

CHAPTER-III: STATE EXCISE

3.1 Results of audit

Test check of records of the State Excise Department conducted during the year 2005-06 disclosed non/short recovery of duty, licence fee, etc., amounting to Rs.18.22 crore in 78 cases, under the following broad categories:

(Rupees in crore)

Sl. No.	Category	Number of cases	Amount
1	Error in computation	8	0.30
2	Non/short recovery of licence fee	7	0.67
3	Granting of excessive production loss/wastage	1	0.04
4	Other irregularities	62	17.21
	Total	78	18.22

During the year 2005-06, the department accepted underassessments of Rs.4.71 crore in 74 cases and recovered Rs.2.86 crore in 56 of them which were pointed out in audit in earlier years.

In 21 cases the department recovered entire amount of Rs.10.88 lakh after the cases were referred to the department/Government in March 2006.

A few illustrative cases having monetary effect of Rs.4.98 crore are given in the following paragraphs.

3.2 Loss due to permitting sale of beer without collecting additional licence fee

Under the Karnataka Excise Act, 1965 (KE Act), Indian liquor means liquor produced, manufactured or compounded in India in the same manner as gin, brandy, whisky or rum imported into India, and includes 'milk punch' and other liquors consisting of or containing spirits. Spirit means any liquor containing alcohol and obtained by distillation whether denatured or not. All other liquors other than Indian liquor are called foreign liquor. Accordingly, beer is a foreign liquor.

3.2.1 Under the Karnataka Excise (Sale of Indian and Foreign Liquors) Rules (KE (SIFL) Rules) 1968, licences were being issued for wholesale vend of Indian liquor or foreign liquor or both in form CL-1 after collecting prescribed licence fee. Licensees are required to pay additional licence fee equal to 10 per cent of licence fee to sell foreign liquor. Besides, an additional licence fee at 15 per cent on the total licence fee was also leviable.

Information collected from Deputy Commissioners of Excise between January and April 2006 revealed that in 11¹³ districts during 2000-01 to 2004-05, 326 CL-1 licensees were allowed to sell beer without collecting additional licence fee leviable to permit a CL-1 licensee to sell foreign liquor. This resulted in loss of revenue of Rs.2.41 crore as detailed below:

(Rupees in lakh)

Year	No. of licensees	Licence fee charged @Rs.6.75 lakh upto 2002-03 and @ Rs.5.75 lakh thereafter	Additional licence fee leviable for foreign liquors not collected	Short levy of additional licence fee for infrastructure projects (at 15% of column (4))	Loss of revenue (4+5)
(1)	(2)	(3)	(4)	(5)	(6)
2000-01	81	546.75	54.68	8.20	62.88
2001-02	76	513.00	51.30	7.70	59.00
2002-03	64	432.00	43.20	6.48	49.68
2003-04	53	304.75	30.47	4.57	35.04
2004-05	52	299.00	29.90	4.48	34.38
Total	326	2,095.50	209.55	31.43	240.98

After this was pointed out to the Excise Commissioner and referred to Government in May 2006, Government stated in August 2006 that beer contains spirit generated in the process of fermentation. The reply is not tenable as the alcohol generated in the process of fermentation does not qualify as spirit for the purpose of the Act. It was also stipulated¹⁴ by Hon'ble

¹³ Belgaum, Bidar, Bijapur, Chamaraanagar, Davanagere, Gadag, Hassan, Kodagu, Kolar, Koppal, Mandya

¹⁴ Northern India Caterers Pvt. Ltd. Vs. Union of India and Another - (1975) 35 STC 121

High Court of Punjab and Haryana that all beer manufactured in India is 'foreign liquor' for excise purpose.

3.2.2 Under the KE(SIFL) Rules, licences were being issued for running a refreshment room (bar) for sale of both Indian and foreign liquor in form CL -9. By an amendment effective from February 1990, foreign liquor was excluded from the purview of this licence. Thereafter, for selling beer in such places, a licence in form-II issued under the Karnataka Excise (Lease of the Right of Retail Vend of Beer) Rules, 1976 is required. Licences under both these Rules are to be obtained each year by payment of the amount prescribed.

It was noticed in March 2005, that 3,354 CL-9 licence holders were incorrectly permitted to sell bottled beer though they had not obtained the licence in form-II as required. This deprived Government of revenue of Rs.1.74 crore during 2004-05 calculated at an amount of Rs.5,175 prescribed for issue of a licence in form-II for sale of bottled beer.

After this was pointed out in March 2006, Government stated in July 2006 that Indian liquor includes beer and the condition of CL -9 licence permits licensee to sell beer. The reply was not tenable as the amendment dated February 1990 excludes beer from the purview of CL -9.

3.3 Short recovery of licence fee

In accordance with notification dated 29 June 2002 amending the KE (SIFL) Rules, star hotels were required to obtain each year, licence in form CL-6A after payment of fee of Rs.4 lakh to vend liquor. Also, the licensees were permitted to sell foreign liquor on payment of an additional licence fee at prescribed rate. In addition, additional licence fee at the rate of 15 *per cent* of total licence fee charged was also leviable.

It was noticed between November 2005 and March 2006 that in four districts, 15 star hotels did not obtain licence in form CL-6A. They were allowed to vend liquor under different licences resulting in short levy of licence fee of Rs.77.93 lakh as detailed below:

(Rs. in lakh)					
Sl. No.	District/ No. of star hotels/ Period of licence	Form of licence issued	Licence fee recoverable	Licence fee recovered	Short realisation of licence Fee
1	Bangalore (Urban)/ 10/ 2002-03 to 2004-05	CL-4 CL-7 CL-9	140.07	91.91	48.16
2	Chikmagalur/ 1/ 2002-03 to 2004-05	CL-7	13.80	7.42	6.38

(Rs. in lakh)

Sl. No.	District/ No. of star hotels/ Period of licence	Form of licence issued	Licence fee recoverable	Licence fee recovered	Short realisation of licence Fee
3	Kodagu / 2/ 2002-03 to 2004-05	CL-7	27.60	11.49	16.11
4	Mysore/ 2/ 2002-03 to 2004-05	CL-7	28.29	21.01	7.28
	Total		209.76	131.83	77.93

After this was pointed out between December 2005 and May 2006, department stated in September 2006 that, there is nothing repugnant under the KE Act or Rules which prevent star hotels from obtaining licence other than in form CL 6A. Hence, the licence applied for by the star hotels were granted. Reply is not tenable, since specific licence has been prescribed under the KE (SIFL) Rules for star hotels, allowing them to deal under other kinds of licences was not in order.

The matter was referred to Government in May 2006; reply has not been received (November 2006).

3.4 Unjust enrichment of distilleries

In Dakshina Kannada district, four¹⁵ fenny distilleries during April and May 2001, collected additional excise duty (AED) at Rs.70 per bulk litre (BL) on sale of 26,695.10 BL of fenny sold to wholesalers. The excess collection of AED at Rs.20 per BL amounted to Rs.5.34 lakh. This was remitted by them to Government account. However, it was noticed in March 2005 that the excess amount so collected and remitted was adjusted against the subsequent dues of those distilleries by the concerned Inspectors of Excise instead of forfeiting it to Government. The incorrect refund thus allowed amounted to unjust enrichment of those distilleries.

After this was pointed out in March 2005, Government stated in October 2006 that in the absence of any provision under the KE Act or under the Rules framed thereunder to forfeit excess tax collected by the dealers, the same was refunded to them. The reply is not tenable as the dealers having collected the taxes from the buyers, were not eligible for refund.

¹⁵ 1. Karnataka Distilleries, Bantwal 2. Netravathi Distillery, Mangalore 3. Pancham Distillery, Moodabidre 4. Prashanth Distilleries, Mangalore