

# Chapter III

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## **State Excise Duties**

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## Performance Audit on “Functioning of Prohibition and Excise Department”

### 3.1 Introduction

Prohibition & Excise (P&E) Department deals with regulation and control over manufacture, possession, transportation, distribution and sale of alcoholic products in the State. The Department plays a dual role of enforcing prohibition of arrack and collection of revenue through regulation of Indian Made Foreign Liquor (IMFL) and Foreign Liquor (FL). The Department is responsible for control of Prohibition & Excise related crimes through detection, investigation, prosecution of offences under the law and prevention of illicit trafficking in Narcotic Drugs and Psychotropic Substances. Excise revenue constituted 10 *per cent* of the total revenue raised by the State Government during 2018-19.

### 3.2 Organisational set up

Principal Secretary, Revenue Department is in charge of Excise Department at Government level. The Department is headed by the Commissioner of Prohibition & Excise (CPE) for administering related Acts.

All the 13 revenue districts of the State are divided into 29 excise districts. Each revenue district is under the charge of a Deputy Commissioner (DC) (for overall administration) and Assistant Commissioner (AC) (for enforcement of excise laws) and each excise district is under the charge of a Prohibition & Excise Superintendent (P&ES). There are three Regional Excise (Chemical) Laboratories situated in Kakinada, Guntur and Chittoor under the control of respective DCs.

There were 14 primary distilleries<sup>1</sup> and 20 secondary/ IMFL distilleries<sup>2</sup> functioning in the State as of March 2019. There were 4,380 retail Shops<sup>3</sup>, 819 Bars, four Micro-Breweries, 20 Clubs, 13 Tourism Development (TD)<sup>4</sup>, three Breweries and 29 Canteen Stores spread across 13 revenue districts in the State.

<sup>1</sup> Units producing Rectified Spirit (RS) and Extra Neutral Alcohol (ENA) which is raw material for production of liquor.

<sup>2</sup> Units that produce Indian Made Foreign Liquor.

<sup>3</sup> A licensed outlet to sell liquor.

<sup>4</sup> A license to sell liquor in tourist spots.

Organisational structure of the Department is given below:

**Figure-3.1: Organogram**



### 3.3 Audit Objectives

Performance audit on 'Functioning of Prohibition and Excise Department' was conducted with the objective of assessing whether;

- the department has levied and collected applicable taxes/ fees/ duties as per the Excise Act and Rules;
- enforcement activities of the department were effective; and
- internal control mechanism in the department was adequate.

### 3.4 Scope and Methodology of Audit

Audit was carried out between April and December 2019 and covered the period from June 2014<sup>5</sup> to March 2019. Audit methodology involved scrutiny of the relevant records in the Commissionerate of Prohibition and Excise (CP&E), Directorate of Enforcement (DoE), Offices of Deputy Commissioners (DC) (4)<sup>6</sup>, Assistant

<sup>5</sup> Composite State of Andhra Pradesh was bifurcated with effect from 02 June 2014.

<sup>6</sup> Chittoor, Krishna, Prakasam and Visakhapatnam.

Commissioners (AC) (Enforcement) (4)<sup>7</sup>, AC, Distilleries, Vijayawada, Prohibition and Excise Superintendents (P&ES) (10)<sup>8</sup> and Distillery Officers (11)<sup>9</sup> were test checked. Records of Andhra Pradesh State Beverages Corporation Limited (APSBCL) relating to collection of taxes, duties, *etc.* were also scrutinised. Joint physical verification of 196 (A4) retail shops, 75(2B) bars (15 *per cent*) and Micro-Breweries (2 out of 4) under the jurisdiction of test checked P&ES offices were conducted. For the purpose of representing whole State in the sample, the districts in the State were divided into three regions *viz.*, North Andhra<sup>10</sup>, Central Andhra<sup>11</sup>, and Rayalaseema<sup>12</sup>. Within each region, offices were selected on the basis of probability proportionate to size without replacement method.

Entry conference was held with the representatives of the State Government in April 2019, wherein audit objectives, scope, criteria and methodology of audit were explained. Draft Report was forwarded to the Government in March 2020 for their comments. Despite specific requests (May 2020 and November 2020) to intimate convenience for Exit meeting to discuss the audit findings, Government has not come forward.

### 3.5 Audit Criteria

Audit findings were benchmarked against the criteria sourced from the following:

- The AP Excise Act, 1968;
- The A.P. Excise (Grant of License of selling by Bar and Conditions of License) Rules, 2017;
- The A.P. Excise (Grant of License of selling by Shop and Conditions of License) Rules, 2012;
- The A.P. Excise (Grant of License of selling by in-house and conditions of License) Rules, 2005;
- The A.P. Distillery (Manufacture of Spirits) Rules, 2006;
- The A.P. Distillery (Manufacture of IMFL other than Beer and Wine) Rules, 2006;
- The A.P. Brewery Rules, 2006;
- The A.P. Excise (Possession, Import, Export, Transport of Molasses Conditions of License and Permits) Rules 2008;
- The A.P. Excise (Levy of Interest on Government Dues) Rules, 1982;

<sup>7</sup> Chittoor, East Godavari, Guntur and Visakhapatnam.

<sup>8</sup> Gudur, Guntur, Kadapa, Narsaraopeta, Palasa, Proddatur, Tenali, Tirupati, Vijayawada and Visakhapatnam.

<sup>9</sup> Sentini Bio-products Private Limited, Sentini Beverages (P) Ltd, United Breweries Ltd, Pearl Distilleries, Soaring Spirits Private Ltd, Crux Bio-tech, Esveer Distilleries Pvt Ltd, Sri Krishna Enterprises, SPY Agro Industries, Andhra Sugars Pvt Ltd and Sri Sarvaraya Sugars Ltd.

<sup>10</sup> Srikakulam, Visakhapatnam and Vizianagaram.

<sup>11</sup> East Godavari, Guntur, Krishna, Nellore, Prakasam and West Godavari.

<sup>12</sup> Ananthapuramu, Chittoor, Kurnool and YSR Kadapa.

- The Andhra Pradesh (Regulation of Wholesale Trade and Distribution and Retail Trade in Indian Liquor, Foreign Liquor, Wine and Beer) Act, 1993.

### 3.6 Trend of Revenue

State Excise revenue earned by the Government and sale value of IMFL and beer for the period from 2014-15 (June 2014) to 2018-19 and their growth rate is given below:

**Table 3.1 Trend of Revenue**

(₹ in crore)

Particulars	Year				
	2014-15	2015-16	2016-17	2017-18	2018-19
Sale value of IMFL and beer	11,570	12,629	13,642	17,291	20,128
State Excise revenue	3,642	4,386	4,645	5,460	6,220
Percentage of increase in revenue over previous year	-	20.40	5.91	17.55	13.92
Percentage of revenue to the sale value	33	35	34	32	31
Percentage of increase in sale value over previous year	-	9	8	27	16

Source: Finance Accounts and data furnished by the Department

During the year 2017-18, license fee structure was changed i.e. existing fee was fixed at 1/4th of the previous year's license fee and MRP of liquor was increased.

### 3.7 Arrears of Revenue

Audit scrutiny of DCB Statement in the Commissionerate revealed that an amount of ₹10.82 crore was pending recovery as of March 2019.

**Table 3.2 Arrears of Revenue**

(₹ in crore)

Year	Net collectable demand	Collection	Balance
2015-16	11.06	0.02	11.04
2016-17	11.04	0.08	10.97
2017-18	10.97	0.12	10.84
2018-19	10.84	0.02	10.82

Source: Data furnished by the Department

The details of arrears viz., the date from which pending and from whom these were due were not forthcoming from the DCB statement.

Audit also noticed that additional arrears accumulated in the field offices during the audit period were not entered in the DCB statement. For instance, an amount of ₹34.75 lakh collectable for the year 2016-17 was reflected as arrears to be collected in the Office of the P&ES, Gudur, but not included in the data furnished by the Commissioner, which suggests that the arrear figures in the DCB do not encompass the complete and accurate figures for the State. Further, as may be seen from the above table, collection of arrears ranged from ₹2 lakh to ₹12 lakh across the State, which was very meagre vis-à-vis collectable demand of ₹10.84 crore. The Department needs to institute an appropriate mechanism to monitor and follow-up collection of arrears.

Commissioner replied that instructions would be issued to all the departmental officers for recovery of excise arrears.

## Results of audit

Significant findings of performance audit of Prohibition and Excise Department are discussed below.

### 3.8 Levy and collection of taxes, fee, duties etc.

#### **Audit Objective 1: Whether the Department has levied and collected applicable taxes/ fee/ duties as per the Excise Act and Rules**

Government notifies establishment of new manufactories or expansion of existing manufactories. On issue of such notifications, prospective distilleries apply for grant of Letter of Intent (LoI) by paying the requisite non-refundable and non-adjustable fee and special fee. On receipt of applications, Government issues LoI prescribing production capacities. Distilleries have to obtain license within six months from the grant of LoI and commence production within two years from grant of LoI. The license is to be renewed before commencement of the license year (April – March). Distilleries are required to remit the excise duty before the product is removed to depots.

Commissioner fixes the number of retail sale outlets, bars to be established in any area/ locality and recommends excise policies for grant of licenses to shops/ bars/ clubs/ Micro Breweries for selling/ serving of IMFL/ beer/ wine. P&ESs issue licenses to shops and Deputy Commissioner issues licenses to bars and CPE issues licenses to clubs, which lift the stock from the depots for sale to end consumers.

Performance audit revealed various deficiencies in assessment and collection of State Excise duty such as non-collection of license fee on expanded production capacity, Non-collection of non-refundable and non-adjustable fee, short collection of license fee *etc.* These are discussed in the succeeding paragraphs.

#### **3.8.1 Non-collection of non-refundable and non-adjustable fee**

##### **Letters of Intent were sanctioned without collecting the applicable fee resulting in loss of revenue of ₹22.40 crore**

Government issued notification (November 2014) inviting applications from the licencees, for grant of LoI for expansion of production capacities of the existing IMFL Manufactories. A Committee<sup>13</sup> was constituted (November 2014) to scrutinize and finalize the applications received by evolving a rational and transparent policy. A total number of 23 (12 existing and 11 new) manufactories had applied for new/expansion of existing LoIs.

As per Rule 5 of AP Distillery (Manufacture of Indian Made Foreign Liquor other than Beer and Wine) Rules, an existing/ new manufactory was required to pay non-refundable and non-adjustable fee (NRNF) at ₹1.40 crore plus ₹1.40 crore for every additional slab of 10 lakh proof litres or part thereof for seeking expansion in the range of above 10 lakh proof litres and up to 50 lakh proof litres.

<sup>13</sup> Committee consisting of CPE, Commissioner of Industries and Addl./Joint/ Dy. Secretary to Government.

Scrutiny of LoI sanction files in the Office of Commissioner revealed that five distilleries were sanctioned additional LoIs without the recommendation of the Committee. In four out of these five cases, the applicable fee was not collected, resulting in loss of revenue of ₹22.40 crore as given below in **Table 3.3**:

**Table 3.3 Non-collection of non-refundable and non-adjustable fee**

Name of the Distillery	Additional LoI Sanctioned (in lakh proof litres)	NRNF to be collected (₹ in crore)
M/s BVS Distilleries	36.52	5.60
M/s Visakha Disilleries	48.68	7.00
M/s PMK Distilleries	24.34	4.20
M/s Shravani Alco Breweries	36.51	5.60
<b>Total</b>	<b>146.05</b>	<b>22.40</b>

Source: Records produced by the office of Commissioner of Prohibition Excise

The LoIs for expansion were issued without the recommendations of the Committee and without collecting NRNF amounting to ₹22.40 crore leading to loss of revenue.

### 3.8.2 Non-collection of license fee on expanded production capacity

As per Rule 8 (4) (c) of AP Distillery (Manufacture of IMFL other than Beer and Wine) Rules, in case an applicant opts for expansion in half-yearly phases, the expanded production capacity sought for and approved in the LoI has to be added to the licensed capacity, irrespective of the commencement of such additional production. Accordingly, respective instalments of non-adjustable and non-refundable fee, special fee and license fee for expanded capacity as applicable, are payable. As per Rule 5, the manufactory has to pay license fee for the expanded capacity at ₹1,00,000 for every additional one lakh PLs.

As per Rule 3 of A.P. Excise (Levy of interest on Government dues) Rules, the arrears of revenue recoverable under Section 65 (3) of the A.P. Excise Act, 1968 shall bear interest at the rate of 18 per cent per annum.

Scrutiny of relevant records in the Commissionerate revealed that seven distilleries<sup>14</sup> had sought expansion of their existing capacities by submitting their scheme (expansion in half yearly phases) of expansion as per Government notification dated 01 November 2014. Government had accorded permission for expansion of their existing capacities in the months of August & September 2016. It was observed that the distilleries continued to pay license fee for the quantities for which they had started production and had not paid license fee on expanded capacities. This resulted in short collection of license fee of ₹13.24 crore and penal interest of ₹6.02 crore as detailed below in **Table 3.4**:

<sup>14</sup> B.R.K Sprints, BVS Distilleries, Esveer Distilleries, Gowthami Agro Ltd., Mohan Breweries, Pearl Distillery and Sri Krishna Enterprises.



**Table 3.4 License fee and interest payable by distilleries**

(₹ in lakh)				
Sl. No.	Date of LoI	Distillery	Enhanced license fee not paid	Penal Interest leviable
1	23/08/2016	M/s B.R.K Spirits	381.00	167.92
2	03/09/2016	M/s Gowthami Agro Ltd	96.00	44.64
3	03/09/2016	M/s BVS Distilleries	211.00	96.08
4	05/08/2016	M/s Pearl Distillery	357.00	193.23
5	03/09/2016	M/s Sri Krishna Enterprises	137.00	45.70
6	19/08/2016	M/s Esveer distilleries	22.00	12.94
7	03/09/2016	M/s Mohan Breweries	120.00	41.87
		<b>Total</b>	<b>1,324.00</b>	<b>602.38</b>

Source: Records produced by the office of Commissioner of Prohibition Excise

As per Rule 5 (2)(b)(ii) of AP Distillery (Manufacture of IMFL other than Beer and Wine) Rules, non-refundable and non-adjustable fee as well as the Special Fee are to be paid in twelve equal four-monthly instalments in case of new manufactories and in case of expansion of the production capacity of existing manufactories within the validity period (4 years) of LoI.

In respect of M/s Gowthami Agro Limited, it was observed (July 2019) that LoI fee (2<sup>nd</sup> to 9<sup>th</sup> instalments) had not been paid as per the schedule. The LoI fee payable worked out to ₹5.33 crore, besides penal interest of ₹1.35 crore at 18 *per cent* per annum totalling ₹6.68 crore.

Commissioner did not offer any remarks.

### 3.8.3 Short collection of license fee

As per Rule 14(7) of Andhra Pradesh Distillery (Manufacture of Spirits) Rules, the right of the licensee to get his license stands forfeited, if the license is not renewed continuously for a period of three years.

Audit noticed that license was issued by the Government to M/s Rhizome Distilleries Private Ltd., for a licensed capacity of 120 lakh BL for the period from June 2011 to March 2012. Later, the license was transferred to M/s Milano Spirits India Limited (August 2011). The license of M/s Milano Spirits India Limited was not renewed from the years August 2012-13 to 2016-17. However, on request of the unit (April 2017), the Commissioner renewed the license (May 2017) and at another request of the Unit (May 2017), license was transferred to M/s KBK Bio tech Ltd. By the time of submission of application for renewal by M/s Milano Spirits India Limited, the property was already sold (May 2016) to M/s KBK Biotech Pvt Limited. Thus, the renewal of license after expiry of time and after change of ownership of property is contrary to the rules stated *ibid*.

As per Rule 9(4)(b), the license fee for a new distillery shall be ₹20,000 per annum till the commencement of production or expiry of two years period from the issue of LoI whichever is earlier. In terms of Rule 10(3), annual License Fee shall be fixed by the Commissioner based on the production capacity. The License Fee structure is as indicated below:

**Table 3.5 Structure of license fee**

Annual Production Capacity	Annual License Fee
1. Up to 20 lakh BLs	₹4,00,000
2. For every additional 10 lakh BLs or part thereof	₹1,00,000

Source: A.P Distillery (Manufacture of sprits) Rules

As per Rule 14 (4) of the Rules, if the licensee doesn't renew the license before commencement of license year, the license fee along with late fee (at 5 per cent) is to be paid within six months from the commencement of license period. The late fee is to be paid at 10 per cent, if the renewal of license is applied after six months from the commencement of license year.

In the instant case, M/s Milano Spirits India Pvt. Ltd (now KBK Biotech), is liable for payment of proportionate license fee of ₹7.89 lakh for the period August 2012 to March 2013 and full license fee of ₹84 lakh at the rate of ₹14 lakh per annum for the period 2013-14 to 2018-19 along with late fee of ₹9.19 lakh (at the rate of 10 per cent of annual license fee) as specified in Rule 14(4) *ibid*. However, the unit paid ₹20,000 per annum and late fee of ₹2,000 as provisional license fee. This resulted in short collection of license fee of ₹1.01crore.

Commissioner replied that Government issued (Memo dated 16 February 2017) orders for extending the validity of LoI upto March 2018 and it was renewed for the period from 2012-13 to 2016-17 in relaxation of Rules. Commissioner further stated that the license was transferred according to Rule 17 (1) (i) of A.P. Distillery (Manufacture of Sprits) Rules.

The reply is not acceptable since the property was sold (May 2016) to M/s KBK Biotech Private Limited and license transfer request was made to the Department, suppressing the fact of sale of property. Further, section 68-B of the AP Excise Act provides that Government may by way of a Notification, exempt or grant relaxation in respect of any of the provisions of the Act. In this connection, no Notification was issued to relax the conditions of LoI relating to this particular licensee.

### **3.8.4 Short collection of proportionate license fee on sub-leases**

As per Rule 4 of AP Distillery (Manufacture of Ready to Drink Alcoholic Beverages) Rules, license fee for the manufacture of Ready to Drink Alcoholic Beverages shall be ₹one per BL. As per Rule 13 *ibid* read with Rule 11 (1) (i) (a) of AP Distillery (Manufacture of IMFL other than Beer and Wine) Rules, a sub-lease fee of sum equal to 10 per cent of the proportionate license fee is remitted on the production capacity proposed for sub-lease.

During scrutiny of sub lease files of a manufacturing unit (Ready to Drink Alcoholic Beverages), it was observed that a licensee, M/s SNJ Sugars & Products Ltd, requested for permit to manufacture ready to drink alcoholic beverage under sub-lease with M/s Bacardi India Pvt Ltd for 16,46,965 PLs<sup>15</sup> (1,71,00,000 BLs). The parties have entered into sub lease agreements on 13 June 2018 and paid sub-lease fee of ₹two lakh per each

<sup>15</sup> For 10,00,000 and 6,46,965 PLs.

agreement instead of paying proportionate license fee of ₹10.50 lakh and ₹6.60 lakh respectively, which resulted in short collection of ₹13.10 lakh<sup>16</sup> at the rate of 10 paise per BL.

Commissioner replied that as per Rule 4 of AP Distillery (Manufacture of Ready to Drink Alcoholic Beverages) Rules, the unit had remitted ₹66 lakh towards license fee and complied with Rule 11 of AP Distillery (Manufacture of IMFL other than Beer and Wine) Rules for sub leasing.

The reply is not acceptable since the unit paid only the license fee but not the proportionate license fee for the quantity sub-leased.

### **3.8.5 Non-collection of administrative fee towards export of denatured spirit**

As per Rule 3(1) of AP Denatured Spirit and Denatured Spirituous Preparations Rules, no Excise Duty or CVD shall be levied on the Denatured Spirit (DS), Methylated Spirit (MS), Methyl Alcohol (MA) or Denatured Spirituous preparations except administrative fee at the rate of 50 paise per bulk litre or such other rate as may be fixed by the Government. As per Rule 6(4) *ibid*, transport permit shall not be granted before payment of administrative fee when the DS, MS or MA Denatured Spirituous preparations are obtained from a distillery by the licensee under these Rules.

During the scrutiny of DS export files, it was observed that three primary distilleries<sup>17</sup> have been permitted to export a total of 18.73 Lakh Bulk Litres of DS for the period 2014-15 to 2018-19 without collecting administrative fee of ₹9.37 lakh at 50 paise per BL of DS.

Commissioner replied that the matter would be discussed with all the Assistant Commissioners of P&E (Distilleries) and detailed reply would be submitted in due course.

### **3.8.6 Non-levy of interest on delayed payment of permit room license fee/registration fee**

As per Rule 16 of the Andhra Pradesh Excise (Grant of license of selling by shop and conditions of license) Rules, read with conditions governing drawl of lots (Notification 2017-19), the successful applicant shall pay a sum equal to the 1<sup>st</sup> instalment of the license fee for the Shop by way of Challan in treasury on the day of selection or the succeeding working day after the acceptance of the application. As per Rule 16(2) *ibid* read with Government order of June 2015, the licensee shall pay the license fee for the two-year license period either in one lump sum or in six equal instalments at his option.

As per Rule 26, the Non-refundable Registration Charge and the license fee for Permit Room shall be ₹5,00,000 and ₹10,000 respectively for the license period or part thereof and is payable in lump sum, at the time of completion of formalities under Rule-16.

<sup>16</sup> ₹ 10,50,000 – ₹ 2,00,000 + ₹ 6,60,000 – ₹ 2,00,000.

<sup>17</sup> Crux Bio tech, Sentini bio products and SNJ sugars & Co.

CPE vide Circular dated 3 July 2018, allowed the licencees of retail shops/ bars to pay the amounts due from them in instalments. As per this relaxation, 1<sup>st</sup> and 2<sup>nd</sup> instalments of the sums due to the Government were to be paid by the licencees on or before 20 June 2018 and 20 November 2018.

As per Rule 3 of A.P. Excise (levy of interest on Government dues) Rules, the arrears of revenue recoverable under Section 65 of the A.P. Excise Act, shall bear interest at the rate of 18 *per cent* per annum.

Scrutiny of records of six<sup>18</sup> P&ESs for the policy period 2015-19 revealed that licencees of 419 (retail shops: 374; Bars: 45) shops/ bars had not paid the License fee in instalments (98), Permit room fee and Registration charges for Permit room (322) on the prescribed dates. P&ESs had not levied the penal interest of ₹28.40 lakh on the delayed payments for two days to 315 days by the licencees.

CPE replied that notices would be issued to the licencees for payment of Penal Interest.

### **3.8.7 Non-levy of additional license fee**

As per Rule 6 (1) (i) (a) of A.P. Excise (Grant of license of selling by Bar and conditions of license) Rules, read with amended Government orders (December 2015)<sup>19</sup> (these orders were withdrawn from August 2016), if the plinth area of bar exceeds 300 square metres, it shall attract an additional license fee at 10 *per cent* of annual license fee for every 100 square metres or part thereof.

Scrutiny of Bar license files in two offices<sup>20</sup> of P&ESs for the period from January to July 2016, disclosed that in 11 cases<sup>21</sup>, the plinth area of bar premises exceeded 300 sq. metres. However, additional license fee amounting to ₹1.17 crore<sup>22</sup> was not levied.

CPE replied that the Rule was applicable vide Government order dated 11 December 2015. It was subsequently amended in August 2016 by making plinth area as 200 square metres.

No specific reply had been furnished with regard to non-collection of additional license fee.

<sup>18</sup> Kadapa, Narsaraopeta, Palasa, Proddatur, Tirupati, and Vijayawada.

<sup>19</sup> G.O.Ms. No. 468 Revenue (Excise-II) Department dated 11 December 2015.

<sup>20</sup> Narsaraopeta and Tirupati.

<sup>21</sup> Narsaraopeta: 07 cases and Tirupathi: 04 cases.

<sup>22</sup> Narsaraopeta: ` 25.66 lakh and Tirupathi: ` 90.88 lakh.

### 3.9 Enforcement activities of the Department

#### Audit Objective 2: Whether the enforcement activities of the Department were effective

The Directorate of Enforcement (DOE) plays a significant role in controlling excise crimes in the State. A control room with a toll free number has been established under the control of Director of Enforcement. Raids are carried out by the State task force teams of DOE based on inputs/complaints received in the entire State. At division level, AC (Enforcement) teams conduct raids and cases detected are handed over to SHOs for further action. Status of the cases detected and handed over to SHOs concerned is reviewed by DOE on a regular basis.

Audit scrutiny revealed low conviction rate, lack of feedback mechanism etc. in enforcement activities of the department. These are discussed in the following paragraphs.

#### 3.9.1 Low rate of conviction

Crime cases are booked by Enforcement wing of the department. The details of cases booked in the State for the period from 2014-15 to 2018-19 by the Enforcement wing are given below in **Table 3.6**:

**Table 3.6 Details of cases booked, convicted and pending cases (01-06-2014 to 31-3-2019)**

Crime Type	Cases pending as on 01.06.2014	No of cases booked during 2014-19	Total No. of cases	Convicted during 2014-19 (%)	Acquitted during 2014-19	Dept Disposal during 2014-19	Abated	Pending cases as of 31.02.2019 (%)
ID Cases	44,146	92,021	1,36,167	6,650 (4.8)	55,340	55,790	1,441	16,946 (18.4)
NDPS	52	4,648	4,700	326 (6.9)	2,043	508	105	1,718 (36.9)

*Source: Information collected from the Directorate of Enforcement*

The cases convicted in the above two categories ranged from five to seven *per cent*.

Director of Enforcement replied that it is difficult to secure independent witnesses and official panchanamas at the time of seizures during vehicle checking and while conducting surprise check on the hideouts of ganja transporters. He further stated that training classes were being arranged with public prosecutors to improve the quality of investigation.

#### 3.9.2 Lack of Feedback mechanism

AC (Enforcement) is responsible for monitoring the prosecution of excise cases, ensuring timely charge-sheeting of the cases by Station House Officers (SHOs), serving summons and execution of non-bailable warrants *etc.*

During the scrutiny of crime records in the test checked AC (Enforcement) offices<sup>23</sup>, it was observed that 20,475 cases were booked during the period 2014-15 to 2018-19. However, as seen from the crime registers and returns, there were no entries with

<sup>23</sup> Chittoor, Guntur, Kakinada and Visakhapatnam.

regard to the status of these cases. In the absence of these details, it is not possible to ascertain whether all the cases detected and handed over by the AC (Enforcement) were correctly registered by SHOs and whether follow-up action was taken by the SHOs/P&ESs for finality of these cases.

DOE replied that SHOs would be instructed to furnish compliance report on offences booked by Enforcement Staff.

### 3.9.3 Inadequate action on licences

As per Government Order dated 8 June 2014<sup>24</sup>, licenses should be cancelled in the following cases.

- (a) retail shops indulging in sale of liquor beyond permitted quantities to the customers in single transaction under Section 36 (b) and (c) of AP Excise Act;
- (b) involvement in supply of liquor to unauthorised outlets, in violation of Rule 35 of the AP Excise (Grant of license of selling by shop and conditions of license) Rules;
- (c) all unauthorised liquor sales sold at unauthorised premises or outlets that cannot be compounded.

According to section 47 (1) of AP Excise Act, the offences booked under Section 34((b),(c),(g), Section 36((a), (e), (f), (g),(h), Section 37( (b), (c), (d)), Section 41 only can be compounded<sup>25</sup>.

Scrutiny of records relating to offences in the test checked Offices of P&ESs<sup>26</sup> disclosed that in respect of retail shops, 68 cases were booked during 2015-19 under Section 36 (b) and (c) for offences like sale of liquor at more than MRP (41) and loose sales (27). The licenses of these shops were suspended and were compounded under Section 47 (1) by collecting compounding fee contrary to the provisions of Section 47(1) of AP Excise Act. Further, in 189 cases of unauthorised outlets, the cases were compounded without cancelling these licenses.

Test check of the compounding cases of retail shops disclosed that 132 cases were booked under Section 31 (1) (b) & 41 instead of under section 36(1) (b) &(c). As the cases booked under 36 (1) (b) &(c) are not compoundable, these cases were booked under Section 31 (1) (b) and Section 41. Further, three of these licences had repeated<sup>27</sup> the same offences in the jurisdiction of P&ES Proddatur.

P&ES, Proddatur replied that Section 31(1)(b) confers the powers on licencing authority to suspend or cancel the license whenever there was an event of any breach by authorised servants and licensee; whereas 36 (1) (b) & (c) was a penal section. The

<sup>24</sup> G.O.Ms. No. 263, Revenue (Ex.II) Department dated 08 June 2014.

<sup>25</sup> Levy of penalty for the offense committed.

<sup>26</sup> Chittoor, Guntur, Guduru, Kadapa, Narasaraopeta, Tenali, Tirupathi, and Vijayawada.

<sup>27</sup> Guru Wines, Muddanur (Three times), Manjunatha Wines, Kondapuram (twice); Vijaya Wines, Vempalli (twice).

competent authority if convinced could compound the same offence under Section 47(1); otherwise the Section would be altered to 36 (1) (b) & (c) to file charge sheet.

The reply is not acceptable as offences like sale of liquor in loose quantities and sale at rates higher than MRP amount to wilful breach of provisions of Excise Act and Rules and should be booked under Sections 36 (1) (b) & (c), which are not compoundable. Taking a lenient view on the licencees and resorting to compounding of offences, instead of initiating stringent action like cancellation of licenses could encourage repetition of illegal activities.

### 3.9.4 Non-Collection of compounding fee

Licenses of the following two shops in the jurisdiction of P&ES, Kadapa were suspended and the shops were compounded as detailed below in **Table 3.7**:

**Table 3.7 Delay in issue of compounding of licence**

License no	Name of the shop	Date of suspension	Date of orders of the Deputy Commissioner allowing licencee to do business	Date of compounding orders by CPE	Amount to be collected (₹ in lakh)
<b>KD120</b>	M/s Sri Sai Midhula Wines	19.01.2019	23.01.2019	26.02.2019	2.00
<b>KD126</b>	M/s SSLCA Wines	29.01.2019	05.02.2019	26.02.2019	2.00

*Source: Records produced by Prohibition and Excise superintendent, Kadapa.*

It is evident from above that before issue of compounding orders of the CPE, DC, Kadapa had allowed the licencees to transact their business without payment of compounding fee levied by CPE.

P&ES replied (May 2019) that the compounding fee would be collected from the licencees.

## 3.10 Internal control mechanism

### Audit Objective 3: Whether internal control mechanism in the Department was adequate

Internal control mechanism is important for ensuring proper and effective functioning of a system and identifying and addressing instances of non-compliance with the relevant rules and regulations. It also provides reasonable assurance to the stakeholders with regard to enforcement of laws, rules and departmental instructions. The internal control mechanism of the department has not been effective as discussed in the succeeding paragraphs.

#### 3.10.1 Internal Audit and inspections

Internal Audit is an important element of internal control for verifying compliance with prescribed Rules/Acts/Manuals/Codes and ensuring prevention and detection of control lapses. The orders issued by Government of AP from time to time stipulate among others, that it is the responsibility of the Accounts Branch of the Head of the

Department to conduct Internal Audit of the Regional offices, District Offices, Unit Offices etc., periodically and at least once in a year and furnish reports to the CPE.

Audit observed that Internal Audit was not conducted in any of the test checked offices. Instances of omissions or commissions in respect of crime, efficiency and accountability of district level offices may not be brought to the notice of concerned competent authorities, in the absence of internal audit of field offices.

CPE replied that internal audit of the regional offices, district offices etc., are not being conducted due to shortage of ministerial staff in CPE's Office.

Periodical inspections of P& E.S. Offices, Sub-divisional offices, Excise Stations, Check posts, IML Depots, Regional Excise Labs, Distilleries, etc., at regular intervals were to be conducted by DCs and ACs.

Audit, however, observed that in four test checked DCs, inspections were not conducted by DC, Vijayawada during the period 2014-19 and in respect of DC Chittoor, for the period from 2014-15 to December-2017. In the remaining two DCs (Visakhapatnam & Ongole) also, there was a shortfall of 25 to 98 *per cent* in inspections. No inspection was conducted by ACs, Kakinada and Chittoor. There was a shortfall ranging from 40 to 89 *per cent* and 66 to 90 *per cent* (except in respect of Toddy shops & Distilleries) by ACs Visakhapatnam and Guntur respectively.

The shortfall in inspections is attributable to shortage of manpower. Audit observed a shortfall of 26 *per cent* manpower across all cadres.

### **3.10.2 Issue of goods during suspension period**

Retail liquor shops/ bars were not eligible either to indent or lift consignment of IMFL/FL from depots or sell it in the premises during the suspension period of the licenses.

Scrutiny of transport permits in Hedonic Path Finder System (HPFS) revealed that 20 shops and 3 bars in the jurisdiction of P&ES, Vijayawada and Narsaraopeta had lifted stock 178<sup>28</sup> times during the suspension period of 2017-19.

P&ES Vijayawada replied that before serving the suspension order on the Licencee, stock was drawn.

The reply is not acceptable, as P&ES should have directly deactivated the status in HPFS portal. However, P&ES without making the status inactive, allowed the depot to issue the goods to the licensee even during suspension period. No specific reply was furnished by P&ES, Narsaraopeta.

### **3.10.3 Physical verification of retail Shops, Bars and Micro Breweries**

A joint physical verification of 196 retail shops out of 1,319 retail shops, 75 bars out of 480 bars and two Micro Breweries out of four Micro-Breweries under the jurisdiction of 10 test checked P&ES offices was conducted by Audit along with an

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<sup>28</sup> Narsaraopeta(176) and Vijayawada(2).



official from the concerned P&ES office during May to June 2019 to verify compliance of these Units with the Excise Act/Rules/instructions etc. Illustrative cases of non-compliance in this regard observed during the physical verification are detailed below:

### **3.10.3.1 Retail shops**

(i) As per Rule 24 of AP Excise (Grant of License of selling by shop and Conditions of License) Rules, the P&ES concerned is competent to issue license once the applicant is selected by the District Collector. The P&ES shall issue the license for the retail shop and for the Permit Room after being satisfied that the premises selected are in accordance with the relevant Rules.

The shop licensee shall not be permitted to serve liquor in loose and food to the consumers. Further, the premises selected for permit room must be adjacent to the existing retail shop.

Audit observed following deviations:

- In 168 out of 196 retail shops, permit rooms were not provided with sanitation facilities;
- In 35 out of 196 retail shops, food sale was noticed;
- 7 out of 196 retail shops were not located in the address indicated in the licenses and permit room was not adjacent to the licenced premises;
- Serving/ selling of loose liquor was noticed in one retail shop in Visakhapatnam.

(ii) As per Rule 42 of AP Excise (Grant of License of selling by shop and Conditions of License) Rules, the licensee should sell IMFL and FL at prices not exceeding the maximum retail price indicated on the labels of the bottles and issue bills to the customers accordingly.

In 183 out of 196 retail shops, computerised bills were not being issued, as the systems were stated to be non-functional. Consequently, the possibility of non-adherence to MRP rates cannot be ruled out.

(iii) As per Rule 46 of AP Excise (Grant of License of selling by shop and Conditions of License) Rules, the licensee shall open the boxes or packages of all IMFL and FL received in the licenced premises only in the presence of and after inspection by the local Excise Officer or in his absence by any other Excise Officer duly authorised in this behalf.

Audit observed that Excise Officer had not authenticated in token of verification of opening of boxes of goods by retail shops/ Bars. In two shops, material pertaining to other shops were found.

(iv) As per Rule 25(5) of AP Excise (Grant of License of selling by shop and Conditions of License) Rules, there shall be a single door for entry and exit for the licenced shop and sales shall be conducted without giving entry to the customers inside the premises.

Audit observed that there was more than one entry point in five out of 196 shops.

(v) As per Rules 48 and 49 of AP Excise (Grant of License of selling by shop and Conditions of License) Rules, and Rules 42 and 43 of AP Excise (Grant of license of selling by Bar and conditions of licence) Rules, licencees should maintain full and day to day accounts of IMFL and FL received and disposed of and should also maintain brand wise account in the prescribed forms.

Audit noticed that, in 12 out of 196 shops and 7 out of 75 bars, the accounts were in arrears for four days to four months as on date of physical verification of the premises.

### 3.10.3.2 Bars

As per Rule 11 (1) of Andhra Pradesh Excise (Grants of license of selling by Bar and conditions of licence) Rules, license shall not be granted unless the premises have the following:

- (i) sanitary equipment like wash basins, separate washrooms for ladies and gents;
- (ii) facility for cooking and serving complete meals of good quality to the consumers as licenced by local authority by providing a kitchen with a minimum plinth area of 15 sq. meters;
- (iii) Air conditioning or Air cooling facility in consumption rooms and halls of licenced premises; and
- (iv) adequate vehicle parking arrangements.

Joint physical inspection of Bars by Audit Team revealed the following:

- In 48 out of 75 bars, separate sanitation facilities for gents and ladies were not provided;
- in 14 out of 75 bars, Air Conditioned or Air Cooling consumption halls were not available;
- in 16 out of 75 bars, there was no separate earmarked place for vehicle parking though shown in the blue prints of plans furnished along with applications for granting of licence;
- in 12 out of 75 bars, the plinth area of kitchen was less than 15 Square meters.

### 3.10.3.3 Micro Breweries

Rule	Audit Observation
<b>As per Andhra Pradesh Brewery Rules, 2006,</b>	
(i) the licencee shall deploy a chemist holding a degree in Science with Chemistry as one of the subjects preferably Organic Chemistry (or) Bio-Chemistry (or) Specialisation in Alcohol Technology.	No chemist was appointed in the two out of four test checked Micro-Breweries.
(ii) The analysis report of the Chemist shall be countersigned by authorized officer.	No chemical analysis reports were made available to Audit. Therefore, the possibility of beer produced in the Brewery being served without valid consumption certificate cannot be ruled out.
(iii) The beer so produced shall be released for sale after its certification as fit for human consumption by the said Chemist.	
(iv) Sample from each batch shall be sent to the Chemical Examiner and it shall be passed by the Chemical Examiner.	

Rule	Audit Observation
(v) The report so obtained thereon shall be displayed predominantly at all places accessible for the consumers in the Micro Brewery premises.	
(vi) The license holder shall get the labels of the different varieties of beer he proposes to make approved by the CPE as laid down in Rules 15 of the A.P Brewery Rules, 2006. The fee payable for approval of labels shall be ₹2,000 per label per year or part thereof.	Though the brewery at Vijayawada was serving four varieties of beer, the copies of Label approvals for the same were not made available to audit. It is not known whether the brewery had obtained label approvals.
(vii) The records in the Micro Brewery shall be maintained in Form MB I to IV.	The breweries had not maintained the records in the prescribed format.

In response to the above observations of Audit, the P&ESs stated that all the SHOs would be directed to ensure strict adherence to Excise Act & Rules.

### 3.11 Conclusion

**The Department had not levied and collected applicable taxes and duties in several cases, resulting in loss of revenue. There was no follow up mechanism or monitoring of the cases booked for violation of Excise Act/Rules. Conviction rate was minimal during the audit period of 2014-2019 and the Department did not take effective action against offenders. Non-compoundable offences by licencees were compounded by the authorities, instead of cancelling the licenses, which could embolden the licencees. Monitoring and internal controls were inadequate and lack of internal audit wing and shortfall in the targeted inspections of subordinate offices by supervising officers leave the system open to perpetuating acts of omission and commission.**

### 3.12 Recommendations

- Government needs to bring in transparency in the system of issuing LoIs and licensing and enforce the provisions of the Excise Act/Rules/orders stringently in levying and collecting applicable taxes, duties and penalties.
- Government needs to strengthen the enforcement wing of the Department and fund it adequately to gather intelligence relating to offences, as well as impart training to staff for improving the quality of investigation.
- Internal controls within the Department need to be strengthened and prescribed departmental inspections of Divisional and Sub-divisional offices should be carried out at periodical intervals.
- Vacancies in various cadres may be filled within a planned timeframe and requisite training may be imparted to the staff for effective functioning of the Department.