

## CHAPTER IV STATE EXCISE

### 4.1 Results of audit

Test check of the records of state excise revenue conducted in audit during the year 2006-07, revealed non/short realisation of excise duty and other irregularities amounting to Rs. 92.73 crore in 144 cases, which broadly fall under the following categories:

*(Rupees in crore)*

Sl. No.	Categories	No. of cases	Amount
1.	Non-realisation of excise duty on the quantity of rectified spirit received short	8	44.28
2.	Non-realisation of renewal fee/licence fee/privilege fee/import pass fee etc.	47	8.23
3.	Non/short realisation of security deposit/establishment cost/house rent allowance	29	0.94
4.	Non/short realisation of late fee due to delayed renewal of licences	9	0.76
5.	Other cases	51	38.52
<b>Total</b>		<b>144</b>	<b>92.73</b>

During the course of the year 2006-07, the department accepted underassessment and other deficiencies of Rs. 1.81 crore involved in 41 cases of which 22 cases involving Rs. 1.58 crore had been pointed out by audit during the year 2006-07 and the rest in the earlier years. Of this, Rs. 85.52 lakh has been realised in 26 cases.

After the issue of the draft paragraphs, the department recovered Rs. 6.87 lakh pertaining to a single observation during the year 2006-07.

A few illustrative cases involving Rs. 37.69 crore highlighting important irregularities have been discussed in the following paragraphs.

#### **4.2 Short realisation of revenue due to low production of alcohol from molasses**

Under the provisions of the Bengal Excise Act, 1909 (BE Act) and rules made thereunder, every distiller has to maintain specified fermentation efficiency and distillation efficiency to recover minimum 92 london proof litre (LPL)<sup>1</sup> of alcohol per quintal of fermentable sugar present in the molasses consumed for production. Failure to recover minimum alcohol renders the licensee liable to suspension/cancellation of his licence in addition to any other penal action under the Act. The rule further stipulates that sample of molasses used for production of spirit should be sent by the distiller to the chemical examiner (CE), the Government of West Bengal (WB) or any other expert authorised by the Excise Commissioner (EC) for determination of fermentable sugar content in molasses. Minimum yield of spirit from molasses should be calculated on the basis of the CE's report and explanation for shortfall, if any, in production should be called for from the distiller.

Scrutiny of the records of two distilleries under Superintendent of Excise (SE), South 24 Parganas and SE, Darjeeling between November 2006 and February 2007 revealed that out of 2,575 samples of molasses drawn for chemical examination, only four samples were sent to the CE and chemical examination of the balance 2,571 samples were carried out by the respective distillers in their own laboratories. The chemical examination report of the four samples had not been received from the CE till the date of audit. Distillery Officer (DO) posted at the distilleries did not take any action for ensuring timely receipt of the CE's report in respect of the four samples and instead of sending the balance samples to the CE for chemical examination, accepted the report of the distillers' chemists in arriving at the yield of alcohol.

A committee set up for determining the allowable molasses transport cost (AMTC) prescribed a minimum yield of 390 LPL of alcohol per MT of molasses. In December 2001, the Government accepted the recommendation of the committee and accordingly issued an executive instruction but did not modify/amend the BE Act and rules made thereunder. In the absence of any amendment of the Act/Rules, the said instruction is not binding on the distillers.

Although audit could not verify the actual yield of alcohol from the molasses used in the absence of any chemical examination report of the CE, on the basis of the aforesaid executive instruction, the minimum yield of alcohol out of molasses used for extraction of alcohol between January 2002 and March 2006 worked out to 287.70 lakh LPL as against the actual yield of 270.21 lakh

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<sup>1</sup> 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.

LPL shown by the distilleries. Thus, there was a short yield of 17.48 lakh LPL of alcohol. This resulted in short realisation of duty of Rs. 25 crore at the rate of Rs. 143 per LPL as mentioned below. Besides, penalty was also leviable for such shortfall in achieving the minimum yield.

Names of the distilleries	Period	Quantity of molasses consumed (MT)	Yield of alcohol in the distillery (in LPL)	Minimum yield of alcohol as per norms fixed by the Government (in LPL)	Short yield of alcohol (in LPL)	Duty involved (Rs. in crore)
IFB Agro Industries, Noorpur	4 <sup>th</sup> quarter of 2001-02	20,198.239	77,22133.7	78,77,313.21	1,55,179.51	2.22
Prakash Distillery and Chemical Siliguri	4 <sup>th</sup> quarter of 2001-02	3,978	13,77,805	15,51,420	1,73,615	2.48
	2002-03	22,179	79,34,381.1	86,49,810	7,15,428.9	10.23
	2003-04	19,767	75,33,444.8	77,09,130	1,75,685.2	2.51
	2004-05	7,646	24,53,527.3	29,81,940	5,28,412.7	7.56
<b>Total</b>		<b>73,768.239</b>	<b>270,21,291.9</b>	<b>287,69,613.21</b>	<b>17,48,321.31</b>	<b>25.00</b>

The Government to whom the cases were forwarded in June 2007 stated in July 2007 that demand notices for Rs. 48.83 crore including penalty had been issued after detailed verification in both the distilleries. A report on recovery has not been received (September 2007).

### 4.3 Non-imposition of penalty on excess wastage of molasses

Under the WB Molasses Control (Regulation, Storage and Transport) Notified Order 1986, as amended from time to time, if the loss or wastage of molasses in transit exceeds one *per cent*, the licensee is liable to pay a penalty not exceeding Rs. 5,000 upto December 2003 per consignment and not exceeding Rs. 25,000 thereafter to be imposed by the EC on the basis of the report of the distillery officer (DO).

Scrutiny of the molasses register of IFB Agro Industries Ltd., (distillery), Noorpur under SE, South 24 Parganas revealed that 15,585 consignments of molasses were received during the period from 2001-02 to 2005-06. Of these, transit wastage exceeding maximum permissible limit of one *per cent* was allowed in 125 consignments (51 cases related to the period prior to January 2004 and remaining 74 cases thereafter). The licensee was, thus, liable to pay penalty upto Rs. 21.05 lakh on excess wastage. But, the DO did not furnish any report on the excess wastage to the EC leading to non-imposition of penalty upto Rs. 21.05 lakh.

The Government to whom the cases were forwarded in June 2007 stated in July 2007, that the DO of the said unit had been directed to verify each case of

such excess wastage of molasses in transit and accordingly the SE, South 24 Parganas had asked the licensee to show cause why action should not be taken against him as per the law. Further reply has not been received (September 2007).

#### **4.4 Non-realisation of excise duty on non/short receipt of spirit during the course of import underbond**

The BE Act and rules made thereunder provide that in case of import of spirit for potable purposes, a licensee is to execute a bond in the prescribed form which envisages that duty at the prescribed rate is to be paid on the quantity of the spirit received short or not reaching the destination with reference to the quantity despatched from the exporting end.

Scrutiny of the records of the SE, North 24 Parganas district in December 2007 revealed that M/s. Sengupta and Sengupta bottling plant, Barrackpore was permitted by the EC to import two lakh BL<sup>2</sup> (3.20 lakh LPL) of spirit underbond in two cases between January and February 2002 from Uttar Pradesh (UP). The said quantity was neither received at the distillery nor were any non-execution certificates received from the exporting distillery. According to the bond agreement, the importer was liable to pay excise duty of Rs. 4.58 crore at the highest rate applicable to IMFL on the quantity of spirit not reaching the destination. But the licensee neither paid any duty nor did the excise authority take any action for its realisation even after the lapse of 66 months from the month of issue of the import permits. This resulted in non-realisation of excise duty of Rs. 4.58 crore.

The Government to whom the cases were forwarded in January 2007 stated in July 2007 that import permits were not executed by the licensee and non-execution certificates could not be obtained as the permits were meant for import of extra neutral alcohol (ENA) from any distillery in UP.

The reply is not tenable as the EC, UP has intimated the EC, WB in August 2007 that export release orders were issued by them for the entire quantity of ENA against each of those import permits. Thus, weak surveillance system to monitor non-execution of the import permits enabled the licensee to avoid payment of duty of Rs. 4.58 crore. Further reply has not been received (September 2007).

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<sup>2</sup> Bulk litre.

#### **4.5 Allowance of excess transport charges resulting in short realisation of additional fee**

The wholesale price of country spirit (CS), fixed by the Excise Department, is equivalent to the cost price (landed cost) of rectified spirit (RS) plus additional fee realisable on the RS imported. Additional fee is the difference between wholesale price and the landed cost of the spirit. The landed cost of spirit, *inter alia*, includes the transport charge.

As per the circulars of the Excise Department issued from time to time, transport charge at the maximum rate of Rs. 3 and Rs. 3.50 per BL was allowable to CS manufacturers for the import of spirit from Bihar and other states respectively during the period from May 1994 to October 2002. The rates were subsequently reduced to Rs. 2.25 and Rs. 2.75 per BL respectively from November 2002.

Cross verification of the records of the excise directorate during September 2006 to February 2007 revealed that the rate of transport charges per BL allowed by the EC for import of RS by 14 CS bottling plants was higher than that paid by two foreign liquor (FL) licensees, though the spirit was imported from the same distilleries of the States of Bihar and UP. During the period between 2001-02 and 2005-06, the rate of transport charges paid by the FL manufacturers for import of RS from distilleries located in UP and Bihar was between Rs. 1.70 and Rs. 2.05 per BL and between 87 paise and Rs. 1.07 per BL respectively while transport charges allowed to the CS bottling plants or RS imported from the same distilleries of Bihar and UP during the same period was between Rs. 2.75 and Rs. 3.50 and Rs. 2.25 and Rs. 3 per BL respectively. Thus, excess allowance of transport charges to the CS licensees at higher rates ranging between 70 paise and Rs. 1.93 per BL led to fixation of additional fees at a reduced rate resulting in short realisation of revenue of Rs. 4.28 crore.

The Government to whom the cases were forwarded in June 2007 stated in July 2007 that the licensees of the CS bottling plants had been asked to submit a clarification relating to the rate of transport charges claimed by them. Necessary action would be taken after receipt of the clarifications from the licensees. Further reply has not been received (September 2007).

**4.6 Non-levy and non-realisation of privilege fee for import of spirit by the distiller**

As per the notification of the Excise Department effective from April 1984, a distiller has to pay a fee for the privilege of import of alcohol at the rate of 60 paise for each BL of spirit imported by him from outside the state at the time of receipt of such spirit at the distillery or warehouse on the quantity so received.

Scrutiny of the records of three distilleries under SEs, Darjeeling and Hooghly between November 2006 and February 2007 revealed that the licensees imported 218.74 lakh BL of spirit during the period from 2001-02 to 2005-06 against 160 import permits granted by the EC. But privilege fee on the quantity of spirit so imported and received at the premises of the distilleries was neither paid by the distiller nor was any action taken by the excise authority to realise it from the licensees till the date of audit. This resulted in non-levy and non-realisation of privilege fee of Rs. 1.31 crore as mentioned below:

*(Rupees in crore)*

Name of the distillery	Period	Total no. of import permits	Total quantity of alcohol received (BL in lakh)	Privilege fee realisable at the rate of 60 p per BL
M/s. McDowell and Co. Ltd., Hooghly	2001-02 to 2005-06	73	77.12	0.46
M/s. Shaw Wallace Distilleries Ltd., Hooghly	2001-02 to 2005-06	82	129.30	0.78
M/s. Prakash Distillery and Chem. Ltd, Siliguri	2004-05 to 2005-06	5	12.32	0.07
<b>Total</b>		<b>160</b>	<b>218.74</b>	<b>1.31</b>

The Government to whom the cases were forwarded in June 2007 stated in July 2007 that M/s. McDowell and Co. Ltd., Hooghly had moved the High Court, Kolkata and obtained a judgment in their favour. The reply was, however, silent on the reasons for the inaction of the State Government to appeal against the judgment. As regards the other two distilleries, the State Government stated that the dues would be recovered. Further reply in case of M/s. McDowell Co., Hooghly and report on recovery in the remaining two cases has not been received (September 2007).

#### **4.7 Non-realisation of pass fee on export of IMFL**

Under the provisions of the WB Excise Foreign Liquor (FL) Rules, 1998, pass required for the export of IMFL outside the State of WB shall be granted on payment of pass fee at the rate of 45 paise per BL upto April 2005 and thereafter at the rate of 50 paise.

Scrutiny of the records of M/s. Shaw Wallace Distilleries Ltd. (distillery unit) under SE, Hooghly in November 2006 revealed that the licensee exported 140.09 lakh BL of bottled IMFL during the period between April 2001 and April 2005 and 12.80 lakh BL during the period between May 2005 and March 2006 outside the state. It was, however, observed that while issuing export passes by the EC, export pass fee was not realised. This resulted in non-realisation of pass fee of Rs. 69.44 lakh.

The Government to whom the cases were forwarded in June 2007 stated in July 2007 that the High Court, Kolkata in an interim order on 26 June 1997 had restrained and forbidden the State Government from realising any export pass fees from the licensee. However, the Government has appealed to the High Court and the case has been admitted in February 2005. The reply is silent on the reasons for the delay of more than seven years on the part of the Government to appeal against the court order. A report on further development has not been received (September 2007).

#### **4.8 Non-levy and non-realisation of pass fee on import of spirit**

Under the provisions of the WB Excise FL Rules, passes for transport or import of spirit brought from any place outside India from a customs station or licenced storage of spirit warehouse of any other State or Union Territory of India, to licenced premises in WB shall be granted on payment of the prescribed fees. Such fee is realisable at the rate of Rs. 25 per LPL on the advised/received quantity of spirit, whichever is higher.

Scrutiny of the import documents and other relevant records of two IMFL manufacturers under SE, Hooghly and Collector of Excise, Kolkata (South) in November 2006 revealed that the licensees imported 2.71 lakh LPL of spirit during the period between January 2004 and March 2006 from Scotland through the distilleries of other States. No pass fee on the quantity of spirit advised/received on import was, however, levied and realised from the licensees prior to issuing the import pass. This resulted in non-levy and consequent non-realisation of pass fee of Rs. 67.75 lakh.

The Government to whom the cases were forwarded in June 2007 stated in July 2007 that demand notices were issued to both the licensees for payment of pass fees. A report on recovery has not been received (September 2007).

#### **4.9 Non-levy of late fee**

##### **4.9.1 Non-levy and non-realisation of late fee for delayed deposit of renewal fee for distillery licence**

By a notification issued in November 2002, the State Government decided that from the licensing year 2003-04, the licence for a distillery may be renewed annually by the Collector subject to the approval of the EC on an application made before the expiry of the existing licence along with the receipted original challan showing deposit of Rs. 1 lakh. If the licensee of a distillery applies for the grant of a licence for the next period of settlement after the expiry of the licence, the Collector may grant renewal of the licence on the realisation of a late fee at the rate of Rs. 600 per diem.

Scrutiny of the records of two distilleries under SEs, Darjeeling and Hooghly districts between November 2006 and February 2007 revealed that the licensees deposited renewal fee for the licensing year 2003-04 to 2005-06 between February 2005 and March 2006. But the district authorities did not levy and realise late fee of Rs. 18.86 lakh from the licensees for delay between 322 and 1,065 days as mentioned below:

*(Rupees in lakh)*

<b>Year of licence</b>	<b>Name of the distillery</b>	<b>Date of expiry of previous licence</b>	<b>Date of deposit of renewal fee</b>	<b>Duration of delay (no. of days)</b>	<b>Late fee realisable</b>
2003-04	M/s. McDowell and Co. Ltd., (distillery unit), Hooghly	31.03.2003	02.03.2006	1,065	6.39
2004-05		31.03.2004	02.03.2006	700	4.20
2005-06		31.03.2005	02.03.2006	335	2.01
2003-04	M/s. Prakash Distillery and Chemicals Ltd., Siliguri	31.03.2003	08.03.2006	722	4.33
2004-05		31.03.2004	17.02.2005	322	1.93
<b>Total</b>					<b>18.86</b>

The Government to whom the cases were forwarded in June 2007 stated between July and August 2007 that, demand notice had been issued to M/s. McDowell & Co. Ltd., Hooghly for the payment of late fee of Rs. 12.60 lakh and in the other case, the Collector, Darjeeling had been instructed to raise the demand for late fee. A report on recovery has not been received (September 2007).

##### **4.9.2 Non-levy and non-realisation of late fee for delayed deposit of renewal fee for CS licence**

Under the provision of the WB Excise (Grant of licence for the Manufacture of Labelled and Capsuled Bottles of Country Spirit and Sale by Wholesale) Rules, 1998 where the licensee applies for the renewal of a licence for the next period of settlement after the expiry of the licence, the Collector may, at his



discretion, grant such renewal, if such licensee deposits a fee of Rs. 50,000 alongwith a late fee of Rs. 300 per diem.

Scrutiny of the records of two CS manufacturers under SE, Jalpaiguri and Collector of Excise, Kolkata (South) revealed that though the licensees had deposited renewal fees for the period from 1999-2000 to 2005-06 between February and July 2005 after a delay ranging between 117 and 2,153 days, the licences were renewed by the respective Collectors without realisation of late fee. As a result, there was non-levy and consequent non-realisation of late fee of Rs. 29.32 lakh from the licensees as mentioned below:

*(Rupees in lakh)*

Year of licence	Name of the CS manufacturer	Date of expiry of previous licence	Date of deposit of renewal fee	Duration of delay (no. of days)	Late fee realisable
2002-03	M/s. Luksan CS warehouse (manufacturer)	31.3.2002	27.07.2005	1,213	3.64
2003-04		31.3.2003		848	2.54
2004-05		31.3.2004		483	1.45
2005-06		31.3.2002		117	0.35
1999-00	M/s. Eastern Distillery and Chemical Ltd. (EDCL)	31.3.1999	23.02.2005	2,153	6.46
2000-01		31.3.2000		1,788	5.36
2001-02		31.3.2001		1,423	4.27
2002-03		31.3.2002		1,058	3.17
2003-04		31.3.2003		693	2.08
<b>Total</b>					<b>29.32</b>

The Government to whom the case were forwarded in June 2007 stated in July 2007 that M/s. Luksan warehouse could not be called a CS manufacturer as the licensee did not hold any licence to manufacture or produce bottled CS. Hence, the question of realisation of any late fee in this case did not arise. In the other case, the licensee M/s. EDCL had prayed to the authority to remit the late fee so demanded.

The reply in respect of the first case is not tenable because as per the Act, the term manufacture includes reduction of strength of RS for sale and in the instant case the licensee had reduced RS into CS (80 degree under proof) in bulk for sale. The licensee company had also paid licence renewal fee for CS manufacture. The reply in respect of the second case is not tenable because there is no provision in the Act for remission of late fee. Further reply has not been received (September 2007).

#### **4.9.3 Non-realisation of late fee due to the delay in renewal of excise licences**

Under the WB Excise (selection of new sites and grant of licence for retail sale of liquor and certain other intoxicants) Rules, 2003 the licensees of CS bottling plant, distillery and C and FS shop who fail to get their licences

renewed for the next period of settlement within the prescribed time limit and apply for renewal of the same after the due date, are required to pay a late fee at the rate of Rs. 100 per day for the period of default in payment of licence fee.

Scrutiny of the records of the SE, Burdwan (East) in March 2006 revealed that no late fee was realised from the licensees of 85 C and FS shops for delays between 7 and 544 days in getting their licences renewed for different periods falling between 2003-04 and 2005-06. This resulted in non-realisation of late fee of Rs. 19.22 lakh.

The Government to whom the cases were forwarded in May 2006 stated in July 2007 that demand notices had been issued to the licensees. A report on realisation has not been received (September 2007).

#### **4.10 Evasion of excise duty due to variation of strength**

Under the WB Excise (FL) Rules, all potable FL has to be manufactured at the strength prescribed subject to an allowable limit of variation of 0.2 degree proof on either side. After the manufacturing process is completed, the manufacturer has to make over two samples of 750 ml each to the excise officer incharge for analysis and determination of the proof strength and obscuration<sup>3</sup> by the CE to the State Government. If the report of the CE shows any variation from the prescribed strength beyond the allowable limits, the manufacturer shall be required to reprocess the FL in question.

Further, the Rules provide that in case of urgency and on the requisition of the manufacturer, FL may be issued on the basis of the strength and obscuration declared by the manufacturer subject to the condition that if the report of the CE shows a strength higher than that declared by the manufacturer, he shall pay, on demand, the excess of duty on the quantity manufactured in the batch.

##### **4.10.1 Evasion of excise duty due to issue of under strength IMFL**

Scrutiny of the records of two FL manufacturers<sup>4</sup> in two districts<sup>5</sup> during November-December 2006 revealed that the licensees produced 1,805 batches of FL during the period from 2001-02 to 2005-06 and the officers incharge of the FL manufacturers sent samples of all the batches to the CE for determination of proof strength and obscuration. Further scrutiny revealed that test reports of only 385 samples were received from the CE after a lapse of

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<sup>3</sup> The difference caused by matter in solution between the true strength of spirit and that indicated by the hydrometer.

<sup>4</sup> M/s. Madhusala Drinks and McDowell and Co. Ltd.

<sup>5</sup> Hooghly and South 24 Parganas.

time ranging between 21 and 41 months when the said batches of FL had already been removed from the manufacturers. The excise officers posted at the manufacturers did not obtain the remaining test reports of 1,420 batches from CE, West Bengal, before allowing removal of such FL.

Cross verification of 247 out of 385 test reports of the CE with the reports from the manufacturers' chemists for the year 2001-02, revealed that in 202 cases though the alcoholic strength was below the strength ranging between 0.3 and 4.7 degree proof, spirit of all the batches relating to those 202 test reports was shown to have been issued at 75 degree proof strength. Accordingly, the total quantity of spirit issued as per Register 78 maintained by the excise personnel posted in the manufacturers was 22.42 lakh LPL. But, the actual quantity of spirit that should have been utilised on the basis of strength as certified by the CE was 22.11 lakh LPL. Thus, the distillery showed an excess issue of 31,225 LPL spirit which resulted in evasion of excise duty of Rs. 35.60 lakh as mentioned below:

Period	Category of IMFL	Excess issue of spirit (in LPL)	Rate of duty per LPL (RS)	Amount involved (Rupees in lakh)
1.4.01 to 24.6.01	Whisky	2,188.20	130	2.84
	Rum	3,489.57	90	3.14
25.6.01 to 31.3.02 (Rate of duty revised from 25.6.01)	Whisky	4,595.33	143	6.57
	Rum	20,952.25	110	23.05
<b>Total</b>		<b>31,225.35</b>		<b>35.60</b>

The Government to whom the cases were forwarded in June 2007 stated in July 2007 that the Deputy Excise Collectors (DEC) incharge of two bottling plants had already sought explanation from the licensees for issue of under strength spirit. Demand notices would be served as soon as the replies were received from the licensees. The reply is, however, silent on the action taken against the CE, WB for such abnormal delay in furnishing the test reports.

#### **4.10.2 Evasion of excise duty due to issue of over strength IMFL**

Scrutiny of the records of two IMFL manufacturers<sup>6</sup> under SEs of two districts<sup>7</sup> between November 2006 and February 2007 revealed that the licensees produced and issued 4,411 batches of FL between 2001-02 and 2005-06. Of this, 110 batches were reported over strength between 0.2 and 4.6 degree proof by the CE on which differential duty was realisable. However, neither was any payment made by the licensees nor was any action taken by the excise authority for realisation of the duty even after a lapse of

<sup>6</sup> M/s. McDowell and Co. Ltd. and M/s. Shaw Wallace Distilleries Ltd.

<sup>7</sup> Burdwan (West) and Hooghly.

time ranging between 16 and 51 months from the date of receipt of the concerned test reports. This resulted in evasion of duty of Rs. 12.36 lakh as detailed in Annexure.

The Government to whom the cases were forwarded in June 2007 stated in July 2007 that in respect of M/s. Shaw Wallace Distilleries, Hooghly demand notice was issued on 26 December 2006. A report on recovery in this case and further development in the other case has not been received (September 2007).

#### **4.11 Non-realisation of revenue due to non-conducting of second redistillation of head cut spirit**

As per the notification issued under the provisions of the BE Act, effective from June 1992, the licensee of a distillery may undertake redistillation operation from silent/head cut spirit (HCS)<sup>8</sup> obtained from primary distillation with the permission of the EC for manufacture of spirit for potable purposes and such second redistillation shall be so made that no further feint spirit or HCS is left as residue. The EC, WB in his circular dated July 1997, directed that spirit obtained after second redistillation had to be used for potable purposes, provided it was found potable. In case, the spirit obtained after second redistillation was not exhausted within a period of three months from the date of obtaining such spirit, the distillery concerned had to communicate the reasons thereof to the Collector of the district. The Collector, after conducting an investigation, should decide whether the reasons adduced are genuine and should pass such orders as he deemed fit with an intimation to the EC. Allowable limit of wastage during such second redistillation is 7.5 per cent and wastage, if any, in excess of allowable limit is chargeable to duty at the highest rate applicable to IMFL.

**4.11.1** Scrutiny of the records of three distilleries in two districts<sup>9</sup> between January-February 2007 revealed that the HCS received after first redistillation of rectified spirit had been kept in store for more than 20 years in the respective distilleries. The total quantity of such HCS was 5.72 lakh LPL which would produce 5.29 lakh LPL of spirit (i.e. 92.5 per cent of 5.72 lakh LPL). Instead of carrying out second redistillation, the distillers requested the excise authority repeatedly to pass necessary order for the disposal of HCS. The excise authority did not direct the distiller to undertake second redistillation as per EC's circular of July 1997. This resulted in non-redistillation of HCS accumulated for more than 20 years and consequent non-realisation of excise duty of Rs. 9.84 crore as mentioned below:

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<sup>8</sup> Silent/head cut spirit also known as feint spirit is the residue obtained after redistillation of the rectified spirit.

<sup>9</sup> Burdwan (West) and Hooghly.

Sl. No.	Name of the licensee company and the distillery	Quantity of head cut spirit stored (in LPL)	Wastage allowable at the rate of 7.5 per cent (in LPL)	Spirit to be produced (in LPL)	Excise duty realisable at the rate of Rs. 186 per LPL (Rs. in crore)
1.	M/s. Shaw Wallace Distilleries Ltd., Hooghly	1.22	0.09	1.12	2.09
2.	M/s. McDowell and Co. Ltd., Hooghly	1.73	0.12	1.60	2.98
3.	M/s. McDowell and Co. Ltd., Asansol	2.77	0.22	2.57	4.77
<b>Total</b>		<b>5.72</b>	<b>0.43</b>	<b>5.29</b>	<b>9.84</b>

The Government to whom the cases were forwarded in June 2007, stated in July 2007 that since the matter involved technical aspects of redistillation and continuous distillation, it had been decided to seek an expert opinion in this regard from a reputed institute such as IIT, Kharagpur. The reply is not tenable as the second redistillation is obligatory after the circular of July 1997 and potability of the spirit was to be judged after second redistillation. The reply is also silent on the reasons for the inaction of the department to enforce redistillation which ultimately led to non-realisation of the Government revenue.

**4.11.2** Scrutiny of the records of M/s. McDowell and Co. Ltd. (distillery unit) and M/s. Shaw Wallace Distilleries Ltd. under SE, Hooghly in November 2006 revealed that the stock position of HCS in April 2001 and April 2002 was 1.09 lakh LPL and 1.28 lakh LPL respectively. Further, during the period between 2001-02 and 2005-06, M/s. McDowell and Co. Ltd produced 78,000 LPL of HCS while in case of M/s. Shaw Wallace Distilleries Ltd. there was no redistillation during 2002-03 to 2005-06. As per the last stock report taken in April 2006, stock of HCS was found to be 1.73 lakh LPL in M/s. McDowell and Co. Ltd and 1.20 lakh LPL in M/s. Shaw Wallace Distilleries Ltd. The distilleries neither undertook redistillation operation of HCS with the permission of the EC for manufacturing potable spirit nor was any action taken by the department to dispose of the spirit lying idle in store for more than 20 years. It was, however, noticed that between April 2001 and March 2006, quarterly stock taking was carried out by the department and permissible wastage of 22,000 LPL of HCS was allowed to the distilleries involving revenue of Rs. 32.27 lakh over the last five years which could have been avoided had timely action been taken by the department either to enforce second redistillation or to dispose the HCS lying in the stock of the distilleries.

#### **4.12 Non-realisation of establishment cost**

Under the provisions of the WB Excise (FL) Rules and WB Coloured and/or Flavoured Spirit (C and FS) Rules, the licensee of a bonded FL warehouse and a manufacturer of C and FS is required to pay a monthly fee in cash equivalent to monthly cost comprising average pay, compensatory allowances and contribution towards leave salary and pension in respect of the excise establishment deployed in the warehouse/bottling plant. Such monthly fee is to be paid within seven days after expiry of the month to which it relates.

Scrutiny of the records of three<sup>10</sup> offices of district excise officers (DEO) between August and September 2006 revealed that licensees of five FL warehouses and one bottling plant of C and FS did not pay the monthly fee of Rs. 27.95 lakh for the excise personnel deployed for different periods between April 2004 and March 2006. The DEOs also did not take any action to realise the establishment cost of Rs. 27.95 lakh.

The Government to whom the cases were reported between October and November 2006 stated in July 2007 that in one case Rs. 98,000 had been realised in March 2007. In two cases involving Rs. 4.39 lakh, the Government stated that bonds of the licensees were non-functional since 2004-05. The reply is not tenable as the licensees had applied for the surrender of their licences between December 2005 and January 2006 and were, thus liable to pay establishment cost upto March 2006. In two cases involving Rs. 20.11 lakh it was stated that the licensees had moved the High Court at Kolkata. The State Government, however, could not furnish copies of the Court order restraining the Government to issue a demand notice in this regard. In the remaining case involving Rs. 2.47 lakh, the Government had asked the department to forward it to the certificate officer for realisation. A report on realisation in this case and further development in other cases has not been received (September 2007).

#### **4.13 Non-realisation of security deposit from C and FS manufacturers**

Under the provision of the West Bengal Excise (C and FS) Rules as amended in February 2005, the licensees of C and FS manufacturers shall deposit Rs. 5 lakh as security deposit either through treasury challan or an interest bearing security from any nationalised bank.

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<sup>10</sup> Collector of Excise, Kolkata (North), Collector of Excise (South) and SE, Jalpaiguri.

Scrutiny of the records of four C and FS manufacturers<sup>11</sup> under two SEs<sup>12</sup> and two Collectors of Excise<sup>13</sup> between November 2006 and February 2007 revealed that security deposit at the rate of Rs. 5 lakh was not made by four licensees till the date of audit. Of this, in respect of two C and FS manufacturers, the excise authorities had renewed their licence from 2005-06 onwards without the realisation of security deposit. In the remaining two cases, the excise authorities had neither realised the security deposit nor renewed their licences resulting in non-realisation of security deposit of Rs. 20 lakh.

The Government to whom the cases were forwarded in June 2007 stated in July 2007 that M/s. EDCL had deposited Rs. 5 lakh as security deposit on 7 June 2007 and in respect of the remaining licensees, West Bengal CS manufacturers and bottlers association had moved the High Court at Kolkata in February 2006. No order had yet been passed by the Court. The State Government could not, however, confirm whether the licensees in question were members of the said association and applicant in the above matter. The reply is also silent about failure of the State Government to recover the security deposit despite lapse of over one year till the court case was registered. Further reply has not been received (September 2007).

#### **4.14 Non/short realisation of fair rent**

Under the WB Excise Rules 1910, as amended in March 2002, the contractor/supplier of CS to retail vendors through warehouse established on the Government land or building shall pay to the State Government with effect from April 2001, a rent equivalent to fair rent as assessed by the concerned Land Acquisition (LA) Collector.

Scrutiny of the records of SE, Paschim Medinipur in December 2006 revealed that the LA Collector, Paschim Medinipur in July 2003 had assessed the fair rent as Rs. 30,800 per month in respect of M/s. IFB Agro Industry Ltd., a contractor/supplier of CS. The District Collector (DC) had instructed the concerned DEC in August 2003 to raise demand for fair rent from April 2001 to August 2003 for Rs. 8.93 lakh and to serve notice to the contractor/supplier every month thereafter. But, the concerned DEC failed to raise the demand for realisation of the fair rent from the contractor. Further scrutiny, however, revealed that Rs. 37,359 had been realised as rent in April 2002 by the excise authority for 2001-02 at the old rate. Thus, failure to raise additional demand/demand of fair rent for the period from 2001-02 to 2005-06 resulted in non/short realisation of fair rent of Rs. 18.11 lakh.

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<sup>11</sup> M/s. EDCL Ltd, M/s. Himalayan Endeavour (P) Ltd., Malda and Siliguri and M/s. Varas International (P) Ltd.

<sup>12</sup> Darjeeling and Malda.

<sup>13</sup> Kolkata (South) and Kolkata (North).

The Government to whom the case was forwarded in February 2007 stated in July 2007 that reassessment of fair rent on the area actually utilised by the licensee was awaited at the LA Collector's level and demand would be raised after reassessment of the same. The reply is, however, silent on the reasons for the failure of the DEC to recover fair rent at the rates assessed by the LA collector till it was pointed out in audit. A report on further development has not been received (September 2007).

#### **4.15 Non/short realisation of annual licence renewal fee/initial grant fee**

**4.15.1** By a notification issued in November 2002 read with subsequent amendment in July 2004 and February 2005, the Government decided that the licensee of C and FS manufacturer shall apply for renewal of licence with a receipted challan of Rs. 500 for the years for 2003-04 and 2004-05 and of Rs. 1 lakh thereafter.

Scrutiny of the records of five C and FS manufacturers<sup>14</sup> between July 2006 and February 2007 revealed that four licensees had applied for renewal of licence for the years from 2003-04 to 2006-07 without the payment of renewal fees and one licensee had deposited Rs. 500 instead of Rs. 1 lakh for the year 2005-06. Of these, demand notices for the years 2003-04 to 2006-07 were raised in the case of one licensee after a lapse of time ranging between 1 and 36 months while in the case of the remaining four licensees, no demand was raised. This resulted in non/short realisation of renewal fee of Rs. 9.03 lakh as mentioned below:

*(Rupees in lakh)*

Name of the licensees (M/s.)	Year of licence	Date of demand	Amount realisable	Amount realised	Amount due
Varas International (P) Ltd., Kolkata	2003-04 to 2006-07	-	2.01	-	2.01
Himalayan Endeavour (P) Ltd., Siliguri	2003-04 to 2006-07	20.4.06	2.01		2.01
Himalayan Endeavour (P) Ltd., Malda	2003-04 to 2006-07	-	2.01		2.01
Farrini 11 UP, Kolkata (S)	2003-04 to 2006-07	-	2.01		2.01
Monalisa Bottling Industries (P) Ltd., Jalpaiguri	2005-06	-	1.00	0.005	0.995
<b>Total</b>					<b>9.03</b>

The Government to whom the cases were forwarded in June 2007 stated in July 2007 that M/s. Himalayan Endeavour (P) Ltd., Siliguri and M/s. Farrini 11 UP had deposited their renewal fee on 9 March 2007 and 26 June 2007 respectively. In respect of M/s. Himalayan Endeavour (P) Ltd., Malda,

<sup>14</sup> M/s. Himalayan Endeavour (P) Ltd., Malda and Siliguri, M/s. Monalisa Bottling Indus.(P) Ltd., M/s. Varas International (P) Ltd., Kolkata and M/s. Farrini 11 UP, Kolkata.



the district authority had been requested to ask the licensee to show cause for non-observance of the regulation and in respect of M/s. Monalisa Bottling Plant a demand had been served for early realisation. As regards M/s. Varas International (P) Ltd., it was stated that WB CS manufacturers and bottlers association had moved the High Court at Kolkata in February 2006 but no order had yet been passed by the Court. The State Government could not, however, confirm whether the licensee was a member of the said association and applicant in the above matter. Besides, the Government also failed to explain the reasons for non-realisation of renewal fees for the years 2003-04 to 2005-06 in this instant case. Further development has not been reported (September 2007).

**4.15.2** Under the provisions of the WB Excise (FL) Rules and WB (C and FS) Rules, the licensees of distilleries, FL bonded warehouses, FL trades, manufacturers of C and FS and bottlers of CS are required to deposit annual licence renewal fee in advance for renewal of their licences for the next licensing year at the prescribed rates within the stipulated period. In case of initial grant of licence for a new FL 'ON'<sup>15</sup> shop or for shifting of the licenced premises of an FL bonded warehouse to a new site, fee at the prescribed rate is also to be deposited by the licensee.

Scrutiny of the records of three<sup>16</sup> offices of DEOs between November 2005 and September 2006 revealed that in 14 cases, annual licence renewal fee and fee for grant of initial licence for the periods falling between 2002-03 and 2006-07 were either not realised or realised short from the licensees of two distilleries, five FL bonded warehouses, five FL trades and one FL 'ON' shop. This resulted in non/short realisation of annual licence renewal fee and initial grant fee of Rs. 7.35 lakh.

The Government to whom the cases were reported between December 2005 and November 2006 admitted the audit observation in five cases involving Rs. 2.80 lakh of which Rs. 2.30 lakh had been realised between March 2006 and March 2007. A reply in the remaining nine cases involving Rs. 4.55 lakh has not been received (September 2007).

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<sup>15</sup> On shop means a place where liquor can be served to the customers for consumption.

<sup>16</sup> Collectors of Excise, Kolkata (North) and Kolkata (South), SE, Hooghly.