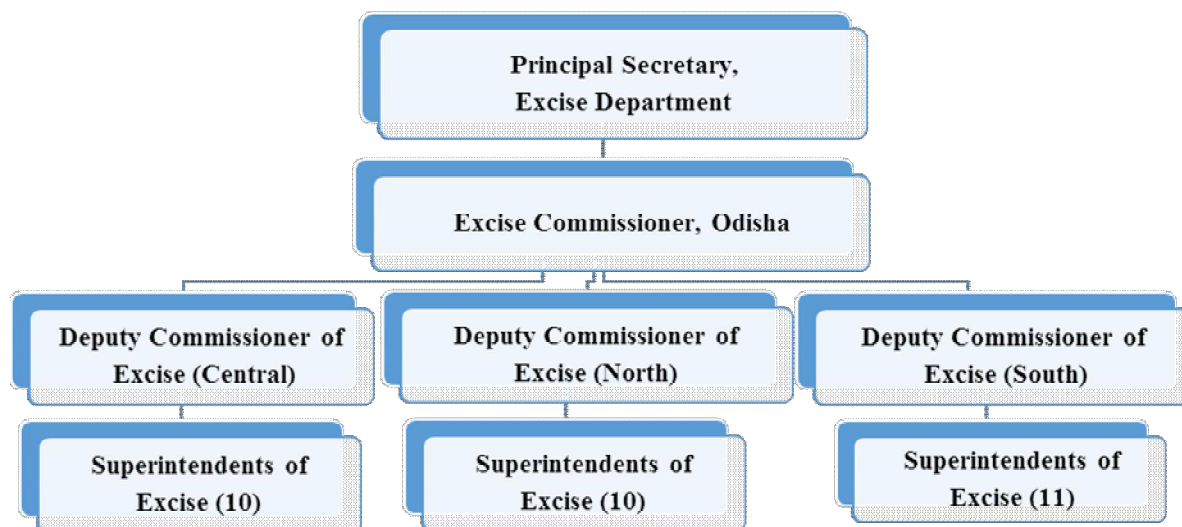


CHAPTER III

STATE EXCISE DUTY

3.1 Tax Administration

Levy and collection of Excise Duty (ED) is regulated under the Odisha Excise Act, 2008 and Rules made thereunder by the Government. The organisational setup for administration of excise revenue is as under:



3.2 Internal Audit

Internal Audit Wing (IAW), responsible for evaluating the Internal Control measures in the department and its field offices, was functioning since June 2010. During 2018-19, the IAW covered nine out of 16 units planned for audit. The shortfall in conducting audit was attributed to shortage of manpower by the Department. It was observed that 554 paragraphs of Internal Audit Reports having money value of ₹155.17 crore issued during 2011-12 to 2018-19 were pending for want of disposal as on 31 March 2019.

3.3 Results of Audit

Audit was conducted in 30 out of 36 units (81.08 *per cent*) during 2018-19. Revenue Receipts collected in the test checked 30 units was ₹3,204.49 crore, which was 99.49 *per cent* of total revenue receipts of ₹3,221.03 crore collected in these 36 units. Audit scrutiny showed non/ short realisation of excise duty and non/ short recovery of licence fee/ interest penalty and other irregularities involving ₹65.30 crore in 2,360 cases as indicated in Table 3.1.

Table 3.1: Details of category wise audit observations on State Excise revenue receipts

Sl. No.	Categories	Number of cases	(₹ in crore)
			Amount
1	Non/ Short realisation of excise duty	636	51.00
2	Non/ Short recovery of license fee/ interest/ penalty	1,646	12.50
3	Other irregularities ²⁴	78	1.80
Total		2,360	65.30

Department accepted the under assessments and other deficiencies worth ₹53.75 crore in 2,075 cases pointed out in audit during the year and realised ₹0.76 crore in 205 cases. Similar errors/ omissions in other excise units under the department but not covered in the test audit are required to be internally examined by the Department in all the other units with a view to ensure that excise duty/ fees are levied as per provisions of the Act and rules.

3.4 Audit observations

Audit scrutinised assessment records on ED and associated fees in the District Excise Offices (DEOs). Audit found several cases of non-observance of the provisions of the Acts/ Rules/ Annual Excise Policies (AEPs) which led to non-levy/ short levy and non realisation of ED, fees and fines, *etc.*, as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on a test check carried out by Audit. Such omissions on the part of the Superintendents of Excise (SEs) were pointed out by Audit in previous years also, however, the irregularities have persisted and remained undetected until the next audit was conducted. There was a need for the Department to improve the internal control system including strengthening of internal audit to avoid recurrence of such irregularities.

3.5 Provisions of the Acts/ Rules/ Annual Excise Policies and instructions of Government not observed

The Bihar and Odisha Excise (B&OE) Act, 1915 and Rules made thereunder by the Government as well as by the Board of Revenue (BOR) read with the Excise Manual, AEPs and notifications of Government provide for levy and collection of ED and charges like establishment cost and extra hour operation charge etc., at the prescribed rates.

The SEs, while finalising the assessments, did not observe the above provisions in some cases which resulted in non-levy and non-realisation of ED/fees, fines and penalty, etc., as follows:

3.5.1 Persistent irregularities and action taken

Finance Department, Government of Odisha, had issued instructions in May 1968 and September 1994 for expeditious disposal of audit observations included in the Audit Reports. As per the instruction, as soon as the reports of the C&AG of India are received, facts and figures mentioned therein should be immediately verified with reference to the records maintained in the concerned Departments and its subordinate offices and necessary actions are to be promptly initiated on various points raised in different paras of the Audit Reports pertaining to each individual Department of the Government.

An irregularity is considered persistent, if it occurs year after year. It is deemed pervasive when prevalent in the entire system. Recurrence of irregularities, despite being pointed out in earlier audits, is indicative of slackness on the part of the executive and lack of effective monitoring. This, in turn, encourages wilful deviations from observance of rules/ regulations and results in weakening of administrative structure. Audit observed instances of persistent and pervasive irregularities worth ₹16.64 crore.

On scrutiny of 34 observations featured in Audit Reports of Revenue Sector during last five years from 2013-14 to 2017-18, it was noticed that out of these 34 observations some irregularities of similar nature *i.e.*, non/ short realisation of excise duty on IMFL/ country spirit and other charges were occurring persistently, as detailed in Table 3.2 below:

Table 3.2: Audit paragraphs with Persistent irregularities

(₹ in lakh)			
Year	Para No.	Title of the para	Money value
2013-14	3.5.1	Non realisation of differential State Excise Duty on annual closing stock of IMFL/ Beer	404.00
2017-18	3.6.2	Short realisation of Excise Duty on short lifting of Country Spirit	22.97
2017-18	3.6.4	Non realisation of establishment cost and overtime fees	12.35
2015-16	3.6.3	Non realisation of extra hour operation charges and overtime fees	19.10
2017-18	3.6.3		21.54
2013-14	3.5.9	Short/ Non levy of Excise Duty on short lifting of IMFL and Beer	3.86
2015-16	3.6.1		157.00
2017-18	3.6.1		1,023.00
		Total	1,663.82

In view of the above, it is recommended that the Government may give priority in acting upon these persistent irregularities for realisation of revenue due to the Government.

3.5.2 Non recovery of excise revenue despite Government's assurance for realisation

On further scrutiny of all 34 observations featured in the Audit Reports pertaining to above stated period involving money value worth ₹33.43 crore, only ₹7.32 crore in 10 cases was realised despite Government's assurance. The matter was sub judice in three observations involving five cases. In eight cases, Government disagreed with the audit observations for which the matters were under consideration of Public Accounts Committee (PAC). Though the SEs in 12 observations and Government in three observations assured to raise demand and recover the amount pointed in the audit observations, no compliances have been received till date (October 2020). The reason for non/ short recovery had not been intimated to Audit. It was also observed that the remedial measures taken by the Government to curb pilferage in revenue realisation was not effective since similar nature of cases were occurring every year and consistently pointed out by audit between 2013-14 and 2017-18.

Thus, the measures taken by the Department to plug the loopholes in the system to augment revenue collection in compliance with the recommendations of the PAC and instructions of the Finance Department were absent/ inadequate. It is in financial interest of the State that audit observations need to be complied with immediately.

3.5.3 Non/ short levy of Excise Duty for short lifting of Indian Made Foreign Liquor and Beer

Excise duty and fine of ₹23.25 crore was non/ short levied against short lifting of Indian Made Foreign Liquor and Beer in respect of 245 licensees during 2016-17. Similarly, Excise duty of ₹2.45 crore was short levied for short lifting of Indian Made Foreign Liquor and Beer in respect of 38 licensees in 2017-18.

Rule 6A of Odisha Excise Exclusive Privilege (Foreign Liquor) Rules, 1989 provides that every successful bidder of foreign liquor 'OFF' shop shall, before obtaining licence, guarantee the sale of the Minimum Guaranteed Quantity (MGQ) of foreign liquor as fixed by the Excise Commissioner.

As per Rules 34(3) to 34(8) of the Odisha Excise Rules, 2017, a Minimum Guaranteed Quantity (MGQ) of IMFL/ Beer, as determined by the Government for the year, should be guaranteed by the successful tenderer/ bidder to lift for retail sale in the shop. The licensee shall lift the MGQ of IMFL and Beer for the entire year before the expiry of the term of licence *i.e.*, last day of March. In case of failure on the part of the licensee to lift the stock from Odisha State Beverage Corporation (OSBC) Ltd. as guaranteed, action may be taken to make good the loss of ED which shall be recovered from the bank guarantee obtained by the Collector. In case of further deficit, the amount will be collected at the end of the year with 10 *per cent* fine on the deficit amount.

As per instructions of Government (May 2015), 'OFF' shop license holders retailing IMFL/ Beer were given option to lift IMFL in London Proof Litre (LPL)²⁵ involving equal amount of excise duty (ED) by interchanging the MGQ of Beer in BL²⁶ fixed in respect of their respective shops. Government, however decided (March 2016) to discontinue the interchangeability of MGQ in lifting of Beer and IMFL from 1 April 2016 which was again allowed from 29 November 2016 for the remaining period of the financial year 2016-17. According to Government orders²⁷, excess quantity of MGQ drawn in previous months be adjusted against short drawn MGQ in subsequent months and the excess quantity lifted in the entire year be adjusted in the MGQ keeping in view the total MGQ fixed for the excise year.

In terms of Annual Excise Policy (AEP) 2016-17, ED on IMFL worked out to ₹292 per LPL taking into account the specific component prescribed (₹260) and the *ad valorem* component of ED²⁸ for the lowest priced IMFL and ED on Beer was ₹59 per BL as clarified by Government in March 2017. Similarly, as per the Annual Excise Policy (AEP) 2017-18, the minimum rate of ED on IMFL and Beer worked out to ₹312 per²⁹ LPL and ₹45 per³⁰ (BL) respectively

²⁵ London Proof Litre (LPL) - Strength of alcohol measured in terms of 'Degree Proof'

²⁶ Bulk Litre (BL) - a litre with reference to the bulk or quantity of the contents equivalent to 0.219 gallons.

²⁷ Letter No. 286 dated 13.1.2016

²⁸ The minimum landing cost of 6.75 LPL of IMFL was ₹431.90. The landing cost per LPL of IMFL was ₹63.99 = ₹64. *Ad valorem* 50 *per cent* thereon amounts to ₹32. Hence, ED on IMFL is ₹292 per LPL (fix component ₹260 + ₹32)

²⁹ The minimum landing cost of 6.75 LPL of IMFL is ₹433.26. The landing cost per LPL of IMFL is ₹64.18. *Ad valorem* 50 *per cent* thereon amounts to ₹32.09. Hence, the ED on IMFL is ₹312 (₹280 + ₹32)

³⁰ The minimum landing cost of 7.80 BL of Beer is ₹385.27. The landing cost per BL of Beer is ₹49.39 *ad valorem* 50 *per cent* thereon amounts to ₹24.69. Hence, the SED on Beer is ₹45 (₹20 + ₹25)

taking into account the *ad-valorem* component of ED for the lowest priced IMFL and Beer.

Audit scrutinised the records relating to MGQ and lifting of IMFL and Beer relating to the period 2016-18. The following were noticed during the course of audit:

- It was noticed that during 2016-17, 245 licensees under 14 Excise Offices³¹ short lifted 24.68 lakh BL of Beer and 2.25 lakh LPL of IMFL from OSBC Ltd. Concerned SEs, however, did not assess and levy the ED payable along with fine for such short lifting. Non/ short realisation of ED on such short lifting worked out to ₹6.58 crore and ₹14.56 crore respectively, totaling to ₹21.14 crore after allowing interchangeability of MGQ in lifting of Beer and IMFL involving equal amount of ED during November 2016 to March 2017 and where no interchangeability was applicable, fine of ₹2.11 crore was also leviable.
- Similarly, it was noticed during 2017-18 that 38 licensees³² pertaining to seven DEOs³³ short lifted 68,944.210 LPL of IMFL and 2,01,809.701 BL of Beer against the MGQ fixed for their shops, in respect of which ED and fine worth ₹3.37 crore were leviable. The SEs had demanded/ realised ED and fine worth ₹0.92 crore only. This resulted in short levy and realisation of ED and fine of ₹2.45 crore.

Audit observed that the SEs had failed to raise demand in respect of short lifted quantity despite maintaining the MGQ records that contained shop-wise lifting position of Beer and IMFL. Similar observations had featured in the previous Audit Reports³⁴ also.

The matter was intimated to Government (September 2019 and January 2020). The reply is awaited (October 2020).

3.5.4 Excise Duty not realised on short lifting of Country Spirit

Failure to recover the *ad valorem* component on lifting of Country Spirit less than the Minimum Guaranteed Quantity led to revenue loss of ₹1.81 crore.

As per Rule 6 (A) of Odisha Excise (Exclusive Privilege) Rules, 1970, read with Rule 34 of the Odisha Excise Rules, 2017, every successful bidder for Country Spirit (CS) shop shall, before obtaining licences, guarantee the sale of the MGQ of CS as fixed by the Collector. The licensee shall lift the monthly MGQ before five pm on the last day of the month. The Collector may, for any special reasons, permit the licensees to lift the short drawn MGQ of the previous month in the succeeding month except for the months of February and March. No un-lifted quantity of the CS shall be permitted to be lifted beyond the last day of February. In case of failure on the part of the licensee to lift the MGQ, action may be taken to make good the loss of ED, which shall be recovered from the bank guarantee obtained by the Collector. In case of

³¹ Angul, Bhadrak, Boudh, Deogarh, Gajapati, Jajpur, Jharsuguda, Mayurbhanj, Nabarangpur, Nuapada, Kalahandi, Kendrapara, Keonjhar and Koraput

³² Licensees of 'OFF' and 'ON' shops

³³ SEs Dhenkanal, Jajpur, Mayurbhanj, Ganjam, Kendrapara, Sundargarh and Khordha

³⁴ Audit Report for the year ended March 2017 and March 2018

further deficit, the amount will be collected at the end of the year with 10 per cent fine³⁵ on the deficit amount. As per the Annual Excise Policies (AEPs) for the years 2016-17 and 2017-18, the ED on CS was ₹66.10³⁶ and ₹86.68³⁷ per LPL respectively.

Audit test checked (April 2018 to March 2019) records³⁸ in 30 out of 36 District Excise Offices (DEOs) and observed that 16 out of 37 licensees of CS pertaining to two DEOs³⁹ short lifted 1.59 lakh LPL against the MGQ fixed for their shops during the year 2016-17. The licensees, however, did not pay the ED for such short lifting of MGQ. The SEs also did not raise demand of ED amounting to ₹105.25 lakh.

Similarly, during 2017-18, 11 out of 67 licensees of CS pertaining to four DEOs⁴⁰ short lifted 1.04 lakh LPL against the MGQ fixed for their shops for which ED of ₹90.38 lakh was payable. Seven licensees, however, deposited ED worth ₹21.45 lakh. SEs did not raise demand for the remaining amount of ₹68.93 lakh along with fine of ₹6.89 lakh despite having monthly lifting statement of the CS licensees. Thus, during the years 2016-17 and 2017-18, ED amounting to ₹174.18 lakh (₹105.25 lakh plus ₹68.93 lakh) and fine amounting to ₹6.89 lakh could not be realised.

The matter was intimated to Government (September 2019). The reply is awaited (October 2020).

3.5.5 Charges for extra hour operation and overtime fees not realised

Extra hour operation charges of ₹64.21 lakh for carrying out 2,005 hour operations beyond the scheduled hours during 2017-18 was not realised from one distillery.

As per Rule 79 of the Odisha Excise Rules, 2017, all operations in a distillery and other production units which require the presence of an Excise Officer shall be stopped on Sundays and other holidays. If the distillery and other production units function for more than one shift, additional staff shall be posted as determined by the Excise Commissioner and the cost of such additional staff shall be borne by the said unit. The distillery and other production units shall pay to the State Government a sum of ₹3,000 per each extra hour of operation beyond the scheduled hours, in addition to the overtime fees payable to the excise staff. Overtime fees to be charged for each hour of overtime work done shall be one-fifth of a day's pay of the officer concerned.

Audit scrutinised (April 2018 to March 2019) records in 30 out of 36 DEOs wherein only three distilleries were present pertaining to three DEOs. Audit

³⁵ Provision for fine on short lifting of Country Spirit was inserted in the Odisha Excise Rules, 2017, effective from April 2017

³⁶ Excise Duty + *Ad valorem* per case i.e., for three LPL = ₹198.29, ED per LPL = ₹198.29/3 = ₹66.096 or say ₹66.10

³⁷ Excise Duty + *Ad valorem* per case i.e., for three LPL = ₹260.04, ED per LPL = ₹260.04/3 = ₹86.68

³⁸ MGQ Registers, Monthly Returns and other connected documents

³⁹ SE, Bhadrak and SE, Kendrapara

⁴⁰ SE, Bhadrak, SE, Kendrapara, SE, Nayagarh and SE, Puri

noticed that out of the three, one distillery⁴¹ under DEO, Ganjam carried out extra hour operation of 2,005 hours beyond the scheduled hours during April 2017 to March 2018. However, the distillery did not pay the extra hour operation charges worth ₹60.15 lakh (2,005 x ₹3,000). The Distillery also did not pay overtime fees worth ₹4.06 lakh for three excise staff posted for the extra hour operation during the above period. Audit observed that the SE also did not raise demand for realisation of revenue despite maintaining the records containing the days of extra hour operation for each month. This resulted in non-collection of excise revenue amounting to ₹64.21 lakh.

The matter was intimated to Government (August 2019). The reply is awaited (October 2020).

3.5.6 Fee towards cost of establishment not realised

Two Superintendents of Excise did not raise demand for realisation of the cost of establishment of ₹19.28 lakh for the years 2016-17 and 2017-18 relating to two Distilleries.

As per Rules 34(1) and 34(2) of the Board's Excise Rules (BER), 1965 read with Rules 92 and 93 of the Odisha Excise Rules, 2017, the Excise Commissioner (EC) shall appoint the Excise Officers (EOs) and staff for proper supervision of the operations carried out in each warehouse or storeroom. The licensee shall pay to the State Government such fees for maintaining a warehouse and for conducting the operations at the rates prescribed at the end of each calendar month which shall not exceed the whole of the cost of the excise staff employed for the purpose.

Mentions were made in earlier Audit Reports⁴² regarding non realisation of fees towards cost of establishment from distilleries. Test check (September 2018 and January 2019) of records relating to reimbursement of cost of establishment in two SE offices⁴³ revealed that nine EOs and staff were posted in two distilleries during the years 2016-17 and 2017-18 for supervision of the operations carried out in those distilleries. The pay and allowances of ₹19.28 lakh in respect of EOs and staff deployed in those two distilleries relating to the said period were paid by the respective Excise Offices. The SEs did not raise demand for reimbursement of the cost of establishment paid by them in form of pay and allowances. This resulted in non-realisation of fees towards cost of establishment of ₹19.28 lakh.

The matter was intimated to Government (July 2019). The reply is awaited (October 2020).

3.5.7 Penalty for short supply of Country Spirit not levied

Superintendent of Excise did not raise demand for realisation of penalty of ₹15 lakh for short supply of Country Spirit.

As per provisions contained in the Excise Policy for the year 2017-18, a CS producer and supplier shall ensure at least 300 full truck load supply of CS per

⁴¹ Aska Co-operative Sugar Industries Ltd

⁴² Audit Reports for the years ended March 2017 and March 2018

⁴³ Ganjam and Koraput

month to wholesale depots for sale to retailers. In case of failure to supply the same quantity of CS, penalty of ₹15 lakh would be leviable on supplier.

Audit scrutinised (October 2018) records of SE, Ganjam and observed that one supplier Aska Co-operative Sugar Industries Ltd (ACSIL) could not supply the prescribed quantity of CS to the four depots⁴⁴ of OSBC Ltd during 2017-18. ACSIL could only supply 3,461 truck load of CS against the required quantity of 3,600 (300×12) truck load. The unit was liable to pay a penalty of ₹15 lakh as it failed to supply the required quantity of CS. However, no demand was raised by SE, Ganjam to realise such penalty.

The matter was intimated to Government (September 2019). The reply is awaited (October 2020).

⁴⁴ Balasore, Chandikhol, Khordha and Nirgundi