 after adjusting revenue collected in Jehanabad district.

After the cases were pointed out, four⁶ ACE/SE stated between October 2007 and March 2008 that inspite of all efforts, the shops remained unsettled due to non-availability of bidders, while SE, Jehanabad-cum-Arwal stated in September 2007 that efforts were made to settle the shop by grouping but due to non-availability of bidders it could not be settled and the shops were operated departmentally. The reply is not tenable as the shops were operated departmentally but the net revenue realisation was negligible with respect to the reserve fee/MGQ fixed for the respective shops.

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

⁵ Aurangabad, Chapra, Jehanabad-cum-Arwal, Patna and Purnea.

⁶ Aurangabad, Chapra, Patna and Purnea.

3.3.2 During test check of the records in five excise districts⁷ between September 2007 and March 2008, it was noticed that 113 country spirit, 71 spiced country spirit and 42 IMFL shops were settled after the expiry of time ranging between 19 and 289 days during 2006-07. Though these shops could have been operated departmentally till the date of settlement, no efforts were made in this regard except in Jehanabad district. Thus, due to the delayed settlement of shops coupled with non-operation of the shops departmentally, the Government lost revenue of Rs. 6.67 crore after adjusting revenue of Rs. 48,840 collected through departmental operation of shops in Jehanabad district.

After the cases were pointed out, the SEs concerned stated between September 2007 and March 2008 that due to non-availability of bidders, settlement of shops were delayed. The replies were silent regarding the reasons for non-operation of the shop departmentally in four excise districts⁸ where the instruction of April 2005 was applicable.

The cases were reported to the Government between February and May 2008; their reply has not been received (October 2008).

3.4 Loss of revenue due to low yield of alcohol from molasses

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 shall allot molasses for the distillery.

As per the Rules framed by the Board of Revenue on 19 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 the 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.

During test check of the records of the SE, SCI Distillery in Rajaun, Banka in February 2008, it was noticed that 37,175 quintal of molasses was consumed in the distillery during the period from December 2005 to November 2006, of which 5,94,113.16 LPL alcohol was actually recovered against the recoverable quantity of 9,81,568.70 LPL alcohol required as per the norms. Thus, less recovery of 3,87,455.54 LPL of alcohol resulted in loss of revenue of Rs. 1.36 crore calculated at the rate of Rs. 35 per LPL.

The case was reported to the department and the Government in May 2008; their reply has not been received (October 2008).

⁷ Aurangabad, Chapra, Jehanabad-cum-Arwal, Nawada and Purnea.
⁸ Aurangabad, Chapra, Nawada and Purnea.

3.5 Short realisation of issuance fee on excess lifting of country spirit/spiced country spirit

As per the notification issued by the Board of Revenue in November 2004 under the provisions of Bihar Excise (settlement of licences for retail sale of country/spiced country liquor) Rules, 2004, the rate of issuance fee of country spirit and spiced country spirit for retail vends was fixed at Rs. 2.50 per LPL upto the fixed MGQ and at Rs. 37.50 and Rs. 42.50 per LPL for the quantity lifted in excess of the fixed MGQ for country spirit and spiced country spirit respectively.

During test check of the records in two excise offices⁹ between January and February 2008, it was noticed that the retail licensees of excise shops lifted 2,26,164.60 LPL of country spirit and 4,34,232.84 LPL of spiced country spirit against their allotted MGQ of 1,43,852.24 LPL of country spirit and 3,89,573.20 LPL of spiced country spirit during 2006-07. Thus, the licensees lifted 82,312.36 LPL of country spirit and 44,659.64 LPL of spiced country spirit in excess of their allotted MGQ, on which Rs. 63.18 lakh was leviable as issuance fee against which a sum of Rs. 16.43 lakh only was levied. This resulted in short realisation of issuance fee of Rs. 46.75 lakh.

The cases were reported to the department and the Government in May 2008; their reply has not been received (October 2008).

⁹ Muzaffarpur and Saharsa-cum-Supaul.