

CHAPTER-III
STATE EXCISE

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3.1 Tax administration

The Principal Secretary (Excise and Taxation) is the administrative Head at Government level. The Department is headed by the Excise and Taxation Commissioner (ETC). The Department has three Zones¹, which are headed by the Additional ETC (South Zone), Deputy ETCs of North Zone and Central Zone. Besides, 22 Excise and Taxation Inspectors under the control of the Assistant Excise and Taxation Commissioners (AETCs) of the respective districts are deputed to oversee and regulate levy/collection of excise duties and allied levies.

3.2 Results of audit

In 2015-16, test check of the records of nine units out of 12 units relating to State excise duty revealed non/short realisation of excise duty/license fee/interest/penalty and other irregularities involving ₹23.17 crore in 73 cases as given in **Table-3.1** below.

Table-3.1: Results of audit

			(₹ in crore)
Sr. No.	Categories	Number of cases	Amount
1.	Non/short realisation of excise duty	04	0.27
2.	Non/short recovery of license fee/interest/penalty etc.	36	15.69
3.	Other irregularities	33	7.21
Total		73	23.17

During the year 2015-16, the Department accepted under-assessment and other deficiencies of ₹18.66 crore in 58 cases, out of which an amount of ₹3.76 crore was realised in 54 cases of which ₹1.95 crore in 32 cases pertain to earlier years and ₹1.81 crore in 22 cases for the year 2015-16.

Significant cases involving ₹16.68 crore are discussed in the following paragraphs.

3.3 Short recovery of license fee on opening of vends

License fee amounting to ₹8.59 crore was short recovered from 29 licensees. In addition, interest of ₹1.03 crore was also leviable.

As per Para 4.3 of Excise Announcement (EA) 2014-15, a licensee is required to pay annual license fee fixed on the basis of monthly MGQ. Para 4.4 (a) provides that the annual license fee of a particular vend shall be pre-determined based on the MGQ of Country Liquor (CL) and Indian Made Foreign Spirit (IMFS) fixed for each vend for the whole of year on prescribed rates of license fee. The license fee shall be divided into 12 monthly instalments and the licensee shall deposit it into the Government treasury by the last day of each month. The last instalment for the month of March shall be paid in full by 15th of March before obtaining the excise pass for issue of liquor. Para 4.5 (a) further provides that if the licensee

¹ South Zone (Shimla, Solan, Sirmour, Kinnaur and Spiti area), North Zone (Chamba, Kangra and Una) and Central Zone (Bilaspur, Hamirpur, Kullu, Lahaul area and Mandi)

fails to deposit the license fee, interest is leviable at prescribed rates. As per Para 4.5 (c), the AETC in-charge of the District or any other officer authorised would ordinarily seal vend on 1st day of the following month or 16th March as the case may be.

Test check of records of seven Assistant Excise & Taxation Commissioners (AETCs)² revealed that the Department could recover only ₹34.32 crore against the recoverable license fee of ₹42.91 crore for the year 2014-15 from licensees of 29 vends resulting in short recovery of license fee of ₹8.59 crore. Interest of ₹1.03 crore accrued on unpaid amount of license fee was also leviable.

The Department intimated in September 2016 that an amount of ₹1.75 crore³ had been recovered by five AETCs from licensees of 12 vends and efforts were being made to recover the balance amount.

The matter was reported to the Government between August 2015 and February 2016; its reply was awaited (November 2016).

3.4 Non-levy of additional fee and penalty on short lifting of Minimum Guaranteed Quota

Additional fee of ₹5.34 crore for short lifting of 20,16,928 proof liters of liquor by licensee of 451 vends was not levied. In addition, a penalty of ₹0.54 crore was also leviable.

Para 4.3 of the EA 2014-15 stipulates that each licensee shall be required to lift MGQ both of CL and IMFS as fixed for each vend failing which he shall be liable to pay license fee fixed on the basis of the MGQ. In addition, the licensee shall also be liable to pay additional fee of ₹10 per proof litre (Pl) on CL and ₹56 per pl on IMFS on the un-lifted quota which falls short of 100 *per cent* of the MGQ. The licensee shall also be liable to pay penalty of ₹7 per pl on CL and ₹14 per pl on IMFS on the un-lifted quota of the liquor which falls short of the benchmark of 80 *per cent* of the MGQ. The AETC or Excise and Taxation Officer (ETO) in-charge of the District shall review the position of lifting of MGQ on quarterly basis and ensure recovery of the additional license fee as well as the amount of penalty on un-lifted MGQ.

Audit test checked the records of seven AETCs⁴ and noticed that licensees of 451 vends had lifted 89,08,339 pl of liquor against the fixed monthly MGQ of 1,09,25,254 pl which was short of 20,16,923 pl⁵ (CL: 1295242 pl and IMFS:

² Baddi: one licensee: ₹6.55 lakh, Kullu: two licensees: ₹43.14 lakh, Mandi: three licensees: ₹31.88 lakh, Nahan: two licensees: ₹0.53 crore, Shimla: 10 licensees: ₹0.83 crore, Solan: three licensees: ₹1.66 crore and Una: eight licensees: ₹4.75 crore

³ AETCs Kullu: two vends, ₹4.00 lakh, Nahan: two vends, ₹35.81 lakh, Shimla: three vends, ₹11.96 lakh, Solan: four vends, ₹0.83 crore and Una: one vend, ₹40.00 lakh.

⁴ Baddi: 26 vends: ₹49.16 lakh, Chamba: 72 vends: ₹0.66 crore, Mandi: 123 vends: ₹0.55 crore, Nahan: 26 vends: ₹49.98 lakh, Shimla: 86 vends: ₹0.68 crore, Solan: 53 vends: ₹1.39 crore and Una: 65 vends: ₹1.59 crore (Including penalty)

<u>Liquor quota</u>	<u>CL</u>	<u>IMFL</u>	<u>Total</u>
MGQ monthly fixed	5842982	5082270	10925252
MGQ lifted	4547740	4360589	8908329
MGQ short lifted	1295242	721681	2016923

721681 pl) of the MGQ during 2014-15. However, additional fee of ₹5.34 crore was payable by these licensees but was not demanded by the concerned AETCs. Audit further noticed that out of licensees of 451 vends, 140 licensees had also not lifted 5,58,734.162 pl which falls short of the benchmark of 80 per cent of the MGQ for which penalty of ₹0.54 crore at the prescribed rates was required to be levied but the same was not levied/demanded by the concerned AETCs. The AETCs or ETO in-charge of the Districts did not review the position of lifting of MGQ by each vend on quarterly basis resulting in loss of revenue of ₹5.34 crore. In addition, a penalty of ₹0.54 crore was also leviable.

On this being pointed out, the Department intimated in September 2016 that out of ₹5.34 crore, an amount of ₹3.78 lakh⁶ had been recovered by five AETCs from licensees of 20 vends and efforts were being made to recover the balance amount.

The matter was reported to the Government between September 2015 and February 2016; its reply was awaited (November 2016).

3.5 Non-levy of interest on delayed payment of license fee

Interest amounting to ₹99.61 lakh on delayed payment of license fee of ₹76.39 crore was not demanded by the Department from the licensees of 109 vends resulting in short levy of interest to that extent.

Para 4.4 (d) of the EA 2014-15 stipulates that if a licensee is unable to lift the MGQ within a month, he shall be required to pay the full instalment of license fee for that month by the last day of the month and fee for the month of March shall be paid in full by 15th of March. Para 4.5 (a) further provides that if the licensee fails to pay the amount of license fee on due dates, interest at the rate of 10 per cent per annum up to one month and 18 per cent per annum thereafter shall be leviable.

Test check of records of six AETCs⁷ between July 2015 and February 2016 revealed that licensees of 109 vends had deposited license fee of ₹76.39 crore after due date between April 2014 and November 2015 with delay ranging from two to 406 days. They were therefore liable to pay interest of ₹99.61 lakh on belated payment of license fee. However, the concerned AETCs did not raise the demand for the same. This resulted in non-recovery of interest amounting to ₹99.61 lakh⁸.

On this being pointed out, the Department intimated (September 2016) that out of ₹99.61 lakh an amount of ₹31.38 lakh⁹ had been recovered by six AETCs and efforts were being made to recover the balance amount of interest.

The matter was reported to the Government between September 2015 and February 2016; its reply was awaited (November 2016).

⁶ AETCs Baddi: one vend, ₹0.15 lakh, Chamba: 15 vends, ₹2.60 lakh, Sirmour: one vend, ₹0.24 lakh, Solan: two vends, ₹0.66 lakh and Una: one vend, ₹0.13 lakh.

⁷ AETCs Baddi, Kullu, Mandi, Nahan, Shimla and Solan

⁸ AETCs Baddi: three Vends: ₹11.20 lakh, Kullu: 23 Vends: ₹3.91 lakh, Mandi: 16 Vends: ₹19.18 lakh, Nahan: 29 Vends: ₹21.57 lakh, Shimla: 23 Vends: ₹17.24 lakh and Solan: 15 Vends: ₹26.51 lakh

⁹ AETCs Baddi: ₹11.20 lakh, Kullu: ₹3.91 lakh Mandi: ₹0.12 lakh, Sirmour: ₹1.95 lakh, Shimla: ₹13.75 lakh and Solan: ₹0.45 lakh

3.6 Non-recovery of license fee on unsold stock of liquor

License fee of ₹43.83 lakh was recoverable in respect of 252 vends due to non-accountal of unsold stock of preceding year.

Para 3.19 of the EA 2014-15 stipulates that in case of renewal of license of a vend, the unsold stock of liquor upto 3 per cent of the MGQ of the preceding year i.e. 2013-14 in the vend, shall not be accounted towards the MGQ for the year 2014-15 and the licensee shall have to take this unsold stock on payment of license fee at the rate of 50 per cent as prescribed for the year 2014-15.

Test check of records of five AETCs¹⁰ brought out that licensees of 252 vends had not accounted for the unsold stock of 43,916.07 pl of liquor (CL: 11,836.99 and IMFS: 32,079.08 pl) of preceding year 2013-14. The license fee of ₹43.83 lakh at the rate of 50 per cent of applicable license fee for the year 2014-15 was payable on this unsold stock by the licensees. The license fee was neither demanded by the Department nor deposited by the licensees. This resulted in non-recovery of license fee of ₹43.83 lakh¹¹.

On this being pointed out, the Department intimated (August 2016) that out of ₹43.83 lakh an amount of ₹9.61 lakh had been recovered from four licensees by four AETCs¹² and efforts were being made to recover the balance amount.

The matter was reported to the Government between September 2015 and February 2016; its reply was awaited (November 2016).

3.7 Non/short recovery of salaries of excise establishment posted at distillery/brewery/bottling plants

Salaries of ₹34.77 lakh of excise establishment staff posted in a brewery, a distillery and two bottling plants were not recovered from the licensees for the year 2014-15.

Rules 9.13 and 9.16 of the Punjab Distillery Rules (PDR), 1932 as applicable in Himachal Pradesh, stipulate that the licensee shall agree to the posting of a Government Excise Establishment to his distillery for the purpose of ensuring due observance of the Rules and for watch and ward for which the licensee have to pay the salaries to that staff.

Cross check of records of a brewery, a distillery and two bottling plants with that of three AETCs revealed that salaries amounting to ₹36.62 lakh of the excise establishment staff posted to the distillery/brewery/bottling plants were required to be paid by the licensees for the year 2014-15. However, an amount of only ₹1.85 lakh was paid despite the fact that the AETCs, being the Drawing and Disbursing Officers, were aware of these postings. The AETCs did not take any

¹⁰ AETCs Baddi, Mandi, Nahan, Solan and Una

¹¹ AETCs Baddi: 39 vends: ₹7.30 lakh, Mandi: 56 vends: ₹6.07 lakh, Nahan: 41 vends: ₹6.64 lakh, Solan: 43 vends: ₹11.26 lakh and Una: 73 vends: ₹12.56 lakh

¹² AETCs Baddi: One licensee: ₹6.30 lakh, Nahan: One licensee: ₹0.23 lakh, Solan: One licensee: ₹1.57 lakh and Una: One licensee: ₹1.51 lakh

action to raise the demand and collect the dues, thus, depriving the Government of ₹34.77 lakh¹³.

On this being pointed out, the Department intimated (August 2016) that out of ₹34.77 lakh an amount of ₹26.98 lakh had been recovered from four licensees by three AETCs¹⁴ and efforts were being made to recover the balance amount.

The matter was reported to the Government between January and February 2016; its reply was awaited (November 2016).

3.8 Short recovery of license fee and interest on bottling of Country liquor

License fee and excise duty amounting to ₹28.75 lakh from two licensees was short recovered, resulting in loss of revenue to that extent. Interest on belated payment of license fee/franchisee fee of ₹5.39 lakh was also recoverable.

Rule 9.5 of the PDR, 1932 read with Para 5.1(29) (iii) of the EA 2014-15 provides that license fee at the rate of ₹0.80 per unit of 750 mls of CL shall be payable in case of bottling of CL by the distillery licensees. Rule 9.5 (8) of PDR, further, provides that if the licensee fails to pay the fee or part thereof on due dates, interest at the rate of 12 per cent upto one month and if default in the payment of fee exceed one month the interest at the rate of 18 per cent per annum from the initial date of default in payment shall be payable on CL/franchisee fees (on IMFS) till the default continued. Further, Para 5.2 (1) of EA 2014-15 provides that the State Excise duty on CL shall be leviable at the rate of ₹10 per PLs. Audit observed the following:

(a) Audit test checked the payment register of two distilleries under jurisdiction of two AETCs¹⁵ engaged in manufacturing of CL and noticed that the license fee for bottling of 25,17,688 unit of 750 mls of CL for the period 2014-15 aggregating to ₹20.14 lakh that was neither deposited by the distilleries' licensees nor demanded by AETCs. Audit, further, noticed that one licensee¹⁶ had paid State excise duty of ₹3.81 crore on sale of 38,99,418.107 pl of CL as against the payable amount of ₹3.90 crore resulting in short recovery of state excise duty of ₹8.61 lakh. This resulted in non-recovery of ₹28.75 lakh (₹20.14 lakh + ₹8.61 lakh) to the State exchequer.

(b) Test check of the payment register of seven AETCs revealed that in two AETCs¹⁷ license and franchisee fees of ₹1.11 crore for the year 2014-15 was payable between 07 January 2014 and 07 April 2015 but were deposited between 24 March 2014 and 02 December 2015 by four licensees. The delay ranged between three and 340 days on which interest of ₹5.39 lakh¹⁸ was leviable but the same was not levied/recovered by the Department.

¹³ AETCs Mandi: ₹8.47 lakh, Nahan : ₹5.11 lakh and ₹6.86 lakh and Una: ₹14.33 lakh

¹⁴ AETCs Mandi: one licensee: ₹2.80 lakh, Nahan: two licensees: ₹9.86 lakh and Una: one licensee: ₹14.32 lakh

¹⁵ AETCs Mandi: one licensee: ₹18.30 lakh and Una: one licensee: ₹1.84 lakh

¹⁶ AETC Una: ₹8.61 lakh

¹⁷ AETCs Bilaspur and Nahan

¹⁸ AETCs Mandi: One licensee: ₹2.16 lakh and Nahan: Three licensees: ₹3.23 lakh

On this being pointed out, the Department intimated in (August 2016) that out of ₹34.14 lakh, an amount of ₹10.89 lakh had been recovered by two AETCs¹⁹ and efforts were being made to recover the balance amount.

The matter was reported to the Government between January and February 2016; its reply was awaited (November 2016).

3.9 Non-recovery of fixed fee for not opening of L-13 vend

The Department had not recovered fixed fee of ₹6.90 lakh from two licensees for not opening three vends in the allotted Districts.

Para 6.10 of the EA for the year 2014-15 stipulates that CL suppliers were required to open an L-13 vend (wholesale vends) in each of District allotted to them on payment of license fees of ₹2.30 lakh per vend. It, further, provides that those CL suppliers who have opened L-13 vends during 2013-14 in those Districts which were not allotted to them during the year 2013-14 shall have to compulsorily open these L-13 vends during the year 2014-15 also as those concerned Districts have further been made as 'allotted' Districts for the year 2014-15.

Audit test checked the records of L-13 vends of AETCs, Mandi and Nahan and found that a CL supplier of Nahan had not opened L-13 vend in two Districts out of five Districts allotted for the year 2014-15. Another licensee of Mandi who had opened L-13 vend in Barmoh (Una District) was not allotted for the year 2013-14 and as such was compulsorily required to open L-13 vend during 2014-15 but failed to do so. Therefore, fixed fee of ₹6.90 lakh was recoverable from these two licensees for not opening of three vends. This was neither demanded by the Department nor deposited by the suppliers which resulted in non-recovery of fixed fee of ₹6.90 lakh.

On this being pointed out, the AETC, Nahan intimated (February 2016) that notice had been issued to the concerned Excise and Taxation Inspectors to recover the amount from the licensees whereas AETC, Mandi stated that efforts would be made to recover fixed fee from the concerned licensees.

The matter was reported to the Government between January and February 2016; its reply was awaited (November 2016).

3.10 Non-realisation of Entertainment Duty

The Excise and Taxation Department did not levy entertainment duty on cable operators thereby forgoing revenue of at least ₹0.55 crore.

The Cable TV Network (Regulation) Act, 1995, provides for mandatory registration of cable operators with the registering authority namely Head Postmaster of a Head post office of the area within whose territorial jurisdiction the office of the concerned cable operator is situated. Section 3 of the HP Entertainment Act, 1968, provides for levy of entertainment duty at rates to be specified by the Government that shall be collected by the proprietor and rendered to the Government. The Himachal Pradesh Entertainment Duty (Amendment) Act

¹⁹ AETCs Mandi: One licensee: ₹7.66 lakh and Nahan: Three licensees: ₹3.23 lakh

1999 brought in “cable television” and “television exhibition” as defined therein within the ambit of the HP Entertainment Act. Television exhibition includes an exhibition with the aid of any type of antenna with a cable network attached to it.

Test check of the records of three AETCs²⁰ and information obtained from District Public Relation Officers (DPROs) revealed that there were 83 cable operators registered in these three Districts. However, none of the cable operators were paying any entertainment duty on the entertainment services rendered to their subscribers though they were charging a fee from their customers for the entertainment supplied. Audit observed that no action was taken by the State Government to determine the methodology or rates of duty to be levied or levy any entertainment duty from them.

The Excise and Taxation Department vide notification of May 2012 had stipulated that duty on all kinds of entertainments shall be levied at the rate of 10 per cent of the payment for admission with immediate effect. Levy of even 10 per cent on the rates charged by the cable operators from their subscribers would result in accrual of revenue of ₹55.41 lakh from the cable operators as given in **Table-2.3** below.

Table: 2.3: Details of Cable Operators for which Entertainment Duty was not realized

Name of District	Total no. of cable operators	Cable Operators registered with Chief Post master	No. of Cable Connections	Rate per connection (in ₹)	Period of Entertainment duty payable	No. of months	Amount realised from cable connections (Col. 4*5*7)	Entertainment duty @ 10 per cent (₹in lakh)
1	2	3	4	5	6	7	8	9
Chamba	26	2	430	200	May 2012 to March 2015	35	30.10	3.01
		1	40	150		35	2.10	0.21
Nahan (Sirmour)	28	4	6,350	200	May 2012 to March 2015	35	444.50	44.45
Solan	29	10	1,814	200	Feb 2014 to Feb 2016	11 to 25	77.40	7.74
Total	83	17	8,634				554.10	55.41

The Department intimated (October 2016) that notices had been issued to the 17 cable operators by three AETCs to deposit the amount of entertainment tax and Circle Excise and Taxation Inspector were directed to recover the same.

The matter was reported to the Government in March 2016; its reply was awaited (November 2016).

²⁰ AETCs Chamba, Nahan and Solan

