

CHAPTER III : STATE EXCISE

3.1 Results of audit

Test check of the records of State Excise conducted during 2007-08 revealed non-assessment, under assessment, loss of revenue and non-levy of penalty amounting to Rs. 88.06 crore in 12,185 cases, which can be categorised as under:

(Rupees in crore)

Sl. No.	Category	Number of cases	Amount
1.	Non-levy/recovery of duty on excess wastages.	10,070	25.06
2.	Non-levy of penalty on non-maintenance of minimum stock of country spirit/rectified spirit.	272	5.54
3.	Non-levy of penalty for breach of license conditions.	348	4.74
4.	Non-realisation of license fee from excise shops	127	2.05
5.	Loss in re-auction/bidding of excise shops.	23	1.88
6.	Others	1,345	48.79
Total		12,185	88.06

During the year 2007-08, the department accepted underassessment of tax of Rs. 24.73 crore involved in 9,520 cases of which 9,489 cases involving Rs. 21.76 crore were pointed out during 2007-08 and remaining cases in earlier years. In 31 cases, Rs. 2.72 crore has been recovered.

A few illustrative cases involving Rs. 7.95 crore are mentioned in the following paragraphs.

3.2 Non-realisation of excise duty on unacknowledged export of foreign liquor/beer

The Madhya Pradesh Foreign Liquor (MPFL) Rules, 1996 provide that the export of foreign liquor (FL)/beer within India is permissible on payment of duty or on furnishing a bank guarantee or on executing a bond with adequate solvent sureties for the amount of duty involved. The licensee should obtain a verification report from the importing unit and furnish it to the authority who issued the permit within 40 days of the expiry of the permit. If the licensee fails to do so, duty leviable on liquor exported shall be recovered from him in addition to any other penalty under the rules.

Test check of the records in distilleries and breweries of six districts¹ and the canteen stores department in Jabalpur district between July 2007 and March 2008 revealed that the licensees exported 1,68,616.35 proof litres² of foreign liquor and 1,37,661.0 bulk litres of beer on 66 permits between September 2006 and January 2008. The verification reports were not received within time and action for recovery of duty of Rs. 4.02 crore was not taken by the department. This resulted in non-realisation of excise duty of Rs. 4.02 crore.

After the cases were pointed out, the EC stated (June 2008) that 12 cases are under consideration in different courts for violation of conditions of the permits and in 51 cases, the verification reports have been received, while in one case of Gwalior, action is being taken for less receipt of liquor due to accident of vehicle. The reply regarding two cases of Raisen district has not been received. The reply is not acceptable as the action for recovery of duty was not taken for non receipt of verification reports within the prescribed time limit as per rule. Besides, the reply does not clarify whether the verification reports were received in time. Reply of the Government has not been received (December 2008).

3.3 Non-realisation of excise duty due to non-disposal of spirit, molasses and foreign liquor

The MPFL Rules and the Madhya Pradesh Distillery Rules, 1995 provide that on expiry, non-renewal and cancellation of licence or labels, the licensee shall place the entire stock of spirit, molasses and bottled foreign liquor under the control of the excise officer. However, the licensee can be permitted to dispose of such stock to any other licensee within 30 days of such expiry or cancellation, failing which the EC may ask any other eligible licensee of the state to purchase such stock or may give necessary directions for the disposal of the stock so that the excise duty may be realised.

Test check of the records in one distillery³, one foreign liquor bottling plant⁴ and two breweries⁵ of four districts⁶ between July 2007 and March 2008 revealed that 11,335.3 proof litres of bottled foreign liquor, 42,833.675 bulk

¹ Bhopal, Chhattarpur, Gwalior, Jabalpur, Morena, and Raisen.

² The strength of proof as ascertained by sikes hydrometer or by any other instrument approved by the Excise Commissioner (EC)

³ Ratlam Alcohol Plant

⁴ M/s Gold water Breweries, Malanpur

⁵ M/s Jagpin Breweries Nowgaon and M.P. Beer, Indore.

⁶ Bhind, Chhattarpur, Indore and Ratlam

litres of beer and 74,554.9 proof litres spirit involving duty of Rs. 1.26 crore was in stock in the plant at the time of expiry of licence/label between February 2005 and September 2007. No effort was made by the licensees/department to dispose of the stock even after a lapse of 5 to 32 months. This resulted in non-realisation of revenue of Rs. 1.26 crore.

After the cases were pointed out, the EC stated (June 2008) that action to dispose of the stock of spirit relating to Indore and Ratlam district is being taken while orders to destroy the beer relating to Chhattarpur district has been issued. Foreign liquor relating to Bhind district is not fit for human consumption for which orders of destruction could not be issued as the case is pending in the Court. Thus, inaction of the department to dispose of the foreign liquor resulted in loss of revenue. Report on further development has not been received (December 2008). The reply of the Government has not been received (December 2008).

3.4 Non-maintenance of minimum stock of spirit at distillery

The Madhya Pradesh Distillery Rules require the licensee to maintain the prescribed minimum stock of spirit at the distillery. In the event of failure, the EC may impose a penalty not exceeding Rs. five per proof litre on the quantity found short of the minimum prescribed stock. The penalty shall be payable by the licensee irrespective of the fact whether any loss has actually been caused to the Government.

Test check of the records in one distillery of Raisen district in January 2008 revealed that the distiller did not maintain the prescribed minimum stock of spirit on 105 occasions between September 2006 and November 2007 but the authority had not levied penalty of Rs. 1.14 crore on 22.94 lakh proof litre spirit which was found short of the minimum prescribed stock.

After the case was pointed out, the EC stated (June 2008) that the stock of extra neutral alcohol (ENA) was not included while calculating the stock of spirit by audit. The reply is factually incorrect as the stock of ENA was kept in the bottling unit of foreign liquor functioning in the same premises with the distillery but under a separate licence. Reply of the Government has not been received (December 2008).

3.5 Incorrect allowance of wastage of spirit in re-distillation

The Madhya Pradesh Distillery Rules do not provide for any allowance for wastage of rectified spirit (RS) during re-distillation for manufacturing ENA.

Test check of the records of one distillery of Rajgarh district in March 2008 revealed that 39.47 lakh proof litres of rectified spirit was re-distilled to produce ENA between March and September 2007 and wastage of 74,242.1 proof litres of RS was allowed which was not admissible. This resulted in non-realisation of excise duty of Rs. 1.02 crore⁷.

After the case was pointed out, the EC stated (June 2008) that an allowance of two *per cent* for re-distillation is provided in Rule 6 (2) of MP Distillery Rules

⁷ 12,918.6x Rs. 125= Rs. 16,14,825
61,323.5x Rs. 140= Rs. 85,85,290
Rs. 1,02,00,115

and as such it was allowed. The reply does not correctly interpret the rules. While audit observation is on re-distillation of RS for production of ENA, Rule 6 (2) relates to allowance of wastage in cases of re-distillation of spirit which is found to be sub-standard or unfit for human consumption and is not applicable in the instant case. Reply of the Government has not been received (December 2008).

3.6 Non-realisation of excise duty due to non-disposal of foreign liquor

According to MPFL Rules, the EC may order cancellation of the registration of a label, if the liquor sold under any such registered label is found sub-standard or if he is convinced that the label is obscene, outrageous or hurtful. Consequent to such cancellation, the EC may also pass suitable orders regarding disposal of the stocks of the cancelled label held by any licensee by way of re-distillation.

Test check of the records in two distilleries of Jabalpur and Rajgarh district between February and March 2008 revealed that consequent upon the provision for manufacture of Indian made foreign liquor from ENA from the year 2007-08, 25,724.01 proof litres of bottled foreign liquor of different labels involving duty of Rs. 46.30 lakh made from rectified spirit was returned to the distilleries by foreign liquor warehouses. This stock was lying undisposed even after 9 to 10 months w.e.f. April to June 2007. The department did not take any step for re-distillation of the stock of foreign liquor for disposal. This resulted in non-realisation of excise duty of Rs. 46.30 lakh.

After the cases were pointed out, the EC stated (June 2008) that the action to dispose of the stock of liquor relating to Jabalpur district is being taken while in Rajgarh district, 17,231 proof litre out of 20,916.4 proof litre of bottled foreign liquor have been sent to warehouses and remaining 3,685.4 proof litre will be sent to warehouses on demand. As such there is no loss of revenue to Government. The reply is unacceptable as 20,916.4 proof litre of foreign liquor was manufactured from RS and consequent upon the provision for manufacture of Indian made foreign liquor only from ENA from 01 April 2007, the RS based foreign liquor could not be sold in the State. Reply of the Government has not been received (December 2008).

3.7 Inadmissible wastage of foreign liquor

The allowance on wastage of spirit at various stages have been prescribed in the Rules, but Rules do not provide for any allowance for wastage of bottled foreign liquor stocked in bottling plants of foreign liquor whether it is due to accident or otherwise.

Test check of the records in one distillery in Raisen district in January 2008 revealed that wastage of bottled foreign liquor of 20,993.22 proof litres involving duty of Rs. 38.41 lakh occurred in June 2007 due to fire in the bottling unit of foreign liquor. As the loss of bottled liquor was not admissible in the Rules, the duty was recoverable from the licensee. However, the department did not take any action to recover the duty from the licensee. This resulted in non-realisation of revenue of Rs. 38.41 lakh.

After the case was pointed out, the EC stated (June 2008) that the intimation of loss of liquor due to fire in godown was given to head of office and collector. The reply does not mention the action taken to effect recovery from the licensee. Reply of the Government has not been received (December 2008).

3.8 Inadmissible wastage in export and transport of foreign liquor and short accountal thereof

The MPFL Rules provide that the maximum wastage allowance for all exports of bottled foreign liquor shall be 0.25 *per cent* of liquor exported irrespective of distance. In case of transport, it shall be 0.1 *per cent* if selling licensee and the purchasing licensee belong to the same district and 0.25 *per cent* if they belong to different districts. If wastage/loss during the export or transport of bottled foreign liquor exceeds the permissible limit the prescribed duty on such excess wastage shall be recovered from the licensee.

Test check of the records in four foreign liquor manufacturing units, three breweries and two FL 10A licensees⁸ in three districts⁹ between July 2007 and March 2008 revealed that during export and transport of foreign liquor, 6,324.28 proof litres of spirit and 10,990.25 bulk litres of beer was shown as wastage in excess of the admissible limit under the rules by the licensees in 652 cases during the period between May 2006 and December 2007 for which excise duty of Rs. 19.78 lakh was recoverable. Further, 1,185.43 proof litres of foreign liquor involving excise duty of Rs. 3.19 lakh in 19 cases received from foreign liquor warehouses was not accounted for in the spirit stock account by two licensees of Bhopal district. However, the verification report for the total quantity was sent. The department did not take any action to recover the duty. This resulted in non-realisation of excise duty of Rs. 22.97 lakh.

After the cases were pointed out, the EC stated (June 2008) that an amount of Rs. 3.91 lakh from seven units of Bhopal and Rs. 8.94 lakh from two units of Gwalior in 132 cases has been recovered between July 2007 and May 2008. In one case of Gwalior, excise duty of Rs. 1.37 lakh has been deposited in Delhi but the challan number and date has not been mentioned. Thirteen cases of Gwalior district are pending in Dholpur Court and action will be intimated after decision of the Court. Action for recovery of Rs. 4.39 lakh of Morena district is being taken which will be intimated after recovery. The reply of the Government has not been received (December 2008).

3.9 Non-levy of penalty due to short production of alcohol

The Madhya Pradesh Distillery Rules require the distillers to maintain minimum fermentable and distillation efficiencies at 84 and 97 *per cent* respectively. Every quintal of fermentable sugar present in molasses as per departmental laboratory reports should yield 91.8 proof litre of alcohol. For this purpose, composite samples of the molasses are required to be drawn by the officer in-charge of the distillery and sent for examination to the departmental laboratory. In case the distiller fails to maintain prescribed

⁸ Outside manufacturer's central godown licence

⁹ Bhopal, Gwalior and Morena

efficiencies and recovery of alcohol, the EC may impose maximum penalty of Rs. 30 per proof litre.

Test check of the records of two distilleries¹⁰ in March 2008 revealed that as per the analysis reports of departmental laboratory, the production of alcohol should have been 5,62,765 proof litres from 13,678.5 quintals of molasses used between June 2007 and October 2007 whereas the actual production was 5,46,936 proof litres resulting in shortfall of 15,829 proof litres. As a result, excise duty of Rs. 22.16 lakh was foregone (at the rate of Rs. 140 per proof litre). However, the DEOs, (distillery) did not refer these cases to the EC for levy of penalty.

After the cases were pointed out, the EC stated (June 2008) that the action in case of Chhattarpur district is being taken while in respect of Rajgarh district, it was stated that the production of alcohol was according to norms, if it is calculated on total quantity of molasses for which the composite sample was sent for chemical analysis. Reply is not acceptable as the production in each set up was not according to the chemical analysis report of the departmental laboratory. The reply of Government has not been received (December 2008).

3.10 Non-realisation of duty on unacknowledged bottled country liquor

The Madhya Pradesh Country Spirit Rules require the licensee to deposit the amount of prescribed duty leviable on the total quantity of bottled country spirit being exported or furnish a Bank guarantee for an equal amount from any local branch of a Nationalised Bank. He should obtain the verification report from the importing unit and if the verification report is not received, the leviable duty shall be recovered from the licensee.

Test check of the records in one distillery in Raisen district in January 2008 revealed that the licensee exported 30.77 lakh proof litres of bottled country liquor on 654 permits during the period between September 2006 and November 2007 to Chhattisgarh State. Out of these, 30.61 lakh proof litres was acknowledged in the verification reports issued by the importing units. Thus, duty of Rs. 21.70 lakh leviable on the unacknowledged 16,429.69 proof litres was not recovered from the exporting licensee. This resulted in non-levy/realisation of revenue of Rs. 21.70 lakh.

After the case was pointed out, the EC stated (June 2008) that the country liquor has been exported to Chhattisgarh state after recovery of prescribed export fee and the imposition of penalty on transit wastage comes under purview of that State. Reply is not in consonance with the rules as excise duty was realisable from the exporter on the quantity of liquor found short at the receiving end. The reply of Government has not been received (December 2008).

¹⁰ M/s Cox India Ltd. Nowgaon (Chhattarpur) and M/s Vindhychal Distillery Pilukhedi (Rajgarh)

3.11 Inadmissible wastage of spirit/country liquor

The Madhya Pradesh Distillery Rules allow wastage of 0.1 to 0.2 *per cent* on account of leakage or evaporation of spirit transported or exported in tankers from a distillery/warehouse to another distillery/warehouse. In case of wastage beyond permissible limit, the EC or the officer authorised for the purpose may impose penalty. The rules also provide that in case of wastage of bottled country liquor beyond permissible limit of 0.5 *per cent* during transport, duty at the prescribed rates shall be recovered from the licensees.

Test check of the records of three excise offices¹¹ between December 2007 and February 2008 revealed that penalty of Rs. 11.64 lakh was leviable in 49 cases of wastage of 38,805.16 proof litres of spirit beyond the permissible limit during transport between November 2006 and January 2008. In 114 cases duty of Rs. 1.50 lakh was recoverable for wastage of 1,107.645 proof litre country liquor beyond the permissible limit during transport of bottled country liquor between January 2007 and January 2008, but was not levied. This resulted in non-levy of duty/penalty of Rs. 13.14 lakh.

After the cases were pointed out, the EC stated (June 2008) that an amount of Rs. 1.88 lakh relating to Gwalior, Dhar and Morena district has been recovered and action for recovery in remaining cases is in progress. Reply of the Government has not been received (December 2008).

3.12 Absence of provision for recovery of loss suffered during resale of shops under lottery system

The conditions for sale of liquor shops through tendering process provide that if any highest bidder takes back his offer, fails to pay basic licence fee/security deposit in time or breaches any condition of sale, the shop shall be resold. In case of any loss suffered by the Government due to resale, such loss shall be recoverable from the defaulter. As per the conditions for sale of retail liquor shops through lottery system for the year 2005-06, the shop which could not be sold under lottery system is to be sold through the tendering process. The conditions for sale notified by the Government under the lottery system do not provide for recovery of loss suffered by the Government during resale of shops.

Test check of the records of DEO, Ashok Nagar in August 2007 revealed that two applicants were declared successful under the lottery system for allotment of three liquor shops at annual value of Rs. 26.20 lakh. The successful applicants failed to deposit the basic licence fee and security deposit within the prescribed date and shops had to be resold for Rs. 13.16 lakh. In this process of resale of shops, the Government suffered loss of Rs. 12.62 lakh after taking into account the forfeiture of earnest money deposit of Rs. 42,000. As there was no provision for recovery of loss suffered by the Government due to resale of shops under the lottery system, no action could be taken against the defaulter to recover the differential amount of Rs. 12.62 lakh.

After the case was pointed out, the EC stated (June 2008) that the work of valuation of shops in new proposed system was very difficult and it was completed by best possible efforts but inspite of this the valuation of

¹¹ Gwalior, Morena and Ujjain

some shops of state could not be done correctly. Under these circumstances, the objection relating to country liquor shops of Ashok Nagar is not correct. Reply does not address the deficiencies in the process of lottery system highlighted above. The reply of the Government has not been received (December 2008).