

## **CHAPTER III - STATE EXCISE**

### **3.1 Results of audit**

Test check of the records of the State Excise Department during 2007-08 revealed cases of non/short realisation of licence fee, duty, loss of revenue etc. amounting to Rs. 38.97 crore in 122 cases, which fall under the following categories:

<b>(Rupees in crore)</b>			
<b>Sl. No.</b>	<b>Category</b>	<b>No. of cases</b>	<b>Amount</b>
1.	<b>“Levy and collection of State excise receipts” (A review)</b>	1	26.92
2.	Non-realisation of licence fee	2	0.78
3.	Other cases	119	11.27
<b>Total</b>		<b>122</b>	<b>38.97</b>

The department accepted non/short realisation of licence fee, duty and deficiencies of Rs. 2.06 crore in 94 cases pointed out in audit during 2007-08.

A review of **“Levy and collection of state excise receipts”** involving loss of revenue of Rs. 26.92 crore are discussed in the succeeding paragraphs:

## **3.2 Levy and Collection of State Excise Receipts**

### **Highlights**

- Absence of provision for levy of import pass fee on rectified spirit deprived the Government of revenue of Rs. 2.39 crore.

**(Paragraph 3.2.7)**

- Non-institution of certificate cases in time against the defaulters by the department resulted in loss of interest of Rs. 1.15 crore.

**(Paragraph 3.2.8)**

- In nine excise districts, 18 licensees of excise retail shops did not lift the fixed minimum guaranteed quota of liquor during 2002-07 which resulted in loss of excise duty of Rs. 25.98 crore.

**(Paragraph 3.2.11)**

- In six excise districts, non-acceptance of surrender of licences, delays in renewal of licences, non-settlement of excise shops of Group-I and II and non-operation of these shops departmentally, resulted in loss of licence fee and excise duty of Rs. 58.29 crore.

**(Paragraph 3.2.12)**

- In four excise districts, non-renewal of licences of two grantees of exclusive privilege for wholesale supply of country spirit resulted in loss of licence fee of Rs. 53.08 lakh, besides non-forfeiture of security money of Rs. 35 lakh.

**(Paragraph 3.2.13)**

- In three excise zones, non-finalisation of tenders and non-renewal of licences for wholesale supply of spiced country spirit resulted in loss of licence fee of Rs. 23.25 lakh besides non-forfeiture of security money of Rs. 6 lakh.

**(Paragraph 3.2.14)**

- In one excise district, non-realisation of licence fee at correct rate from eight bars/restaurants resulted in short realisation of Rs. 24 lakh.

**(Paragraph 3.2.15)**

### **3.2.1 Introduction**

The seventh schedule to the Constitution empowers the State Government to levy excise duty. State excise revenue is one of the most important sources of tax revenue which is levied and collected as duty and fee on manufacture, storage, sale, import and export of liquor or intoxicating drugs. The levy and collection of excise duty and other State excise receipts are governed by the Bihar Excise Act, 1915 and rules made/notifications issued thereunder, as adopted by the Government of Jharkhand.

Under the provisions of Bihar Excise Act and rules made thereunder, the system of settlement of excise shops through auction is in force for the retail

vend of country spirit, spiced country spirit and India made foreign liquor. The excise shops are put to auction subject to a specified upset fee, i.e., reserved fee. When the reserved fee is not obtained, the Collector of the district may accept a lower fee subject to the approval of the Commissioner of Excise. A new excise policy was enacted in February 2004 and made effective from 2004-05. Under the new excise policy settlement of retail excise shops of every district is made in two groups, Group-I for country spirit and spiced country spirit and Group-II for India made foreign liquor and beer for a block of three years, i.e., 2004-05 to 2006-07.

Audit reviewed the functioning of the Excise and Prohibition Department regarding the levy and collection of excise receipts. It revealed a number of system and compliance deficiencies which are mentioned in the succeeding paragraphs.

### **3.2.2 Organisational setup**

The Commissioner-cum-Secretary of the State Excise and Prohibition Department is responsible for administration of the State excise laws at the Government level. The Commissioner of Excise is the head of the department. He is primarily responsible for the administration and execution of the excise policies and programmes of the State Government. He is assisted by a Deputy Commissioner of Excise and an Assistant Commissioner of Excise at the headquarters. He is further assisted by Deputy Commissioners of Excise in excise divisions.

The State of Jharkhand is divided into three excise divisions each under the control of a Deputy Commissioner of Excise. The divisions are further divided into 14 excise districts each under the charge of an Assistant Commissioner of Excise/Superintendent of Excise.

### **3.2.3 Audit objectives**

The review was conducted with a view to ascertain whether:

- the provisions of the Act, Rules and executive instructions were enforced effectively to safeguard the revenue of the State; and
- internal control mechanism of the department was effective and sufficient controls were in place to safeguard levy and collection of excise receipts.

### **3.2.4 Audit scope and methodology**

The records for five years from 2002-03 to 2006-07 of the Excise Commissioner, two out of three Deputy Commissioners of Excise<sup>1</sup> and nine out of 14 excise districts<sup>2</sup> were test checked between July 2007 and March 2008.

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<sup>1</sup> North Chotanagpur Division, Hazaribag and South Chotanagpur Division, Ranchi.

<sup>2</sup> Bokaro, Dhanbad, Deoghar, Giridih, Gumla, Hazaribag, Jamshedpur, Lohardaga and Ranchi.

### 3.2.5 Acknowledgement

Indian Audit and Accounts Department acknowledges the co-operation of the State Excise and Prohibition Department in providing necessary information and records for audit. The draft review report was forwarded to the Government and department in May 2008 and was discussed in the Audit Review Committee meeting held in September 2008. The Commissioner-cum-Secretary, State Excise and Prohibition Department represented the Government. All observations made by audit were accepted by the Government and necessary remedial action was assured. Views of the Government/department have been incorporated in the relevant paragraphs.

### Audit findings

### 3.2.6 Trend of revenue

According to the provisions of the Bihar Financial Rules Vol.-I, the responsibility for the preparation of estimates of revenues vests in the Finance Department. The Commissioner-cum-Secretary, Excise and Prohibition Department is responsible for the compilation of the correct estimates and sending it to the Finance Department on the date fixed by the later.

The budget estimates and actual receipts of the state excise revenue earned for the last five years ending 31 March 2007 are mentioned below:

(Rupees in crore)				
Year	Budget estimate	Actual	Variation (+) excess (-) shortfall	Percentage of variation
2002-03	224.10	98.51	(-) 125.59	(-) 56
2003-04	252.47	96.49	(-) 155.98	(-) 62
2004-05	125.00	145.76	(+) 20.76	(+) 17
2005-06	155.00	161.64	(+) 6.64	(+) 4
2006-07	186.00	129.62	(-) 56.38	(-) 30

It would be seen from the above that the percentage of variation between budget estimates and actual receipts ranged between (+) 4 and (-) 62 *per cent*. During 2006-07 the actual receipts fell short by 19.81 *per cent* over the previous year 2005-06.

After this was pointed out, the department stated that the budget estimates for collection of revenue were prepared by the Finance Department on the basis of achievement of the last financial year. The department further stated that the collections of arrears of revenue are not taken into account while fixing the target for the current year. This indicated that there was lack of co-ordination between Finance and the Excise and Prohibition Department which made the budget estimates unrealistic.

## **System deficiencies**

### **3.2.7 Absence of provision for levy of import pass fee on rectified spirit**

Under the provisions of the Bihar Excise Act and Rules made thereunder, rectified spirit can be imported on passes issued by the Collector of the district. These passes are known as import passes and are issued on prepayment of duty in the district of import by a person holding a licence for medical or surgical purpose, manufacture of perfumes and toilet preparations, medicines and chemicals, compounding and blending of foreign liquor, hospital and dispensaries and for defence services requirements. Besides, in absolutely necessary cases other than those mentioned above like conversion of rectified spirit into country spirit, passes for import of rectified spirit can be issued under specific order of the Excise Commissioner. The Act does not provide for levy of import pass fee on rectified spirit though it is leviable on the import of country spirit and extra neutral alcohol.

Test check of the records of four excise districts<sup>3</sup> revealed that import passes were issued for import of rectified spirit to grantees of exclusive privilege for wholesale supply of country spirit in sachets/bottles and to a licensee for manufacture of India made foreign liquor under the order of Excise Commissioner for converting rectified spirit into country spirit/extra neutral alcohol. Though the power granted under the Act/rules was to be applied only in specified exceptional cases, it was applied in all the cases. Importantly, the entire quantity of 5,98,800 london proof litre of rectified spirit imported by the grantees of exclusive privilege for wholesale supply of country spirit during 2006-07 was used for producing country spirit. Further, import passes for import of 53,71,531.50 london proof litre of rectified spirit were issued to a licensee of Ranchi for manufacture of extra neutral alcohol during 2005-06 and 2006-07.

Thus, absence of provision for levy of import pass fee on rectified spirit extended an undue financial advantage to the concerned grantees/licensee, depriving the Government of import fee of Rs. 2.39 crore on import of 59,70,331.50 london proof litre (calculated at the leviable rate of Rs. 4 per london proof litre on India made foreign liquor).

After the matter was reported, the Government stated in September 2008 that provision for levy of permit fee has been made with effect from May 2008. However, the Government remained silent on the issue of levy of import pass fee.

The Government may consider formulating provision for levy and collection of import pass fee on import of rectified spirit.

### **3.2.8 Loss of interest due to non-institution of certificate cases**

Under the Bihar Excise Act, read with Bihar and Orissa Public Demands Recovery Act, arrears of excise revenue can be recovered as arrears of land revenue. The Bihar Excise Act does not provide for levy of interest for late

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<sup>3</sup> Bokaro, Giridih, Jamshedpur (country spirit) and Ranchi (India made foreign liquor).

payment of dues. As per the Public Demands Recovery Act, interest on public demand to which 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 institution of certificate proceedings would result in loss of revenue in the form of interest.

Test check of the records of eight excise districts<sup>4</sup> revealed that arrears amounting to Rs. 26.95 crore, pertaining to the period from 1959-60 to 2006-07 were outstanding as on 31 March 2007. Certificate cases for recovery of the arrears of Rs. 26.95 crore were not instituted. Non-institution of certificate cases against the defaulters resulted in loss of revenue of Rs. 1.15 crore in the form of interest, calculated for the period from 2002-03 to 2006-07.

After this was pointed out, the Assistant Commissioners of Excise/Superintendents of Excise stated between August 2007 and March 2008 that certificate cases would be initiated.

The Government may consider formulating provision for levy of interest on belated payment of dues in Bihar Excise Act.

### **3.2.9 Absence of a time period for finalisation of certificate case**

Under the Bihar Excise Act, read with Public Demands Recovery Act, arrears of excise revenue can be recovered as arrears of land revenue. As per instruction of Board of Revenue, the Requiring Officer and the Certificate Officer are jointly responsible for the finalisation of certificate cases. There is no time limit for finalisation of a certificate case.

Test check of the records of three excise districts<sup>5</sup> revealed that 70 certificate cases involving Rs. 99.98 lakh were filed between 1998-99 and 2005-06 against which only four certificate cases were finalised and Rs. 2.63 lakh was realised. But 66 certificate cases involving Rs. 97.35 lakh were still pending as on March 2007. Non-finalisation of certificate cases instituted during 1998-99 to 2005-06 by the department resulted in non-realisation of certified arrears amounting to Rs. 97.35 lakh.

The Government may consider prescribing time limit for instituting and finalising the certificate cases.

### **3.2.10 Internal audit and intelligence bureau**

Internal audit is generally defined as the control of all controls, as it is a means of an organisation to assure itself that the prescribed systems were functioning reasonably well. The Finance Department ordered in May 1960 that internal audit of the State Excise and Prohibition Department would be conducted by the former's audit wing. The internal audit parties are required to conduct *cent per cent* audit of demand and revenue collected and verification of deposit of amount into treasury. Further, under the provisions of Excise Laws an Excise Intelligence Bureau is required to make general and special enquiries in different districts of the State and check inter-State and inter-

<sup>4</sup> Bokaro, Deoghar, Giridih, Gumla, Hazaribag, Jamshedpur, Lohardaga and Ranchi.

<sup>5</sup> Bokaro, Dhanbad and Ranchi.

district movement and smuggling of liquor. The wing is also required to collect, collate and disseminate information regarding smuggling of liquor.

Test check revealed that during 2002-07, no internal audit was conducted by the Finance Department in any of the offices. Besides, the department had not yet constituted the Excise Intelligence Bureau in the State. Thus, vital component of internal control were absent in the department which needs to be addressed on priority basis.

The Government may consider reviving the internal audit wing of the Finance Department and constituting the Excise Intelligence Bureau for ensuring effective and timely prevention of evasion of revenue. Further, the Government may also consider establishing a separate internal audit wing in the Excise Department.

### **Compliance deficiencies**

#### **3.2.11 Loss of revenue due to short/non-lifting of liquor**

As per condition 19 of the sale notification issued under the provisions of the Bihar Excise Act, the licensee is required to lift the entire minimum guaranteed quota of liquor during the year, failing which penalty may be imposed or licence is to be cancelled under the Act.

Test check of the records of nine excise districts<sup>6</sup> revealed that 18 licensees of excise retail shops were required to lift minimum guaranteed quota of 3.40 crore london proof litre/bulk litre of liquor during 2002-07 against which only 1.63 crore london proof litre/bulk litre was lifted. Thus, 1.77 crore<sup>7</sup> london proof litre/bulk litre of liquor were not lifted. This resulted in loss of excise duty of Rs. 25.98 crore.

After this was reported, the Government stated in September 2008 that a resolution for levy of penalty in case of non-lifting of minimum guaranteed quota has been taken and a notification to this effect has been issued in May 2008. Further reply has not been received (November 2008).

#### **3.2.12 Non-renewal/non-settlement/delayed settlement of excise shops**

By a notification issued in February 2004, under the provisions of Bihar Excise Act, the Government of Jharkhand adopted a new excise policy, effective from 2004-05. Under the new policy, retail shops are required to be settled in two groups; one for country spirit/spiced country spirit and other for India made foreign liquor/beer for a block of three years, i.e., from July 2004 to March 2007. The licensees of Group-I and Group-II shops are required to deposit monthly licence fee by twentieth of the month, failing which their tender is to be cancelled and security deposit forfeited. The Government issued instructions in June 1995 to operate unsettled excise shops departmentally in case of non-settlement of excise shops to check the loss of revenue.

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<sup>6</sup> Bokaro, Dhanbad, Deoghar, Giridih, Gumla, Hazaribag, Jamshedpur, Lohardaga and Ranchi.

<sup>7</sup> London proof litre- 1.47 crore; Bulk litre- 0.30 crore.

Test check of records of six excise districts revealed that licences of eight retail shops of Group-I and II were neither renewed nor resettled with other bidders during 2006-07. This resulted in loss of revenue of Rs. 58.29 crore as mentioned below:

(Rupees in crore)

Excise districts Group of excise retail shops	Period	Annual licence fee Excise duty	Total	Revenue earned by departmental operation of excise shop	Loss of revenue	Nature of observation
<u>Dhanbad</u> Group-I	2006-07	<u>17.44</u> 1.29	18.73	Nil	18.73	Non-acceptance of surrender of licence by the department as per codal provisions and resettlement of shops thereof.
<u>Jamshedpur</u> Group-I	2006-07	<u>10.21</u> 0.92	11.13	Nil	11.13	
<u>Ranchi</u> Group-I	2006-07	<u>8.84</u> 0.83	9.67	Nil	9.67	
<u>Hazaribag</u> Group I	2006-07	<u>4.44</u> 0.44	4.88	0.13	4.75	Resettlement of shops was not made after cancellation of licence by the department.
<u>Bokaro</u> Group-I and II	2006-07	<u>17.11</u> 1.91	19.02	5.43	13.59	
<u>Deoghar</u> Group-I and II	2006-07	<u>0.42</u> 0.00 <sup>8</sup>	0.42	Nil	0.42	Delay in renewal of licence by the department.
<b>Total</b>			<b>63.85</b>	<b>5.56</b>	<b>58.29</b>	

After the cases were pointed out, the Government stated in September 2008 that in Dhanbad, Jamshedpur and Ranchi districts, licence fee from the licensees of Group-I could not be realised in view of the judgment of Board of Revenue/High Court, Jharkhand. However the fact remains that the judgement does not debar the departments from resettling the shops.

### 3.2.13 Non-renewal of exclusive privilege for wholesale supply of country spirit

Under the provisions of Bihar Excise Act and Rules made thereunder, the Government may grant to any person/persons on such terms and conditions and for such period as it may think fit, the exclusive/special privilege for supplying country liquor, on wholesale basis, after sacheting/bottling it. The Government of Jharkhand, Excise and Prohibition Department issued tender notification in February 2005 for wholesale supply of country spirit to retail vendors for the period from 1 April 2005 to 31 March 2008 on annual renewal of licence. In accordance with terms and conditions of tender notification, if any loss is caused to the Government by the tenderer, his security money would be forfeited and loss may be recovered from him under Public Demands Recovery Act.

<sup>8</sup> Licence fee leviable worked out for 52 days, i.e., from 1.04.06 to 22.5.06.



Test check of records of the four excise districts<sup>9</sup> revealed that two grantees were granted exclusive privilege for wholesale supply of country spirit in these districts for the period from 1 June 2005 to 31 March 2008 and 18 October 2005 to 31 March 2008. The licensees did not get their licence renewed for the year 2006-07. As a result, manufacturing and wholesale supply of country spirit could not be made in these districts. This resulted in loss of licence fee amounting to Rs. 53.08 lakh. Also, for breach of conditions of the tender notification security money of Rs. 35 lakh, available with the department, was not forfeited.

### **3.2.14 Non-finalisation of tender/non-renewal of licence for wholesale supply of spiced country spirit**

Under the provisions of Bihar Excise Act and Rules made thereunder, sanction of exclusive privilege may be granted to any person for manufacture and wholesale supply of spiced country spirit from approved warehouses within specified area. Under the above provisions, Commissioner of Excise, Jharkhand, Ranchi issued a tender notification in February 2005. In accordance with terms and conditions of tender notification, if any loss is caused to the Government by the tenderer, his security money would be forfeited and loss may be recovered from him under Public Demands Recovery Act.

Test check of the records of three excise zones<sup>10</sup> revealed that tender for whole sale supply of spiced country spirit was not finalised for the period from 2005-06 to 2007-08 in Jamshedpur excise zone with any bidder and in Ranchi excise zone the licensee did not get his licence renewed for 2006-07. In Dhanbad excise zone, the department did not float/call for tender for 2006-07 and no licence was issued during this year for wholesale supply of spiced country spirit. Thus, manufacturing and wholesale supply of spiced country spirit could not be made during 2006-07. Non-finalisation of tender/issue and non-renewal of licence for manufacturing and wholesale supply of spiced country spirit by the department resulted in loss of licence fee amounting to Rs. 23.25 lakh for 2006-07. Besides, the security money amounting to Rs. 6 lakh deposited by the licensees/grantees of Ranchi and Dhanbad excise zones, was not forfeited.

### **3.2.15 Short realisation of licence fee**

By a notification of July 2004, issued under the provisions of Bihar Excise Act, annual licence fee for retail sale of India made foreign liquor in hotel, bar, restaurant, club etc. of Dhanbad was raised to Rs. 5 lakh from Rs. 2 lakh with effect from 31 July 2004.

Test check of the records of Dhanbad excise district revealed that the licence fee of eight bars and restaurants was realised at the pre-revised rate during 2006-07. The licensees were liable to pay a licence fee of Rs. 40 lakh against which licence fee of Rs. 16 lakh was recovered. This resulted in short realisation of revenue of Rs. 24 lakh.

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<sup>9</sup> Gumla, Hazaribag, Lohardaga and Ranchi.

<sup>10</sup> Dhanbad, Jamshedpur and Ranchi.

### **3.2.16 Non-recovery of loss from defaulters for non-supply of country spirit to retail vendors**

Under the provisions of Bihar Excise Act and Rules made/notifications issued thereunder, grantee of exclusive privilege for wholesale supply of country spirit is required to manufacture liquor and supply it to retail vendors within two months from the date of issue of letter of grant by Excise Commissioner. In case of failure, loss of Government revenue was to be recovered from the grantee under Public Demands Recovery Act.

Test check of the records of Gumla and Lohardaga excise districts revealed that two licensees of retail shops of Group-I (country spirit) were allowed remission of licence fee of Rs. 17.22 lakh during 2005-06 by the Member, Board of Revenue, Jharkhand, due to non-supply of liquor by the wholesale supplier. This licence fee though recoverable from the wholesale supplier, was not recovered resulting in loss of revenue of Rs. 17.22 lakh.

### **3.2.17 Improper grant and issue of licence**

Under the provisions of Bihar Excise Act and Rules made thereunder, licence is required for manufacture of spirit in a distillery in form '28A' for use in the manufacture of potable liquor (India made foreign liquor). The base material for the manufacture of spirit is molasses.

Test check of the records of Ranchi excise district revealed that licence in excise form '28A' was granted to a bottler and blender for conversion of rectified spirit into extra neutral alcohol to be used in manufacture of potable liquor. This action of the department was not in consonance with above provision of the Act. According to provisions of Bihar Excise Act, rectified spirit was required to be manufactured by the licensee. But instead of manufacturing rectified spirit in the distillery from the base material (molasses), it was imported for converting it into extra neutral alcohol for manufacture of potable liquor. This resulted in undue financial aid to the licensees.

### **3.2.18 Non/improper maintenance of challan register**

Under the provisions contained in paragraph 133 of the instructions issued by Board of Revenue read with notification below the excise form '106', every challan for deposit of excise revenue into treasury should be passed by head clerk/accountant or any officer not below the rank of sub-inspector under his initial. It should be entered in the challan register after assigning a serial number on it. At the close of each sale day, the Superintendent of Excise must satisfy himself by personal communication with the Treasury Officer that the remittances to and the receipt in the treasury for the day, agree.

Test check of the records of nine excise districts<sup>11</sup> revealed that the challan register was not maintained by three excise offices<sup>12</sup> while in six excise offices<sup>13</sup> register was not maintained as per the provisions. The challan register

<sup>11</sup> Bokaro, Dhanbad, Deoghar, Giridih, Gumla, Hazaribag, Jamshedpur, Lohardaga and Ranchi.

<sup>12</sup> Bokaro, Dhanbad and Ranchi.

<sup>13</sup> Deoghar, Giridih, Gumla, Hazaribag, Jamshedpur and Lohardaga.

is an important control record for monitoring the revenue receipts. Non-maintenance of challan register may lead to serious financial irregularities and even defalcation of revenue cannot be ruled out.

After this was pointed out, the Assistant Commissioner of Excise, Bokaro stated in August 2007 that the challan register was being maintained and Assistant Commissioner of Excise, Dhanbad stated in October 2007 that accountant had already been instructed to update the challan register, whereas other Assistant Commissioners of Excise/Superintendents of Excise stated between October 2007 and March 2008 that provisions would be followed in future.

### **3.2.19 Non-furnishing of records**

Security deposit of Rs. 34.29 lakh was refunded to the licensees for which necessary details and related documents were not made available to audit despite repeated requests. In absence of these details/records, genuineness of refund against security deposit could not be ascertained.

### **3.2.20 Conclusion**

Excise receipts are one of the most important sources of tax revenue and third largest receipts of the State. Audit scrutiny revealed that the system instituted by the Excise and Prohibition Department for levy and collection of excise receipts was deficient. Monitoring of key records such as maintenance of reports/returns, registers etc. was not adequate. Annual renewal of licence for the period of settlement for excise shops and exclusive privilege for wholesale supply of country spirit/spiced country spirit was not made compulsory. Non-imposition of import pass fee on rectified spirit, non-finalisation of tender in time, non/short lifting of minimum guaranteed quota etc. adversely affected the revenues of the State. Internal audit and intelligence bureau were not in existence. No time frame was prescribed for institution and disposal of certificate cases. The department did not follow the provisions of the Act/Rules and instructions issued by the Government resulting in leakage of revenue.

### **3.2.21 Summary of recommendations**

The Government may consider:

- formulating provision for levy and collection of import pass fee on import of rectified spirit;
- formulating provision for levy of interest on belated payment of dues in Bihar Excise Act;
- prescribing time limit for instituting and finalising the certificate cases; and
- reviving internal audit and Excise Intelligence Bureau to ensure timely detection and correction of errors in levy and collection of revenue.