

# THE BIHAR AND ORISSA EXCISE ACT, 1915

## CONTENT

### CHAPTER - I

#### *Preliminary*

| <i>Sec.</i>  | <i>Page</i> |
|--|-------------|
| 1. Short title, extent and commencement .....  | 1           |
| 2. Definitions .....   | 1           |
| 3. ....  | 4           |
| 4. Powers to declare what shall be deemed to be 'country liquor' and 'foreign liquor' respectively ..... | 4           |
| 5. Definition of 'retail' and 'whole sale' .....   | 5           |
| 6. Saving of certain Acts .....  | 5           |

### CHAPTER - II

#### *Establishments, Control, Appeal and Revision*

|   |    |
|---|----|
| 7. Establishments and delegation and withdrawal of powers ..... | 5  |
| 8. Control, appeal and revision .....                           | 10 |

### CHAPTER - III

#### *Import, Export and Transport*

|  |    |
|--|----|
| 9. Restriction on import .....                           | 11 |
| 10. Restriction on export or transport .....             | 11 |
| 11. Power to prohibit, import, export or transport ..... | 11 |
| 12. Passes for import, export or transport .....         | 12 |

### CHAPTER - IV

#### *Manufacture, Possession and Sale*

|  |    |
|--|----|
| 13. Licence required for manufacture .....   | 13 |
| 14. Drawing of tari in notified areas .....  | 13 |
| 15. Establishment of distilleries, breweries or warehouses .....                                       | 14 |
| 16. Licence required for depositing or keeping intoxicant in warehouse or other place of storage ..... | 14 |
| 17. Payment of duty on removal from distillery, brewery, warehouse or other place of storage .....     | 14 |
| 18. Possession of intoxicant not obtained from a licensed vendor .....                                 | 14 |
| 19. Possession of intoxicant generally .....   | 15 |
| 20. Licence required for sale .....  | 18 |

( ii )

|  |    |
|--|----|
| 21. Manufacture and sale of liquor in or near cantonment .....   | 19 |
| 22. Grant of exclusive privilege of manufacture and sale of country liquor or intoxicating drugs .....   | 19 |
| 23. Transfer of exclusive privilege .....  | 20 |
| 24. Maintenance and use of measures, weights and instruments by licensed manufacturers and vendors ..... | 20 |
| 24A. ....  | 21 |
| 25. Employment of children or women by licensed vendors .....  | 22 |
| 26. Power to close shops temporarily .....   | 22 |
| 26A. Restriction on grant of licence or exclusive privilege .....  | 23 |

## CHAPTER - V

### *Duty*

|   |    |
|---|----|
| 27. Power to impose duty on import, export, transport and manufacture .....   | 23 |
| 27A. ....   | 27 |
| 28. Ways of levying such duty .....   | 28 |
| 29. Payment for grant of exclusive privilege .....                            | 29 |
| 29A. Saving for duties being levied at commencement of the Constitution ..... | 29 |

## CHAPTER - VI

### *Licences, Permits and Passes*

|  |    |
|--|----|
| 30. Perparation of list of places for which it is proposed to grant licences for the retail sale of spirit ..... | 29 |
| 31. Publication of such list .....   | 30 |
| 32. Time for preparation and publication of such list .....  | 30 |
| 33. Submission of objections and opinions to Collector .....   | 30 |
| 34. Grant of licences by Collector and submission of list, objections and opinions to Excise Comissioner .....   | 31 |
| 35. Finality of decision of Excise Commissioner or Board .....   | 31 |
| 36. Application of sections 30 to 35 to licences for retail sale of intoxicants other than soirit .....          | 32 |
| 37. Exemption of certain lincences from section 30 to 36 .....   | 32 |
| 38. Fees for, terms, conditions and form of and duration of licences, permits and passes .....                   | 32 |
| 39. Power of Board to reduce fees .....  | 32 |
| 40. Counterpart agreement by licensees and security or deposit .....   | 33 |
| 41. Technical defects, irregularities and omissions .....  | 33 |
| 42. Power to cancel or suspend licence, permit or pass .....   | 33 |

|   |    |
|---|----|
| 43. Power to withdraw licences .....                  | 34 |
| 44. ....  | 35 |
| 45. Bar of right to renewal and to compensation ..... | 35 |

**CHAPTER - VII**

***Departmental management or transfer***

|  |    |
|--|----|
| 46. Power of Collector to take grants under management or to transfer them ..... | 35 |
|--|----|

**CHAPTER - VIII**

***Offences and Penalties***

|  |    |
|--|----|
| 47. Penalty for unlawful import, export, transport, manufacture, possession, sale etc .....  | 36 |
| 48. Presumption as to offence where possession is not satisfactory accounted for .....   | 37 |
| 48A. Penalty for contravention of sec 24-A .....   | 37 |
| 49. ....   | 37 |
| 50. Presumption as to offence under section 49 in certain cases .....  | 37 |
| 51. Presumption as to any spirit being, or containing or having been derived from, denatured spirit .....                                | 38 |
| 52. Penalty for adulteration by licensed manufacturer or vendor or his servant .....   | 38 |
| 53. Penalty for fraud by licensed manufacturer or vendor or his servant .....  | 38 |
| 54. Penalty for certain unlawful acts of licensed vendors or their servants .....  | 39 |
| 55. Penalty for possession of intoxicant in respect of which an offence has been committed .....   | 39 |
| 56. Penalty for consumption in chemist's shop, etc .....   | 40 |
| 57. Penalty for certain acts by licensee or his servant .....  | 40 |
| 58. Import, export, transport, manufacture, sale or possession by one person on account of another .....                                 | 40 |
| 59. Criminal liability of licensee for acts of servant .....   | 41 |
| 60. Imprisonment under section 58 or section 59 .....  | 41 |
| 61. Penalty on Excise officer making vexatious search, seizure, detention, or arrest or refusing duty or being guilty of cowardice ..... | 41 |
| 62. Penalty for offences not otherwise punishable .....  | 41 |
| 63. Penalty for contempt of Court .....  | 42 |
| 64. Penalty for attempt to commit offence .....  | 42 |
| 65. Enhanced punishment after previous conviction .....  | 42 |
| 66. What things are liable .....   | 42 |

|  |    |
|--|----|
| 67. Confiscation by magistrate or Collector .....                                      | 42 |
| 68. Power to compound offences and to release property liable to<br>confiscation ..... | 43 |

**CHAPTER - IX**

***Detection, Investigation and Trial of Offences and Procedure***

|   |    |
|---|----|
| 69. Power to enter and inspect and power to test and seize<br>measures etc. ....                              | 43 |
| 70. Power to arrest without warrant, to seize articles liable to<br>confiscation, and to make searches .....  | 44 |
| 71. Power of Collector to issue warrant of arrest .....   | 44 |
| 72. Power to issue search warrant .....   | 45 |
| 73. Power of Collector or Magistrate to arrest or search without<br>issue of warrant .....                    | 45 |
| 74. Power to search without a warrant .....   | 45 |
| 75. Information and aid to Excise Officers .....  | 45 |
| 76. Duty of owners and occupiers and land and other persons to give<br>notice of unlicensed manufacture ..... | 46 |
| 77. What Excise Officers may investigate offences .....   | 46 |
| 78. Powers and duties of Excise Officers investigating offences .....   | 46 |
| 79. Security and bail .....   | 47 |
| 80. Production of articles seized and persons arrested .....  | 48 |
| 81. Custody by police of articles seized .....  | 48 |
| 82. Reports of arrests, seizures and searches .....   | 49 |
| 83. Execution of Collector's warrant .....  | 49 |
| 84. Maximum period of detention - Intimation on grounds of arrest .   | 49 |
| 85. Application of certain provisions of the Code of Criminal<br>Procedure, 1898 .....                        | 49 |
| 86. Magistrates having jurisdiction to try offences .....   | 50 |
| 87. Initiation of certain prosecutions .....  | 50 |
| 88. Bar to transfer of trial on application of accused .....  | 50 |

**CHAPTER - X**

***Miscellaneous***

|  |    |
|--|----|
| 89. Power of State Government to make rules .....                                  | 50 |
| 90. Power of Board to make rules .....   | 52 |
| 91. Powers of Board exercisable from time to time .....                            | 54 |
| 92. Publication and effect of rules and notifications .....                        | 54 |
| 93. Recovery of dues .....   | 54 |
| 94. Power of State Government to exempt intoxicants provisions<br>of the Act ..... | 55 |
| 95. Bar of certain suits .....   | 58 |

|  |    |
|--|----|
| 96. Limitation of suits and prosecutions .....   | 58 |
| 97. Bar to application of section 261 of the Bengal Municipal Act, 1884 .....  | 58 |
| 98. Bengal Act 5 of 1909 to cease to be in force, but orders, rules, etc., made and licences, etc., granted thereunder to continue ..... | 58 |

## **ORISSA EXCISE RULES, 1965**

### **CHAPTER - I**

#### **GENERAL**

|                      |     |
|----------------------|-----|
| 1. Short title ..... | 100 |
| 2. Definitions ..... | 100 |

### **CHAPTER - I -**

#### **IMPORT, EXPORT AND TRANSPORT OF INTOXICANTS**

##### **PART I**

##### **PRELIMINARY**

|  |     |
|--|-----|
| 3. Restrictions on import, export and transport of certain intoxicants ..... | 101 |
|--|-----|

##### **PART II**

##### **FOREIGN LIQUOR**

##### **A. IMPORT**

|   |     |
|---|-----|
| 4. Import of India-made foreign liquor for private consumption prohibited .....                                     | 102 |
| 5. Import of India-made foreign liquor by clubs and by licensees for sale to be subject to certain conditions ..... | 102 |
| 6. To whom pass for import of foreign liquor to be issued .....   | 102 |
| 7. Import of rectified spirit under certain special circumstances ....  | 103 |
| 8. Steps to be taken for transport and storage of foreign liquor imported .....                                     | 103 |

##### **B. EXPORT**

|   |     |
|---|-----|
| 9. Export of foreign liquor to be subject to certain restrictions .....         | 104 |
| 10. Issue of foreign liquor for export only after measurement and proving ..... | 104 |
| 11. Pass for export to be in triplicate .....                                   | 104 |
| 12. Vessel containing foreign liquor for export to bear certain marks ....      | 104 |
| 13. Accounts of export to be maintained .....                                   | 104 |
| 14. To whom pass for denatured spirit to be issued .....                        | 104 |

##### **C. TRANSPORT**

|   |     |
|---|-----|
| 15. Transport of foreign liquor on which duty has been paid ..... | 105 |
|---|-----|

|   |     |
|---|-----|
| 16. Transport of India made foreign liquor (other than denatured spirit and rectified spirit) on which full amount of duty has not been paid..... | 105 |
| 17. Transport of rectified spirit on which full amount of duty has not been paid .....  | 105 |
| 18. Transport of duty free rectified spirit .....   | 105 |
| 19. Transport of denatured spirit .....   | 106 |

**PART III**

**COUNTRY SPIRIT**

**A. IMPORT**

|   |     |
|---|-----|
| 20. Import by certain persons and subject to certain conditions ..... | 106 |
|---|-----|

**B. EXPORT**

|  |     |
|--|-----|
| 21. Export to be subject to certain conditions ..... | 106 |
|--|-----|

**C. Transport**

|  |     |
|--|-----|
| 22. Transport to be subject to certain restrictions..... | 107 |
|--|-----|

**PART IV**

**GANJA AND BHANG**

**A. IMPORT**

|  |     |
|--|-----|
| 23. Conditions for import of Ganja .....                           | 107 |
| 24. Conditions for transport of ganja.....                         | 108 |
| 25. Conditions for export of bhang.....                            | 108 |
| 26. Conditions for import or transport of bhang .....              | 109 |
| 27. Conditions for export of bhang.....                            | 109 |
| 28. Import of ganja and bhang within the limit of possession ..... | 109 |

**PART V**

**HEMP DRUGS, EXTRACTS AND TINCTURES OF HEMP AND  
MEDICINAL PREPARATIONS CONTAINING HEMP DRUGS**

|   |     |
|---|-----|
| 29. Import of medicinal preparations containing hemp drugs under cover of permits.....      | 110 |
| 30. Prohibition of transmission of hemp drugs by post except under certain conditions ..... | 110 |

**CHAPTER - III**

**SALE OF INTOXICANTS**

**PART I**

**DURATION AND NUMBER OF LICENCES, PRINCIPLES FOR  
GRANT OF LICENCE AND LOCATION OF SHOP.**

|   |     |
|---|-----|
| 31. Licence for sale of intoxicants to be subject to certain conditions ..... | 111 |
| 32. Regulation of number of licences for any local area .....                 | 111 |
| 33. Fixation of number of licences .....                                      | 112 |

- 34. Licences for shops for consumption of liquor on vendor's premises not to be granted at certain places ..... 112
- 35. General principles to be observed in granting licences for liquor shops ..... 112
- 36. Restriction on grant of licence on border of a district ..... 113
- 37. Restriction on grant of outstill licence near distillery area ..... 113
- 38. Restriction on grant of licence for sale of foreign liquor for consumption on vendor's premises and otherwise ..... 113

**PART II**

**ASCERTAINMENT OF LOCAL OPINION PRIOR TO THE GRANT OF LICENCES FOR THE RETAIL SALE OF SPIRIT OR TARI FOR CONSUMPTION ON VENDOR'S PREMISES**

- 39. Preparation of list of licences proposed to be granted for the next period of settlement to be complete by 20th October ..... 113
- 40. Notice of the proposal for grant of licences to be given to certain authorities ..... 114
- 41. Publication of the notice in a municipal area ..... 114
- 42. Objection to the proposal to be sent to Collector by the 15th November ..... 114
- 43. Local committees to be constituted in certain localities for consideration of the proposal ..... 114
- 44. Submission of the proposal with objections etc. by the Collector to Commissioner ..... 115
- 44-A. .... 115

**PART III**

**RESTRICTION REGARDING GRANT OF LICENCE AND SALE**

- 45. To whom licences for sale of intoxicants not to be granted ... 115
- 46. Restriction on grant of licence for retail sale of distillery spirit or Tari and foreign liquor ..... 115
- 47. Restriction on grant of licence for retail sale of outstill spirit or tari ..... 116
- 48. Restriction on sale of intoxicants to certain person ..... 116

**CHAPTER - IV**

**RESTRICTIONS ON CERTAIN POWERS OF EXCISE OFFICERS**

- 49. Excise Officer below the rank of Inspector not to exercise certain powers ..... 117
- 50. Officers below certain ranks to exercise power in certain circumstances only ..... 117
- 51. Exercise of certain powers outside local jurisdiction to be followed by certain formalities ..... 117

**CHAPTER - V**

**INFORMATION AND AID TO EXCISE OFFICERS**

52. Information on breach of provision of the Act to whom to be given ..... 117
53. Aid not to be given under certain circumstances ..... 117
54. Aid how to be asked for ..... 117
55. Restriction on the aid to be given by village Choukidar or Dafadar to Excise Officer ..... 118

**CHAPTER - VI**

**GRANT OF EXPENSES TO WITNESSES**

56. Scale of expenses to be granted to witnesses ..... 118

**CHAPTER - VII**

**GRANT OF COMPENSATION**

57. Compensation for loss of time ..... 119
58. Scale of such compensation ..... 119

**CHAPTER - VIII**

**APPEALS**

59. Appeals to Collector from orders of officers subordinate ..... 119
60. Appeals to Commissiner from orders of Collector ..... 119
61. Appeals in certain cases how and when to be prepared ..... 119
62. Appeals to Board from orders of Commissioner ..... 120
63. Limitation for appeal to Board ..... 120
64. Mode of presentation and disposal of certain appeals ..... 120

**Govt. Orders & Notifications**

---



# THE BIHAR AND ORISSA EXCISE ACT, 1915 (NO 2 OF 1915)\*

An Act to amend and re-enact the Excise Law in the  
Province of Bihar and Orissa.

Whereas it is expedient to amend and re-enact the law in the Province of Bihar and Orissa relating to the import, export, transport, manufacture, possession and sale of certain kinds of liquor and intoxicating drugs.

And whereas the previous sanction of the Governor-General has been obtained, under Section 5 of the Indian Councils Act, 1892, to the passing of this Act;

It is hereby enacted as follows:—

## CHAPTER - I

### Preliminary

1. **Short title, extent, and commencement** : (1) This Act may be called the Bihar and Orissa Excise Act, 1915;

(2) It extends to the whole of the Province of Bihar and Orissa including the Santal Parganas and the district of Angul; and

(3) It shall come into force on such date as the State Government may, by notification, direct.

2. **Definitions** : In this Act, unless there is any thing repugnant in the subject or context,—

(1) "beer" includes ale, stout, porter and all other fermented liquor made from malt;

(2) "Board" means the Board of Revenue;

(3) to "bottle" means to transfer liquor from a cask or other vessel to a bottle or other receptacle for the purpose of sale, whether any process of rectification be employed or not, and includes re-bottling;

(4)                    x                    x                    x                    x                    [3]

\* Published in the Bihar & Orissa Gazette of the 19th January 1916.

1. Local Extent - It has been extended by the Orissa Law Regulation, 1936 (Regn. No.1 of 1936) to the Ex-C.P. Areas on the 1st April 1936 (Sc. 11, Sch. IV *ibid*); to the districts of Ganjam and Koraput from the 1st February, 1937 by regulation No. 6 of 1937 (The Orissa Laws Amendment Regulation 1937); and to the ex-State areas merged in Orissa from the 3rd March, 1950 by the Orissa Merged States (Laws) Act, 1950.

2. The Act came into force on the 1st April, 1916 - so far as the districts of Cuttack, Puri, Balasore, Sambalpur and Angul - Vide notification No. 2494.F, dated the 23rd February, 1916 by the Government of Bihar and Orissa in the Financial Department, published on page 384, Part II of the *Bihar and Orissa Gazette, dated the 1st March, 1916.*

3. Clause (4) was omitted by the Dangerous Drugs Act, 1930 (2 of 1930).

- (5) (a) "denaturant " means any substance prescribed by rule made in this behalf under clause (3) of section 90, for admixture with spirit in order to render the mixture unfit for human consumption, whether as a beverage, or internally as a medicine, or in any other way whatsoever;
- (b) to "denature" means to mix spirit with one or more denaturants in such manner as may be prescribed by rule made in this behalf under clause (3) of section 90, and "denatured spirit" means spirit so mixed;
- (6) "excisable article" means –
- (a) any alcoholic liquor for human consumption;
- (b) any intoxicating drug; or
- (c) [Omitted]
- (6-a) "excise duty" and "countervailing duty" mean any such excise duty or countervailing duty, as the case may be, as is mentioned in Entry 5 of List II in the Seventh Schedule to the Constitution;
- (7) "Excise Commissioner" means the officer appointed under section 7, Cl.(a);
- (8) "Excise officer" means the Collector or any officer or other person appointed or invested with powers under section 7;
- (9) "Excise-revenue" means revenue derived or derivable from any duty, fee tax, payment (other than a fine imposed by a Criminal Court) on confiscation imposed or ordered under this Act or any other law for the time being in force relating to liquor or intoxicating drugs and includes any payment to be made to the State Government under Section 29;
- (10) "export" means to take out of the State otherwise than across a customs frontier as defined by the Central Government;
- (11)           x                   x                   x                   x
- (12) "import" (except in the phrase "import into India") means to bring into the State otherwise than across a customs by the Central Government;
- (12-a) "intoxicant" means any liquor or intoxicating drug and includes mohua flower; [and molasses]<sup>1</sup>
- (13) "intoxicating drug" means –
- (i) the leaves, small stalks and flowering or fruiting tops of the Indian hemp plant (*Cannabis sativa L.*), including all forms known as *bhang*, *siddhi* or *ganja*;

---

1. Inserted vide OGE no. 301 Dt. 23.2.99.

- (ii) *charas*, that is, the resin obtained from the hemp plant, which has not been submitted to any manipulations other than those necessary for packing and transport;
- (iii) any mixture, with or without neutral materials of any of the above forms of intoxicating drug, or any drink prepared therefrom; and
- (iv) any other intoxicating or narcotic substance which the State Government may, by notification, declare to be an intoxicating drug, such substance not being opium, coca leaf, or a manufactured drug, as defined in section 2 of the Dangerous Drugs Act, 1930;

NOTE: "Methyl of lcohol" shall be an intoricating drug as per the deelaration made by the State Government vide SG Dppt. No. 1826 of 31.3.37.

- (14) "Liquor" includes all liquids consisting of or containing alcohol, such as spirits of wine, spirit, wine, fermented *tari*, *pachwai* and beer, and also unfermented *tari* and also any other substance which the State Government may, by notification, declare to be liquor for the purposes of this Act;
- (15) "Manufacture" includes –
  - (i) every process whether natural or artificial, by which any intoxicant is produced or prepared (including the tapping of *tari*-producing trees and the drawing of *tari* from trees),
  - (ii) re-distillation, and
  - (iii) every process for the rectification, flavouring, blending, or colouring of liquor, or for the reduction of liquor for sale;
- (16) "*Pachwai*" means fermented rice, millet or other grain whether mixed with any liquid or not, and any liquid obtained therefrom, whether diluted or undiluted; but does not include beer;
- (17) "place" includes building, house, shop, booth, vessel, raft, vehicle or tent;
- (18) expressions referring to "sale" include any transfer otherwise than by way of gift;
- (19) "spirit" means any liquor containing alcohol obtained by distillation, whether it is denatured or not;
- (20) "*tari*" means fermented or unfermented juice drawn from any coconut, palmyra, date or other kind of palm tree; and
- (21) "transport" means to remove from one place to another within the State.

3. [Provision supplemental to the definition of intoxicating drug].  
 Repealed by section 40 and Schedule II of the Dangerous Drugs Act, 1930  
 (2 of 1930.)

4. Powers to declare what shall be deemed to be country liquor' and 'foreign liquor' respectively : The State Government, may, by notification, declare what, for the purposes of this Act or any portion thereof, shall be deemed to be 'country liquor' and 'foreign liquor', respectively.

x                    x                    x                    x                    x

NOTE : The following shall, for purposes of the Act, be deemed to be "Country liquor" and "foreign liquor" respectively as declared by the State Government vide LSG Deptt. No. 1826 dt. 31.3.1937.

**"Country liquor" -**

- (a) Plain spirit which has been made in India from materials recognised in Orissa as bases for country spirit, namely, rice, *gur*, treacle or molasses, and on which duty has not been imposed at the rate fixed for the importation of spirit into India,
- (b) *tari* or toddy, and
- (c) all fermented liquors made from *mahua*, rice, millet or other grain according to indigenous processes;

**"Foreign liquor" -**

- (a) beer and spirit, wines and liquours which have been imported into India and were liable, on such importation, to duty under the Indian Tariff Act, 1934 or the Customs Act, 1962,
- (b) beer which has been brewed in India, or imported into India in a condensed form and afterwards converted into potable beer and on which duty has been imposed at the rate fixed for the importation of beer into India,
- (c) rectified spirit which has been made in India and on which duty has been imposed at the rate fixed for the importation of spirit into India,
- (d) spirit which has been made in India and has been sophisticated or compounded so as to resemble in colour and flavour whisky, brandy, gin, rum or liquor,
- (e) spirit which has been made in India from some special bases (such as malt or toddy) not recognised in Orissa as bases for country spirit, and on which duty has been imposed at the rate fixed for the importation of spirit into India,

- (f) wines and liquors which have been made in India and on which duty has been imposed at the rate fixed for the importation of wines or liquors into India,
- (g) denatured spirit, and
- (h) perfumed spirit and spirit used in drugs, medicines or chemicals, whether manufactured in India or imported from foreign countries;

**5. Definition of "retail" and "whole sale" :** (1) The Board may, by notification, declare, with respect either to the whole of the State or to any specified local area, and as regards purchases generally or any specified class of purchasers, and either generally or for any specified occasion, what quantity of any intoxicant shall, for the purposes of this Act, be the limit of a retail sale.

(2) The sale of any intoxicant in any quantity in excess of the quantity declared in respect thereof under sub-section (1) shall be deemed to be a wholesale sale.

**6. Saving of certain Acts :** Nothing contained in this Act shall affect the provisions of -

- (a) the Sea Customs Act, 8 of 1878, or
- (b) the Indian Tariff Act, 8 of 1894 (except section 6 thereof), or
- (c) the Cantonments Act, 15 of 1910

## CHAPTER - II

### *Establishments, Control, Appeal and Revision*

**7. Establishments and delegation, and withdrawal of powers :**

(1) The administration of the Excise department and the collection of the excise-revenue within a district shall ordinarily be under the charge of the Collector.

(2) The State Government may, by notification applicable to the whole of the State or to any specified local area, -

- (a) appoint an officer who shall, subject to such control as the State Government may direct, have the control of the administration of the Excise department and the collection of the excise-revenue;

**NOTE :** an Excise Commissioner, shall be appointed and that he shall subject to the general control of the Board have control over the administration of the Excise Department and collection of excise revenue; vide LSG Deptt. No. 1826 dt. 31.3.1937.

- (b) appoint any person to exercise all or any of the powers and to perform all or any of the duties, conferred and imposed

on a Collector by or under this Act, subject to such control as the State Government may direct;

**NOTE :** The Additional District Magistrates shall be appointed as such under sub-section (2) of section 10 of the Code of Criminal Procedure, 1898 (Act 5 of 1898), who shall, within their respective jurisdictions exercise all the powers and perform all the duties conferred and imposed on the Collector by or under the Act and shall, while exercising such powers and performing such duties, act under the general supervision and direction of the Collectors of the respective districts save in matters relating to appeals; vide LSG Deptt. No. 1826 dt. 31.3.1937.

(c) appoint officers of the Excise department, of such classes and with such designations, powers and duties, as the State Government may think fit;

**NOTE :** One or more Deputy Commissioners of Excise who shall exercise the powers conferred and perform the duties imposed on an Excise Officer by or under the Act within their respective jurisdictions and shall, subject to the control of the Excise Commissioner exercise such functions, as may be specified by the Excise Commissioner in that behalf, shall be appointed by the State Govt.

A Superintendent of Excise shall be appointed in every district who shall exercise the powers conferred and perform the duties imposed on an Excise Officer by or under the Act throughout the district for which he is appointed and shall in subordination to the Collector, and subject to the general control of the Excise Commissioner, exercise in such district all the powers and perform all the duties conferred and imposed on the Collector by the provisions of the Act specified below –

- (i) grant of passes under sub-section (2) of section 12,
- (ii) grant of authorisation under clause (c) of sub-section (2) of section 18 to possess intoxicants not obtained from a licenced vendor;
- (iii) grant of permit under clause (g) of sub-section (2) of section 18 and under clause (e) of proviso (4) to section 20 to use *tari* in the manufacture of bread,
- (iv) grant of permits under sub-section (1) of section 19 for possession of intoxicants,
- (v) power to empower Excise Officers under clause (b) of section 24 to require licensees to weigh or test intoxicants,
- (vi) publication of lists under sub-section (1) of section 31,
- (vii) confiscation under sub-section (2) of section 67,

- (viii) composition of offences under section 68 in respect of breaches of conditions of licence; permit or pass or general conditions applicable to such licence of property liable to confiscation,
- (ix) issue of warrant of arrest under section 71,
- (x) issue of search warrant under section 72,
- (xi) arresting or searching in person or directing arrest or search in his presence under section 73,
- (xii) investigation of offences under sub-section (1) of section 77,
- (xiii) powers relating to security and bail under section 79,
- (xiv) powers, functions and protections of a Court under sub-section (2) of section 85,
- (xv) complaints or reports to Magistrate under clause (b) of section 87, and
- (xvi) issue of distress warrants under sub-section (1) of section 93:

Provided that the Superintendent of Excise of Dhenkanal district shall be the Superintendent of Excise of Angul district *ex officio*:

Provided further that the Superintendent of Excise of Boudh district shall be the Superintendent of Excise of Khondmals district *ex Officio*; the following Excise Officers who shall exercise the powers conferred and perform the duties imposed on them by or under the Act throughout the areas for which they are appointed and shall have rank in the order in which they are named below -

- (i) Inspectors of Excise,
- (ii) Sub-Inspectors of Excise,
- (iii) Assistant Sub-Inspectors of Excise,
- (iv) Excise Constables;

the areas to which Inspectors and Sub-Inspectors are appointed shall be fixed by the Collectors in the respective districts and such areas in respect of Excise Officers below the rank of Sub-Inspector shall be similarly fixed by the Superintendent of Excise;

the areas in which an Excise officer of and below the rank of Inspector appointed to work under the charge of a Deputy Commissioner shall be fixed by such Deputy Commissioner; vide LSG Deptt. No. 1826 dt. 31.3.1937.

- (d) order that all or any of the powers and duties assigned by or under this Act to any officer appointed under clause (c) of this section shall be exercised and performed by any Government officer or any other person;

- (e) delegate to the Board, the Commissioner of a Division, or the Excise Commissioner or the Collector of a district, all or any of the powers conferred upon the State Government by or under this Act, except the power conferred by section 89 to make rules :
- (f) withdraw from any officer or person all or any of the powers or duties conferred or imposed upon him by or under this Act; and
- (g) permit the delegation by the Board, the Commissioner of a Division, the Excise Commissioner or the Collector, to any person or classes of persons specified in such notification, of any powers conferred or duties imposed upon it or him by or under this Act.

**NOTE :** The State Government, vide LSG Deptt. No. 1826 Dated the 31.3.1937 order and delegate the following – A Police Officer of or above the rank of an officer-in-charge of a police-station shall be competent to exercise the following powers under the Act, namely –

- (a) power to search, seize and detain or arrest without a warrant under section 74,
- (b) power to investigate offences without the order of a Magistrate under sub-section (2) of section 77 so far as it relates to investigation of offences punishable under sections 47, 49, 55 and 56,
- (c) stopping of proceedings under sub-section (2) of section 78,
- (d) power to release persons on bail or on their own bond under sub-section (5) of section 79, and
- (e) power to submit complaint or report to Magistrate under clause (a) of section 87;
- (a) to the Board to exercise the following powers of the State Government, namely –
  - (i) power to give permission for the import of an intoxicant under clause (a) of sub-section (1) of section 9.
  - (ii) power to prescribe the quantity of an intoxicant up to which it can be transported without a pass, under sub-section (1) of section 12, excepting the cases covered by the proviso to the said sub-section,
  - (iii) power to grant for a period not exceeding five years exclusive privilege of manufacturing and /or supplying wholesale country liquor or any intoxicating drug under clauses (a) and (b) of sub-section (1) of section 22.



- (iv) power to prescribe restrictions upon the cancellation or suspension of exclusive privilege licences, permits, or passes under sub-section (1) of section 42, and
- (v) power to empower officers to demand the production of licences, permits or passes under clause (a) of section 57;
- (b) to the Excise Commissioner to appoint all Excise officers of and below the rank of Inspectors of Excise, all Excise Head Clerks and all Excise Clerks;
- (c) to the authority empowered to make an appointment, by or under the Act of an Excise officer to any rank or of an Excise Head Clerk or an Excise Clerk, to order the transfer of an officer of that rank or of an Excise Head Clerk or an Excise Clerk, the power to transfer such officer and such clerk, or to delegate such power of transfer to an Excise Officer subordinate to him –

Provided that such power of transfer can be exercised by an Excise Officer higher in rank to such authority –

Provided further that all matters relating to control of officers of the Excise Department and their suspension, reduction, dismissal or other punishments and all other matters relating to conditions of service shall be regulated by the rules which are generally applicable to other similar employees of the State Government or by such rules as may be framed from time to time by the State Government under the proviso to Article 309 of the Constitution for regulating the conditions of service of Excise officers in general or of any particular rank;

The Government permit the delegation – (a) by the Excise Commissioner –

- (i) to a Deputy Commissioner of Excise, the power to appoint Assistant Sub-Inspectors of Excise and Excise Constables required for the work directly under the control of such Deputy Commissioner of Excise,
- (ii) to the Collectors to appoint Assistant Sub-Inspectors of Excise and to appoint temporarily Excise clerks subject to confirmation of the Excise Commissioner,
- (iii) to the Superintendents of Excise to appoint Excise Constables;
- (b) by the Collector any of the powers or duties under the provisions of the Act specified below to the officer or officers designated against each such power or, duty, namely –
  - (i) power under sub-section (2) of section 12, to grant passes for the import, export or transport of any intoxicant, to any Deputy Collector or any officer of the Excise Department

not below the rank of Sub-Inspector or to an officer who is in charge of a distillery or an Excise warehouse,

- (ii) power under sub-section (2) of section 12, to grant passes for the transport of any intoxicant, to any Sub-Deputy Collector, or to any officer of the Excise Department not below the rank of Sub-Inspector or who is in charge of a distillery or an Excise warehouse,
- (iii) power under clause (g) of section 18 and clause (e) of section 20, to grant permits to use *tari* or toddy for the manufacture of bread, to any Deputy Collector, or Sub-Deputy Collector, or any Excise officer not below the rank of Sub-Inspector,
- (iv) power under sub-section (1) of section 19 to grant permits to possess an intoxicant in excess of the quantity declared to be the limit of retail sale, to any Deputy Collector or Sub-Deputy Collector, or any Excise officer not below the rank of Sub-Inspector of Excise,
- (v) power under section 71 to issue warrant of arrest to any Deputy Collector or Sub-Deputy Collector,
- (vi) power under section 72 to issue search warrant, to any Deputy Collector or Sub-Deputy Collector,
- (vii) a Sub-Divisional Officer to exercise and perform within his jurisdiction all the powers of the Collector conferred and imposed on the Superintendent of Excise –

Provided that such powers under clause (b) of section 24, sub section (1) of section 31 and section 68 shall not be delegated to a Sub-Divisional Officer;

**8. Control, appeal and revision :** (1) The Collector shall, in the proceedings under this Act, be subject to the control of the Excise Commissioner, and shall, in such matters as the State Government may direct, be subject also to the control of the Commissioner of the Division.

(2) Orders passed under this Act or under any rule made hereunder shall be appealable in such cases, to such authorities and under such procedure as may be prescribed by rule made under section 89, Clause(c).

(3) The Board may revise any order passed by a Collector, the Excise Commissioner or the Commissioner of a Division.

(4) [ x x x x ]<sup>1</sup>

---

1. Omitted by Orissa Act 17 of 1972

## CHAPTER - III

*Import, Export and Transport*

**9. Restriction on import :** (1) No intoxicant shall be imported unless -

- (a) the State Government has given permission, either general or special, for its import;
- (b) such conditions (if any) as the State Government may impose have been satisfied; and
- (c) the duty (if any) payable under Chapter V has been paid or a bond has been executed for the payment thereof.

(2) Sub-section (1) shall not apply to any article which has been imported into India and was liable, on such importation, to duty under the Indian Tariff Act, 1894 or the Sea Customs Act, 1878, if -

- (i) the duty as aforesaid has been paid, or
- (ii) a bond has been executed for the payment of such duty.

(3) Clauses (a) and (b) of sub-section (1) shall not apply to liquor manufactured in India and declared under section 4 to be foreign liquor.

**10. Restriction on export or transport :** No intoxicant shall be exported or transported unless -

- (a) the duty (if any) payable under Chapter V,
  - (b) x x x x x
- has been paid, or a bond has been executed for the payment thereof:

Provided that the Board may, subject to such conditions (if any) as it thinks fit to impose, exempt any intoxicant from the provisions of this section.

**11. Power to prohibit, import, export or transport :** The State Government may, by notification :

- (a) prohibit the import or export of any intoxicant into or from the State or any part thereof, or
- (b) prohibit the transport of any intoxicant

**NOTE :** The State Govt. vide LSG Deptt No. 1826 Dt. 31.3.1937 prohibit -

- (1) the transport of country spirit -
  - (a) when manufactured in a licensed outstill shop, to any prohibited area or area in which the sale of distillery spirit is allowed,
  - (b) when manufactured in a distillery, to any area in which a higher duty is levied except under the written authority of the Collector in such area per mitting such transport,

- (c) when obtained from a licensed country spirit shop, to any area in which a higher retail price has been prescribed by the Board;
- (2) the transport of Ganja and Bhang –
  - (a) when obtained from the scheduled areas to the plains areas;
  - (b) when obtained from non-excise areas to any other area;

*Explanation* – For definitions of "Prohibited area" and "non Excise area" see (part VIII) of this notification;

**12. Passes for import, export or transport :** (1) No intoxicant exceeding such quantity as the State Government may prescribe by notification, either generally or for any specified local area, shall be imported, exported or transported, except under a pass:

Provided that in the case of duty-paid foreign liquor other than denatured spirit, such passes shall be dispensed with unless the State Government, by notification, otherwise directs with respect to any local area.

(2) The passes required by sub-section (1) may be granted by the Collector.

(3) Such passes may be either general for definite periods and particular kinds of intoxicants or special for specified occasions and particular consignments only.

**NOTE :** The Government have prescribed vide LSG Deptt. No. 1826 dt. 31.3.1937 that – (1) no intoxicant exceeding the limit of a retail sale as specified in sub-section

- (1) of section 5 shall be imported or transported except under a pass,
- (2) the power to grant pass under sub-section (2) of section 12 for the transport of foreign liquor or country spirit manufactured in a distillery from their own premises to the premises of other licensed dealers may be exercised, as the case may be, by the holders of "sale-to-trade" licences of foreign liquor or by the agents in charge of licensed wholesale depots of such country spirit,
- (3) the passes required by the general provisions of sub-section (1) of section 12 shall not under the proviso to the said sub-section, be dispensed with in cases of –
  - (a) rectified spirit,
  - (b) foreign liquors of all other kinds manufactured in India including per fumed spirit and spirit contained in drugs, medicinal and toilet preparations and chemicals, and
  - (c) foreign liquors of all kinds when transported for sale;

## CHAPTER - IV

*Manufacture, Possession and Sale*

13. Licence required for manufacture : (a) No intoxicant shall be manufactured,

- (b) no hemp plant shall be cultivated,
- (c) no portion of the hemp plant from which an intoxicating drug can be manufactured or produced shall be collected,
- (d) no liquor shall be bottled for sale,
- (e) no distillery or brewery shall be worked, and
- (f) no person shall use, keep or have in his possession any materials, still, utensil, implement or apparatus whatsoever for the purpose of manufacturing any intoxicant other than *tari*, except under the authority and subject to the terms and conditions of a licence granted in that behalf by the Collector:

Provided that any *tari*-producing tree may be tapped, and *tari* may be drawn from any tree, without a licence under this section, by the person in possession of the tree, -

- (i) for the purpose of being used in the manufacture of *gur* or molasses, or
- (ii) for the purpose of being used solely for the preparation of food for domestic consumption and not -
  - (a) as an intoxicant, or
  - (b) for the preparation of any intoxicating article, or
  - (c) for the preparation of any article for sale or.
- (iii) up to a limit of four seers, for the domestic consumption of the said person.

Case laws : inclusive possession - except under the authority and subject to the terms and conditions of licence is prohibited - 67(1989) CLT 365.

14. Drawing of *tari* in notified areas : (1) Notwithstanding anything contained in the proviso to Section 13, -

- (a) no *tari*- producing tree shall be tapped, and
- (b) no *tari* shall be drawn from any tree in any local area specified in this behalf by the State Government by notification except under the authority and subject to the terms and conditions of a licence granted in that behalf by the Collector:

(2) Provided that, when any exclusive privilege of manufacturing *tari* has been granted under section 22, the State Government may declare that any written permission given by the grantee to draw *tari* shall have the

same force and effect as a licence granted by the Collector under sub-section (1) of this section:

(3) Provided also that, in any local area specified by notification under sub-section (1), the State Government may, by notification, declare that sub-section shall not apply to trees tapped or tari drawn under such special conditions as the Board may prescribe.

**15. Establishment of distilleries, breweries or warehouses :** (1) The Excise Commissioner may –

- (a) subject to any restrictions imposed by the State Government, establish, or authorize the establishment of distilleries or breweries, in which liquor may be manufactured under a licence granted under section 13;
- (b) discontinue any such distillery or brewery;
- (c) establish or authorize the establishment of warehouses, wherein any intoxicant may be deposited and kept without payment of duty; and
- (d) discontinue any such warehouse.

(2) No distillery, brewery or warehouse as aforesaid shall be established except by, or under the authority of, the Excise Commissioner.

**16. Licence required for depositing or keeping intoxicant in warehouse or other place of storage :** No person shall, except under the authority and subject to the terms and conditions of a licence granted in that behalf by the Collector, deposit or keep any intoxicant in any warehouse or other place of storage established, authorized or continued under this Act.

**17. Payment of duty on removal from distillery, brewery, warehouse or other place of storage :** No intoxicant shall be removed from any distillery, brewery, warehouse or other place of storage licensed, established, authorized or continued under this Act, unless the duty (if any) payable under Chapter V has been paid or a bond has been executed for the payment thereof.

**18. Possession of intoxicant not obtained from a licensed vendor :** (1) No person shall have in his possession any intoxicant which has not been obtained from a licensed vendor of the same.

(2) Sub-section (1) shall not apply to –

- (a) any intoxicant lawfully deposited or kept in a distillery, brewery, warehouse or other place of storage licensed, established, authorized or continued under this Act, or
- (b) any intoxicant lawfully in the possession of a licensed vendor of the same, or

- (c) any intoxicant in the possession of a person who has lawfully imported it, or who is authorised by the Collector to possess it, or
- (d) any foreign liquor in the possession of any common carrier or warehouseman as such, or purchased at a sale authorized by clause (a) of proviso (4) to section 20, or
- (e) *tari* intended to be used in the manufacture of *gur* or molasses, or
- (f) *tari* intended to be used solely for the preparation of food for domestic consumption, and not –
  - (i) as an intoxicant, or
  - (ii) for the preparation of any intoxicating article, or
  - (iii) for the preparation of any article for sale, or
- (g) *tari* intended to be used in the manufacture of bread by a person holding a permit to use *tari* for that purpose, or
- (h) *tari*, up to a limit of four seers when in the possession of the person possessing the tree from which it was drawn and intended to be used for his domestic consumption, or
- (i) intoxicating drugs in the possession of any person licensed to cultivate or collect the plants from which such drugs were produced, when such possession is in accordance with the conditions of his licence.

**19. Possession of intoxicant generally :** (1) No person not being licensed to manufacture, cultivate, collect or sell any intoxicant shall have in his possession any quantity of any intoxicant in excess of such quantity as the Board has, under section 5, declared to be the limit of a retail sale, except under a permit granted by the Collector in that behalf.

(2) Sub-section (1) shall not apply to –

- (a) any foreign liquor (other than denatured spirit) which is in the possession of any common carrier or warehouseman as such, or
- (b) any foreign liquor which has been purchased by any person for his bona fide private consumption and not for sale or for use in the manufacture of any article for sale, or
- (c) *tari* intended to be used in the manufacture of *gur or molasses*,
- (d) *tari* intended to be used solely for the preparation of food for domestic consumption and not –
  - (i) as an intoxicant, or
  - (ii) for the preparation of any intoxicating article, or
  - (iii) for the preparation of any article for sale.

(3) A licensed vendor shall not have in his possession at any place other than that authorized by his licence any quantity of any intoxicant

in excess of such quantity as the Board has, under section 5, declared to be the limit of a retail sale, except under a permit granted by the Collector in that behalf.

✓(4) Notwithstanding anything contained in the foregoing sub-sections, the State Government may, by notification, prohibit the possession by any person or class of persons, or, subject to such exceptions, if any, as may be specified in the notification, by all persons either in the State of Orissa or in any specified local area, of any intoxicant either absolutely, or subject to such conditions as it may prescribe.

Case Laws : Possession – Quantity found in excess of that fixed by Revenue Board – Liable to be convicted – Proof of actual quantity in possession of the accused is necessary – 1978(46) CLT. 373.

NOTE : The State Government prohibit, vide LSG Deppt No. 1826 odt.

31.3.1937 subject of the exemptions specified under section 94 of the Act and to the following exceptions, the possession by any person of any wine, spirit, beer, *tari* and country liquor in the prohibited area –

- (a) in case of sacramental wine at the time of a Christian festival where such sacramental wine is customarily used, possession of such wine up to one litre by a Christian is permissible,
- (b) any Military Officer stationed at Chandipur or within the limits of Balasore Municipality in the district of Balasore, who is authorized to purchase any wine, spirit and beer within the limit of a retail sale as specified under sub-section (1) of section 5,
- (c) any qualified licensed chemist or medical practitioner is authorized to possess one litre of brandy only for medicinal purposes under licence granted by the Collector,
- (d) any person permitted by a permit issued by the Commissioner or by any other officer authorised by him by an order in writing in that behalf may possess foreign liquor of such description in such quantities and for such purposes and under such conditions as may be specified in the permit so granted for the purpose :

Provided that no licence shall be granted for sale of foreign liquor, excepting under the provisions of section 20 and subject to the conditions laid down in the Orissa Excise Rules, 1965 with regard to establishment of licensed premises for such sale:-

Provided further that no licence shall be granted under section 15 of the Act, for establishment of a distillery, brewery or warehouse or their discontinuance excepting with the prior orders of the State Government in each case;



*Explanation – (i) "prohibited area" means the districts of Cuttack, Puri, Balasore and Ganjam and all excepting the Kashipur Tahsil of Koraput district,*

(ii) "non-prohibited area" means any area which is not prohibited area;

(e) A tourist who intends to possess foreign liquor for his personal consumption in course of his tour in any prohibited area may be granted a temporary permit for the purpose by any officer authorised in this behalf by the Board in such manner and subject to such conditions as may be specified by the Board in such authorisation;

*Explanation – "Tourist" means a foreigner who is not normally a resident in India, and who enters India for a stay of not less than twenty-four hours and not more than six months at a time for legitimate non-immigrant purposes such as touring, holiday, family reasons, study, religion, pilgrimage or business;*

(f) The Khonds and Savaras in the scheduled areas of the district of Ganjam excluding the 122 villages mentioned below are authorised to manufacture and possess country spirit for *bona fide* home consumption as well as for use at village feasts, marriages and other social and religious functions but not for sale –

- (1) Tamarada, (2) Loba, (3) Gopalpuram, (4) Pavanobuddi, (5) Kistnapuru,
- (6) Addanguda, (7) Votajoriya, (8) Ramachandrapuram, (9) Chipurupalla,
- (10) Bädigam, (11) Radhakanthapur, (12) Parida, (13) Khetada, (14) Arli,
- (15) Kounaipur, (16) Pustopuram, (17) Jaganadhpur, (18) Londhahatti,
- (19) Kujasingi, (20) Nuagam, (21) Kalamasingi, (22) Onchala, (23) Buruji,
- (24) Rempi, (25) Baruda, (26) Santasopuram, (27) Laksmipuram,
- (28) Haripurm, (29) Anandda puram, (30) Savaraharipuram, (31) Baduva,
- (32) Raskoraya puram, (33) Jolla, (34) Oddanguda, (35) Gangarajpuram,
- (36) Kumalasingi, (37) Jenapuram, (38) Konchimunda, (39) Vobasingi,
- (40) Sorogolo, (41) Thubarada, (42) Kintada, (43) Demerijiola, (44) Burujango,
- (45) Raghunadhpur, (46) Dalimapur, (47) Pegada, (48) Sorada,
- (49) Koradasingi, (50) Padmapuram, (51) Govindpur, (52) Dampur,
- (53) Herapuram, (54) Sonnatundi, (55) Bodatundi, (56) Tubursingi,
- (57) Padasahi, (58) Porisola, (59) Marlava, (60) Paindaguda, (61) Koraisingi,
- (62) Pothisahi, (63) Toborosingi, (64) Pekota, (65) Nemolosingi, (66) Jolango,
- (67) Gopalpur, (68) Sunapur, (69) Dumba, (70) Mohano, (71) Hattibadi,
- (72) Rajapuram, (73) Chompapur, (74) Koitopodora, (75) Raigoda,
- (76) Dikkasal, (77) Krishnapuram, (78) Savarakristnopuram, (79) Kharisahi,
- (80) Abbapur, (81) Bhalliasahi, (82) Raida, (83) Narayanapuram,
- (84) Badagam, (85) Lallusayi, (86) Arkhabhodra, (87) Lanjibhadra,

(88) Nilakanthapuram, (89) Kothoor, (90) Sankurada, (91) Konchilingi, (92) Lavapuram, (93) Gandhahathi, (94) Oudharojilla, (95) Balarampuru, (96) Thalasingi, (97) Ramachandrapuram, (98) Godasingi, (99) Muligumma, (100) Palamkouda, (101) Balajeepuram, (102) Garabandhomettu, (103) Ravuthuporam, (104) Venkatapuram, (105) Kunusoda, (106) Mamadipali, (107) Jagannadha-puram, (108) Boddapadu, (109) Lavanya kota, (110) Barripadu, (111) Bhimopurom, (112) Theramba, (113) Ambajarimettu, (114) Burushi, (115) Ambasari, (116) Marangi, (117) Burugam, (118) Somavalsa, (119) Guddibhadra, (120) Lavundha, (121) Devula, (122) Gongabado of the Parlakimedi Maliahs;

(g) The Schedule Tribes in non-excise areas in the district of Koraput are authorised to manufacture and possess country spirit for *bona fide* home consumption and for use at village feasts, marriages and other social and religious functions, but not for sale;

(h) The Schedule Tribes in the scheduled areas of the district of Ganjam and in the non-excise areas in the district of Koraput are authorised to tap any *tari* producing tree and draw *tari* from it for purposes mentioned in the proviso to section 13 of the Act;

*Explanation* - "Non-excise area" means an area as may be specified by the Board to be the area in which sale and possession of no country spirit shall be allowed otherwise than under subsection (4) of section 19 of the Act;

(i) a co-operative society or organisation which the State Government may recognise for tapping of *tari* producing tree and drawing of sweet or unfermented *tari* therefrom for the purpose of selling it as sweet drink or of manufacturing 'Gur' from it, may on authorisation, free of any fees, by the Board, tap *tari* producing trees draw sweet or unfermented *tari* from them for the purpose of selling it as sweet drink or of manufacturing 'Gur' from it, in such specified areas and subject to such terms and conditions of licence or permit as may be specified by the Board in the said authorisation;

**20. Licence required for sale :** No intoxicant and no portion of the hemp plant from which an intoxicating drug can be manufactured or produced, shall be sold except under the authority and subject to the terms and conditions of a licence granted in that behalf by the Collector:

Provided as follows -

(1) a licence for sale in more than one district shall be granted only by the Excise Commissioner or by a Collector specially authorized in that behalf by the Excise Commissioner;

- (2) a licence for sale granted under the Excise law in force in any other State may, on such conditions as may be determined by the Excise Commissioner, be deemed to be a licence granted under this Act;
- (3) a cultivator or owner of any hemp plant may sell, without a licence, those portions of the plant from which an intoxicating drug can be manufactured or produced, to any person licensed under this Act to deal in the same, or to any officer whom the Excise Commissioner may authorize to purchase or receive the same.
- (4) no licence shall be required for any of the following sales, namely –
  - (a) the sale of foreign liquor lawfully procured by any person for his private use – when such sale is made by such person himself or on his behalf upon his quitting a station, or on behalf of his representatives in interest after his decease;
  - (b) the sale of tari lawfully possessed by a person in possession of the tree from which it was drawn, to a person licensed under this Act to manufacture or sell tari;
  - (c) the sale of tari lawfully possessed and intended to be used in the manufacture of *gur* or molasses; or
  - (d) the sale of tari lawfully possessed and intended to be used solely for the preparation of food for domestic consumption, and not –
    - (i) as an intoxicant, or
    - (ii) for the preparation of any intoxicating article, or
    - (iii) for the preparation of any article for sale, or
  - (e) the sale of tari lawfully possessed, intended to be used in the manufacture of bread, to a person holding a permit to use tari for the purpose of making bread.

**21. Manufacture and sale of liquor in or near cantonment :** Within the limits of any military cantonment, and within such distance from those limits as the <sup>1</sup>[Central Government] may in any case prescribe, no licence for the manufacture or sale of liquor shall be granted, except with the previous consent of the Commanding Officer.

**22. Grant of exclusive privilege of manufacture and sale of country liquor or intoxicating drugs :** (1) The <sup>2</sup>[State Government] may grant to any person, on such conditions and for such periods as it may think fit, exclusive privilege –

1. 'Central Govt' was substituted for "Local Government" by A.L.O. 1937.

2. "State Govt" was substituted for "Provincial Government" by A.L.O. 1950.

- (a) of manufacturing, or supplying wholesale, or
  - (b) of manufacturing and supplying wholesale, or
  - (c) of selling, wholesale or retail, or
  - (d) of manufacturing or supplying wholesale and selling retail, or
  - (e) of manufacturing and supplying wholesale and selling retail,
- any country liquor or intoxicating drug within any specified local area :

(1-a) The State Government may also grant to any person on such conditions and for such period as it may think fit the exclusive privilege for retail sale of foreign liquor within any specified place :

Provided that public notice shall be given of the intention to grant any such exclusive privilege, under the preceding sub-section and that any objections made by any person residing within the area affected shall be considered before an exclusive privilege is granted.

(2) No grantee of any privilege under sub-section (1) or sub-sec (1-a) shall exercise the same unless or until he has received a licence in that behalf from the Collector or the Excise Commissioner,

Case Laws : Opening of liquor shop – Highest bidder deposited the required moneys, but not dared to open any shop due to protest by the villagers and the Govt. was not in a position to maintain the law and order system of the area concerned – As no licence was issued, Govt. was directed to refund the money deposited - 86(1998) CLT 637.

**23. Transfer of exclusive privilege :** (1) A grantee of an exclusive privilege under section 22 shall not let or assign the same or any portion thereof unless he is expressly authorized, by a condition made under that section, to do so.

(2) Such letting or assignment shall be made only to a person approved by the Collector or (if the letting or assignment extends to more than one district) the Excise Commissioner.

(3) The lessee or assignee shall not exercise any rights as such unless and until the Collector has, upon his application, granted him a licence to do so.

**24. Maintenance and use of measures, weights and instruments by licensed manufacturers and vendors :** Every person who manufactures or sells any intoxicant under a licence granted under this Act –

- (a) shall supply himself with such measures, weights and instruments as the Excise Commissioner may prescribe and shall keep the same in good condition; and

- (b) when such measures, weights and instruments have been so prescribed, shall, on the requisition of any Excise officer duly empowered by the Collector in this behalf, measure, weigh or test any intoxicant in his possession, at such time and in such manner as such officer may require.

**24-A.** [(1) No person shall print or publish in any newspaper, news-sheet, book, leaflet, booklet or any other single or periodical publication or otherwise display or distribute any advertisement or other matter which –

- (a) commands, solicits the use of or offers any intoxicant or hemp; or
- (b) is calculated to encourage or incite any individual or class of individuals or the public generally to commit an offence under this Act or to commit a breach of or to evade the provisions of any rule, regulation or order made thereunder or the conditions of any licence, permit, pass or authorisation granted thereunder.

(2) Save as otherwise provided in sub-sec (3) nothing in this section shall apply to –

- (a) catalogues or price lists which may be generally or specially approved by the Excise Commissioner in this behalf;
- (b) any advertisement or other matter contained in any newspaper, news-sheet, book, leaflet, booklet or other publication printed and published outside the State; and
- (c) any other advertisement or matter which the State Government may by notification, either generally or specially exempt from the operation of this section.

(3) Notwithstanding anything contained in sub-sec (2) the State Government may by notification, prohibit within the State the circulation, distribution or sale of any newspaper, news-sheet, book, leaflet, booklet or other publication printed and published outside the State which contains any advertisement or matter which –

- (a) commands, solicits the use of or offers any intoxicant or hemp, or
- (b) is calculated to encourage or incite any individual or class of individuals or the public generally to commit any offence under this Act or to commit a breach of or to evade the provision of any rule, regulation or order made thereunder or the conditions of any licence, permit, pass or authorisation granted thereunder]

**25. Employment of children or women by licensed vendors :** (1) No person who is licensed to sell foreign liquor for consumption on his premises shall,

- during the hours in which such premises are kept open for business,
- employ or permit to be employed, either with or without remuneration, any person under the age of eighteen years,
- in any part of such premises in which such liquor is consumed by the public.

(1-a) No person who is licensed to sell country spirit or any intoxicating drug shall employ or permit to be employed, either with or without remuneration, any person under the age of eighteen years, in any part of the premises in which such spirit or drug is sold, during the hours in which such premises are kept open for business.

(2) No person who is licensed to sell foreign liquor for consumption on his premises shall, without the previous written permission of the Board,

- during the hours in which such premises are kept open for business,
- employ or permit to be employed, either with or without remuneration, any woman,
- in any part of such premises in which such liquor is consumed by the public.

(3) The State Government may, by notification, declare that sub-section (2) shall apply also, in any specified area, to persons licensed to sell country spirit for consumption on their premises.

(4) Every permission granted under sub-section (2) shall be endorsed on the licence, and may be modified or withdrawn.

**26. Power to close shops temporarily :** (1) The District Magistrate or a Sub-divisional Magistrate, may, by notice in writing to the licensee, require that any shop in which any intoxicant is sold shall be closed at such times or for such period as he may think necessary for the preservation of the public peace.

(2) If any riot or unlawful assembly is apprehended or occurs in the vicinity of any shop in which any intoxicant is sold, any Magistrate, or any Police officer above the rank of constable, who is present, may require such shop to be kept closed for such period as he may think necessary.

(3) When a direction is made by a Magistrate under sub-section (1) or sub-section (2) or by a police officer under sub-section (3) such Magistrate or Police officer shall forthwith inform the Collector of his action and of his reasons therefor.

["26A. **Restriction on grant of licence or exclusive privilege –**  
(1) Notwithstanding anything contained in this Chapter or elsewhere, in this Act, in the Scheduled Areas –

(a) in no case there shall be granted under this Act any licence for manufacture, possession or sale, or any exclusive privilege for manufacture or sale, of any intoxicant, except with the prior approval of the concerned Grama Panchayat accorded with concurrence of the Grama Sasan; and

(b) no licence or exclusive privilege which is granted in contravention of clause (a) shall have any effect for the purpose of this Act.

(2) For the purposes of clause (a) of sub-section (1)

(i) the authority competent to grant licence for manufacture, possession or sale, or exclusive privilege for manufacture or sale, of any intoxicant shall, before granting any such licence or exclusive privilege, refer every proposal therefor to the concerned Grama Panchayat for the decision within a period of thirty days from the date of receipt of such reference; and

(ii) if the Grama Panchayat fails to communicate its decision within the period referred to in clause (i), it shall be deemed that the concerned Grama Panchayat has accorded the required approval.

*Explanation –* For the purposes of this section –

(i) "Grama Panchayat" and "Grama Sasan" shall respectively mean the Grama Panchayat and Grama Sasan as defined in the Orissa Grama Panchayat Act, 1964; and

(ii) "Scheduled Areas" means the Scheduled Areas as referred to in clause (i) of Article 244 of the Constitution."]

## CHAPTER – V

### *Duty*

**27. Power to impose duty on import, export, transport and manufacture :** (1) An excise duty or countervailing duty, as the case may be, at such rate or rates as the State Government may direct, may be imposed, either generally or for any specified local area, on –

(a) any excisable article imported, or

- (b) any excisable article exported, or
- (c) any excisable article transported, or
- (d) any excisable article (other than *tari*) manufactured under any licence granted in respect of clause (a) of section 13, or
- (e) any hemp plant cultivated, or any portion of such plant collected, under any licence granted in respect of clause (b) or clause (c) of section 13, or
- (f) any excisable article manufactured in any distillery or brewery licensed, established, authorized or continued under this Act.

*Explanation* – Duty may be imposed on any article under this sub-section at different rates according to the places to which such article is to be removed for consumption, or according to the varying strengths and quality of such article.

(2) An excise duty or countervailing duty, as the case may be, at such rate or rates as the State Government may direct, may be imposed, either generally or for any specified local area, on any *tari* drawn under any licence granted under section 14, sub-section (1).

(3) Notwithstanding anything contained in sub-section (1) –

(i) duty shall not be imposed thereunder on any article which has been imported into India and was liable, on such importation, to duty under the Indian Tariff Act, 1894 or The Sea Customs Act, 1878, if –

- (a) the duty as aforesaid has been already paid, or
- (b) a bond has been executed for the payment of such duty; and

(ii) x x x x x

NOTE : The State Government vide LSG Deptt. Notefication No. 1826 dt. 31.3.37 direct that under section 27 – (1) duty shall be lived at the rates specified in the Table below on foreign liquor, except –

- (a) liquor which has been imported into India and was liable on such importation, to duty under the Indian Tariff Act, 1934, or the Customs Acts 1962, if such duty has already been paid or a bond has been executed for the payment thereof;
- (b) denatured spirit not so imported, and
- (c) medicinal or toilet preparations containing alcohol on which duty is leviable under section 3 of the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 (Act 16 of 1955); whether imported to or exported from or transported or manufactured in the State;



**TABLE**

| Serial No. | Name of article   | Unit for levy of duty              | Rate of duty |
|------------|---|------------------------------------|--------------|
| (1)        | (2)   | (3)                                | (4)          |
| 1(A)       | Ale, beer, porter, cider and other fermented [Liquor manufactured by the East Coast Breweries & Distilleries Ltd.]  | Litre ...                          | 6.00         |
| 1(B)       | Ale, beer, porter, cider and other fermented liquor manufactured other than East Coast Breweries and Distilleries Ltd.  | Litre...                           | 7.00]        |
| 2          | Whisky, brandy, rum, gin, liquors, cordials, mixtures and other similar potable alcoholic preparations containing India-made rectified spirit intended for manufacture of whisky, brandy, rum, gin, liquors, cordials and other similar potable alcoholic preparations. | Litre of the strength London proof | 82.00        |
| 3(A)       | India-made foreign liquor "Rum" issued from any distillery and bonded warehouse to troops and military bodies in Orissa.  | Ditto ...                          | 48.00        |
| 3(B)       | India made foreign liquor other than "Rum" issued from any distillery and bonded warehouse to troops and military bodies in Orissa.   | Ditto ...                          | 52.00]       |
| 4          | In india-made spirit used for scientific and industrial purposes unless totally exempted in any case.   | Ditto ...                          | 2.50         |
| 5          | All other sorts of spirit   | Ditto ...                          | 16.00        |

- (2) Duty shall be levied at the rates specified in the table below on ganja and bhang –

**TABLE**

| Serial No | Name of article per kilogram | Rate of duty of |
|-----------|------------------------------|-----------------|
| (1)       | (2)                          | (3)             |
|           | Rs. P.                       |                 |
| (i)       | Ganja                        | 240.00          |
| (ii)      | Bhang                        | 108.00          |

(3) duty shall be levied in the areas and the rates respectively specified in the table below, and subject to the following conditions, on country spirit manufactured in a distillery –

- (a) on spirit of different strengths transported from any distillery, wholesale country spirit depot or excise warehouse in Orissa to the premises of a licensed retail vendor, the duty shall be levied at the rates imposed on spirit of such strengths in the area in which such premises are situated,
- (b) on spirit transported from any distillery, wholesale country spirit depot or excise warehouse in Orissa to another such distillery, depot or warehouse, the duty shall be levied at the highest rate imposed on such spirit in any area through or into which the spirit passes,
- (c) on spirit manufactured in a distillery in Orissa, the duty shall be levied at the highest rate imposed on such spirit in the area in which the distillery stands,
- (d) on spirit stored in an excise warehouse or wholesale country spirit depot in Orissa, the duty shall be levied at the highest rate imposed on such spirit in the area served by the warehouse,
- (e) on spirit imported into Orissa, the duty shall be levied at the highest rate imposed on such spirit in any area through or into which the spirit passes,
- (f) on spirit exported from Orissa, the duty shall be levied at the rate in force in the place to which the spirit is exported;
- <sup>1</sup>[(g) Incentive to the retail licencees of country spirit having strength of both 60 U.P. and 40 U.P. for lifting more than the M.G.Q. fixed shall be given as follows –

[ TABLE OF AREA AND RATES ]

| District   | Local area            | Strength of spirit | Rate of duty per London proof litre for sub-paragraph(g) |
|------------|-----------------------|--------------------|--|
| (1)        | (2)                   | (3)                | (4)  |
| Balasore   | Whole of the district | 60 U.P. & 40 U.P.  | Rs. 15/-   |
| Bolangir   | Whole of the district | 60 U.P. & 40 U.P.  | Rs. 15/-   |
| Cuttack    | Whole of the district | 60 U.P. & 40 U.P.  | Rs. 15/-   |
| Dhenkanal  | Whole of the district | 60 U.P. & 40 U.P.  | Rs. 15/-   |
| Ganjam     | Whole of the district | 60 U.P. & 40 U.P.  | Rs. 15/-   |
| Kalahandi  | Whole of the district | 60 U.P. & 40 U.P.  | Rs. 15/-   |
| Keonjhar   | Whole of the district | 60 U.P. & 40 U.P.  | Rs. 15/-   |
| Koraput    | Whole of the district | 60 U.P. & 40 U.P.  | Rs. 15/-   |
| Mayurbhanj | Whole of the district | 60 U.P. & 40 U.P.  | Rs. 15/-   |
| Phulbani   | Whole of the district | 60 U.P. & 40 U.P.  | Rs. 15/-   |
| Puri       | Whole of the district | 60 U.P. & 40 U.P.  | Rs. 15/-   |
| Sambalpur  | Whole of the district | 60 U.P. & 40 U.P.  | Rs. 15/-   |
| Sudargarh  | Whole of the district | 60 U.P. & 40 U.P.  | Rs. 15/- ]   |

- i) When lifted more than 25% M.G.Q. – duty @ Rs 12/- per L.P.L. will be levied.
- ii) When lifted 25% to 50% over the M.G.Q. – Duty @ Rs 9/- per L.P.L. will be levied.
- iii) When lifted more than 50% of the M.G.Q. – Duty @ Rs 7.50 per L.P.L. will be levied]

27-A. (1) A luxury tax on the sale of foreign liquor may be imposed generally or in respect of any local area specified in that behalf by State Government :

(2) The luxury tax shall be levied at such rates, not exceeding the specified below, and in such manner as the State Government may, by rules, prescribe –

| Description of liquor   | maximum rate per litre |
|---|------------------------|
| Champagne and medicated wines issued by the Excise Commissioner as sparkling wines, wines of all other kinds and liquor | Rs. 20.00              |
| Beer, cider and fermented liquor  | Rs. 03.00              |

**28. Ways of levying such duty :** Subject to any rules made under section 90, clause (12), any duty imposed under section 27 may be levied in any of the following ways –

- (a) on an excisable article imported –
  - (i) by payment (upon or before importation) in the State or the State or territory from which the article is brought,
  - (ii) by payment upon issue for sale from a warehouse established, authorized or continued under this Act;
- (b) on an excisable article exported –
  - by payment in the State or in the State or territory to which the article is sent;
- (c) on an excisable article transported –
  - (i) by payment in the district from which the article is sent,
  - (ii) by payment upon issue for sale from a warehouse established, authorized or continued under this Act;
- (d) on intoxicating drugs manufactured, cultivated or collected –
  - (i) by a rate charged upon the quantity manufactured under licence granted in respect of the provisions of section 13, clause (a) or issued for sale from a warehouse established, authorized or continued under this Act, or
  - (ii) by a rate assessed on the area covered by, or on the quantity or outturn of, the crop cultivated or collected under a licence granted in respect of the provisions of section 13, clause (b) or clause (c);
- (e) on spirit or beer manufactured in any distillery or brewery licensed, established, authorized or continued under this Act –
  - (i) by a rate charged upon the quantity produced in or issued from the distillery or brewery, as the case may be, or issued for sale from a warehouse established, authorized or continued under this Act, or
  - (ii) in accordance with such scale of equivalents, calculated on the quantity of materials used, or by the degree of attenuation of the wash or wort, as the case may be, as the State Government may prescribe; and
- (f) on *tari* drawn under a licence granted under section 14, sub-section (1) by a tax on each tree from which the drawing of *tari* is permitted:

Provided that, where payment is made upon the issue of an excisable article for sale from a warehouse, shall be at the rate of duty in force on the date of issue of such article from such warehouse;

Provided also that no tax shall be levied in respect of any tree from which *tari* is drawn only for the manufacture of *gur* or molasses and under special conditions as the Board may prescribe.

**29. Payment for grant of exclusive privilege :** (1) Instead of or in addition to, any duty leviable under this Act, the State Government may require payment of a sum in consideration of the grant of any exclusive privilege under section 22.

(2) The sum payable under sub-Sec (1) shall be determined as follows :

- (a) by auction or by calling tenders or otherwise as the State Government may, in the interest of excise revenue by general or special order direct;
- (b) by such authority and subject to such control as may be specified in such order.

(3) The sum determined under sub-sec (2) shall be final and shall be payable by the party making the offer by way of tender, bid or otherwise once the offer is accepted by the authority referred to in cl (b) of that sub-section.

**30-A. Saving for duties being levied at commencement of the Constitution :** (1) Until provision to the contrary is made by the Parliament, the State Government may continue to levy any duty to which this section applies which it was lawfully levying immediately before the commencement of the Constitution, under this chapter as then in force.

(2) The duties to which this section applies are -

- (a) any duty on intoxicants which are not excisable articles within the meaning of this Act;
- (b) any duty on an excisable article produced outside India and imported into the State whether across a customs frontier as defined by the Central Government or not.
- (c) any duty on medicinal or toilet preparations containing alcohol.

(3) Nothing in this section shall authorize the levy by the State Government of any duty which, as between goods manufactured or produced in the State and similar goods not so manufactured or produced, discriminates in favour of the former, or which, in the case of goods manufactured or produced outside the State discriminates between goods manufactured or produced in one locality and similar goods manufactured or produced in another locality.

## CHAPTER - VI

### *Licences, Permits and Passes*

**31. Preparation of list of places for which it is proposed to grant licences for the retail sale of spirit :** Before the expiration of every period for which existing licences for the retail sale of spirit or *tari* are in force, the State Government shall prepare a list, in a form prescribed by the Board, showing

what licences it is proposed to grant for the retail sale of spirit or for consumption on the vendors' premises, for the next period of settlement.

**31. Publication of such list :** (1) The Collector shall –

- (a) cause to be conspicuously affixed upon the site of each referred to in the said list a notice to the effect that proposed to grant a licence for the retail sale of spirit or tari thereat, or in the vicinity, for the next period of settlement;
- (b) if any site referred to in the said list is not at the time proposed for the retail sale of spirit or tari cause a notice, to the effect that it is proposed to grant a licence for the retail sale of spirit or tari thereat, or in the vicinity, for the next period of settlement, to be proclaimed in the locality by beat of drum;
- (c) send a copy of the said list to the Chairman of the District Board;
- (d) send to the Chairman of each municipality an extract reproducing so much of the said list as relates to shops within the jurisdiction of the municipality; and
- (e) cause the said list, or any portion thereof, to be published in such other methods (if any) as may be prescribed by rule made under section 89, clause (j).

(2) When a copy of the said list is sent to the Chairman of the District Board he shall send to each member of the District Board a copy thereof and to the chairman of each local Board an extract reproducing so much of the said list as relates to shops within the jurisdiction of the local Board.

(3) When an extract is sent to the Chairman of any municipality under clause (d) of sub-section (1), he shall –

- (i) cause a copy of the extract to be conspicuously affixed to the central office of the municipality; and
- (ii) send to each Municipal Commissioner a copy of the extract.

**32. Time for preparation and publication of such list :** The list mentioned in section 30 shall be prepared, and shall be published under section 31, at such time as may be prescribed by rule made in this behalf under section 89, clause (j).

**33. Submission of objections and opinions to Collector :** (1) Objections to any proposal contained in any list prepared under section 30 may be received, at any time prior to the date prescribed by rule made in this behalf under section 89, clause (i) from –

- (a) persons paying municipal rates and residing in any municipality to which such proposal relates, or (if any such municipality

is divided into wards) in the ward to which such proposal relates or in any ward adjoining such ward; or

(b) (in the case of shops not situated in any municipality) persons owing or occupying land, or residing in the vicinity of the shop to which such proposal relates; or

(c) the District Board; or

(d) the District Magistrate.

(2) Such objections must be submitted to the Collector, or in any municipality, either to the Chairman of the municipality or to the Collector.

(3) Every Chairman of a District Board or municipality to whom a copy or an extract has been sent under section 31, clause (c) or clause (d) as the case may be, shall send to the Collector, by a date prescribed by rule made in this behalf under section 89, clause (j) –

(i) in the case of a municipality all objections (if any) to proposals contained in the extract which may be received by the Chairman, from persons paying municipal rates, before that date; and

(ii) in the case of a District Board, all objections (if any) to proposals contained in the list which may be received by the Chairman from members of the District Board, or the Chairman of any local Board; and

(iii) any opinion which the Chairman or the member of the District Board or the Municipal Commissioners, as the case may be, may wish to record on the said proposals.

**34. Grant of licences by Collector and submission of list, objections and opinions to Excise Commissioner :** (1) After the date prescribed for the receipt of objections and opinions submitted under section 33, the Collector shall consider the same, and shall, if necessary, revise the said list, and shall decide for what places licences for the retail sale of spirit shall be granted, and may, in his discretion, grant licences accordingly.

(2) The Collector shall then forthwith submit the said list, as so revised, and the said objections and opinions, and his own opinion to the Commissioner of the Division who shall consider the same, and shall forward then with his own opinion and recommendations (if any) to the Excise Commissioner.

**35. Finality of decision of Excise Commissioner or Board :** The Excise Commissioner shall consider the list, objections and opinions so sent to him, and may modify or annul any order passed or licence granted by the Collector and notwithstanding anything contained in section 8, his orders shall be final;

Provided that, if there be any difference of opinion between the Excise Commissioner and the Commissioner of a Division, the matter shall be referred by the Excise Commissioner to the Board, whose decision shall be final.

**36. Application of sections 30 to 35 to licences for retail sale of intoxicants other than spirit :** The provisions of sections 30 to 35 as to licences for the retail sale of spirit shall apply also in respect of licences for the retail sale, in any local area specified in any order made by the Board in this behalf, of any other intoxicant specified in such order.

**37. Exemption of certain licences from sections 30 to 36 :** Sections 30 to 36 shall not apply in the case of any licence which it is proposed to grant -

- (a) to any person, for the retail sale of any intoxicant during any period not exceeding six months; or
- (b) to any person, for the retail sale of any denatured spirit; or
- (c) to any person, for the retail sale of any intoxicant in substitution for a licence which has been cancelled or surrendered before the expiration of the period for which it was granted; or
- (d) to any medical practitioner, chemist, druggist, apothecary or keeper of a dispensary, for the retail sale of any intoxicant for medicinal purposes, or
- (e) to any Person, or exclusive privilege by the State Government U/s22 in respect of any of the matters referred to in Cls. (a) to (e) of sub-sec (1) or in sub-sec (1-a) of that section.

**38. Fees for, terms, conditions, and form of and duration of licences, permits and passes :** (1) Every licence, permit or pass granted under this Act -

- (a) shall be granted -
  - (i) on payment of such fees (if any) and
  - (ii) subject to such restrictions and on such conditions, and
- (b) shall be in such form and contain such particulars, as the Board may direct.

(2) Every licence, permit or pass under this Act shall be granted for such period (if any) as may be prescribed by rule made by the State Government u/s 89, clause (e).

**39. Power of Board to reduce fees :** The Board may, if it thinks fit, at any time during the period for which any licence has been granted, order a reduction of the amount of fees payable in respect thereof during the unexpired portion of the grant.



**40. Counterpart agreement by licensees and security or deposit :** authority granting a licence or exclusive privilege under this Act may require the grantee to execute a counterpart agreement, in conformity with the tenor of his licence or exclusive privilege and to give such security for the performance of such agreement, or to make such deposit in lieu of security, as such authority may think fit.

**41. Technical defects, irregularities and omissions :** (1) No licence or exclusive privilege granted under this Act shall be deemed to be invalid on account merely of any technical defect, irregularity or omission in the licence or exclusive privilege or in any proceedings taken prior to the grant thereof.

(2) The decision of the Excise Commissioner or (where a reference is made to the Board under Section 35) the Board, as to what is a technical defect, irregularity or omission shall be final.

**42. Power to cancel or suspend licence, permit or pass :** (1) Subject to such restrictions as the State Government may prescribe, the authority may cancel or suspend any exclusive privilege, licence, permit or pass under this Act if—

- (a) if it is transferred or sublet by the holder thereof without the permission of the said authority; or
- (b) if any duty or fee payable by the holder thereof be not duly paid; or
- (c) in the event of any breach by the holder thereof, or by any of his servants, or by any one acting on his behalf, with his express or implied permission, of any of the terms or conditions thereof; or
- (d) if the holder thereof is convicted of any offence punishable under this Act or any other law for the time being in force relating to revenue, or of any cognizable and non-bailable offence, or of any offence punishable under the Dangerous Drugs Act, 1930 or, under the Merchandise Marks Act, 1889 or under any section which has been introduced into the Indian Penal Code by section 3 of that Act; or
- (e) if the holder thereof is punished for any offence referred to in clause (8) of section 167 of the Sea Customs Act, 1878; or
- (f) where a licence, permit or pass has been granted on the application of the holder of an exclusive privilege granted under section 22, on the requisition in writing of such holder; or

- (g) if the conditions of the exclusive privilege, licence, permit or pass provide for such cancellation or suspension at will.

(2) When an exclusive privilege, licence, permit or pass held by a person is cancelled under clause (a) clause (b) clause (c), clause (d) clause (e) of sub-section (1) the authority aforesaid may cancel any other exclusive privilege, licence, permit or pass granted to such person by the authority of the State Government under this Act, or under any other law for the time being in force relating to Excise, or under the Opium Act, 1878.

(3) The holder of an exclusive privilege, licence, permit or pass shall not be entitled to any compensation for its cancellation or suspension under this section, or to the refund of any fee or consideration money paid or deposit made in respect thereof.

**43. Power to withdraw licences :** (1) Whenever the authority which has granted any licence or exclusive privilege under this Act considers that such licence should be withdrawn for any cause other than those specified in section 42, it shall remit a sum equal to the amount of the fees and consideration money payable in respect thereof for fifteen days, and may withdraw the licence either -

- (a) on the expiration of fifteen day's notice in writing of its intention to do so, or  
(b) forthwith, without notice.

(2) If any licence or exclusive privilege be withdrawn under clause (b) of sub-section (1), the said authority shall, in addition to remitting the sum as aforesaid, pay to the licensee or grantee of an exclusive privilege such further sum (if any), by way of compensation, as the Excise Commissioner may direct.

(3) If any licence or exclusive privilege be withdrawn under clause (a) of sub-section (1) the Excise Commissioner may, in special circumstances, direct the payment of such compensation as he may consider fit, in addition to the remission of the fee or consideration money as aforesaid.

(4) When a licence or exclusive privilege is withdrawn under sub-section (1), any fee or consideration money paid in advance, or deposited, made, by the licensee or grantee of an exclusive privilege in respect thereof shall be refunded to him after deducting the amount (if any) due to the State Government.

(5) For the purpose of calculating the amount due to the State Government mentioned in sub-section (4), the amount of fee or consideration money payable on account of the licence or exclusive privilege, as the case may be, for the period during which it was in force shall be taken to be the sum bearing the same proportion to the total fee or consideration money

for the whole period for which the licence or exclusive privilege was settled, as the period during which the licence or exclusive privilege was in force bears to the full period for which the licence or exclusive privilege was settled or granted.

[44. (1) Any holder of a licence or exclusive privilege granted under this Act to manufacture and sell an intoxicant may, unless his licence or exclusive privilege is liable to cancellation or suspension under section 42, surrender the same –

- (a) on the expiration of one month's notice in writing given by him to the Collector of his intention to surrender it, and
- (b) on payment of the fees payable for the licence or the consideration money due for the exclusive privilege for the whole period for which it would have been current but for such surrender;

Provided that, if the Excise Commissioner is satisfied that there is sufficient reason for the surrender of an exclusive privilege or licence, he may remit to the holder thereof the sum so payable on surrender and any fees or consideration money paid in advance or any portion of such sum or fees or consideration money.

*Explanation* – The expression "holder of a licence" as used in this section, includes a person whose tender or bid or offer for an exclusive privilege has been accepted, although he may not actually have received the licence].

**45. Bar of right to renewal and to compensation :** No person to whom any licence or exclusive privilege has been granted under this Act shall have any claim to the renewal of such licence or exclusive privilege or, save as provided in section 43, any claim to compensation on the determination thereof.

## CHAPTER – VII

### *Departmental management or transfer*

**46. Power of Collector to take grants under management or to transfer them :** (1) If any holder of a licence or exclusive privilege granted under this Act, or any person to whom an exclusive privilege has been granted under section 22, contravenes any provision of this Act or any rule made hereunder, or makes default in complying with any condition imposed upon him by such licence or privilege, the Collector may (in the case of

1. Substituted by O.A. 10 of 1971

*Note* – The words 'Exclusive privileges' and 'consideration money' inserted vide O.A. 10 of 1971.

a licence after the cancellation thereof) and in the case of an exclusive privilege, at any time –

- (a) take the grant under management, at the risk and loss of the person to whom it was made, or
- (b) transfer the unexpired portion of the grant, at the risk and loss of the said person, to any other person.

(2) If a licence or exclusive privilege granted to any person under this Act is withdrawn under section 43, or surrendered under section 44, the Collector may, after the withdrawal or surrender thereof, take the grant under management, or transfer the unexpired portion of the grant to any other person.

## CHAPTER – VIII

### *Offences and Penalties*

**47. Penalty for unlawful import, export, transport, manufacture, possession, sale etc :** If any person, in contravention of this Act, or of any rule, notification or order made, issued or given, or of any licence or permit granted, under this Act,

- (a) imports, exports, transports, manufactures, collects, possesses or sells [any intoxicat]<sup>1</sup>
- (b) cultivates any hemp plant or collects or sells any portion of the hemp plant from which any intoxicating drug can be manufactured, or
- (c) taps or causes to be tapped or draws or causes to be drawn tari from any tari producing tree, or
- (d) bottles any liquor for purposes of sale, or
- (e) constructs or, works any distillery or brewery of other manufactory in which liquor is manufactured, or
- (f) uses, keeps or has in his possession any materials, still, utensil, implement, or apparatus whatsoever for the purpose of manufacturing any intoxicating drug or liquor other than *tari*, or
- (g) removes any intoxicant from any distillery, brewery, warehouse or other place of storage established, licensed or continued under this Act,

he shall on conviction –

- (i) for the offence other than an offence under Cl. (c) be punishable with imprisonment for a term which shall not be less than <sup>1</sup>[Two years] but may extend to <sup>1</sup>[Five years] and also with fine which shall not be less than <sup>1</sup>[Five thousand] rupees, but may extend to <sup>1</sup>[Twenty thousand] rupees;

---

1. Substituted by OGE no. 301 Dt. 23.2.99.

[Provided that where any such person collects, possesses or sells mohua flower or possesses or sells tari or pachwai he shall be liable to the punishment provided in sub clause (ii) and

- (ii) for an offence under Cl. (c) be punishable with imprisonment for a term which may extend to six months or with fine which may extend to <sup>1</sup>[Six thousand] rupees, or with both;

**48. Presumption as to offence where possession is not satisfactorily accounted for :** In prosecutions under section 47 it may be presumed unless until the contrary is proved, that the accused person has committed an offence punishable under that section in respect of –

- (a) any intoxicant, or
- (b) any still, utensil, implement or apparatus whatsoever for the manufacture of any intoxicant other than *tari*, or
- (c) any materials which have undergone any process towards the manufacture of an intoxicant or from which an intoxicant has been manufactured,

or the possession of which he fails to account satisfactorily.

**48-A. Penalty for contravention of sec 24-A :** Whoever contravenes the provisions of sec 24-A shall on conviction be punishable with imprisonment for a term which shall not be less than <sup>1</sup>[two years] but may extend to <sup>1</sup>[Five years] and also with fine which shall not be less than <sup>1</sup>[Five thousand] rupees, but may extend to <sup>1</sup>[Five thousand] rupees :

**49. If any person –**

- (a) alters or attempts to alter any denatured spirit, or methyl alcohol whether manufactured in India or not, or any preparation containing denatured spirit with the intention that such spirit, alcohol or preparation may be used for human consumption, whether as a beverage, or internally as medicine, or in any other way whatsoever by any method whatsoever, or
- (b) has in his possession any spirit, alcohol or preparation in respect of which he knows or has reason to believe that any such alteration or attempt has been made,

shall be liable to imprisonment for a term <sup>1</sup>[which shall not be less than years but may extend to ten years and also to fine which shall not be less than ten thousand rupees but may extend to fifty thousand rupees].

**50. Presumption as to offence under section 49 in certain cases :** In prosecutions under section 49, when the accused person is proved to have been in possession of any spirit which is, or contains, or has been

1. Substituted by OGE No. 301 Dt. 23.2.99.

derived from denatured spirit, and in respect of which any such alteration or attempt as is referred to in section 49 has been made it may, from the mere fact of such possession, be presumed, unless and until the contrary is proved, that such person –

- (i) has himself made such alteration or attempt, or
- (ii) knows or has reason to believe that such alteration or attempt has been made.

**51. Presumption as to any spirit being, or containing or having been derived from, denatured spirit :** In any prosecution under this Act it may be presumed, unless and until the contrary is proved, that any spirit which is proved to contain any quantity of any denaturant is, or contains, or has been derived from, denatured spirit.

**52. Penalty for adulteration by licensed manufacturer or vendor or his servant :** If any licensed manufacturer or licensed vendor, or any person in his employ and acting on his behalf –

mixes, or permits to be mixed, with any \*[intoxicant] manufactured, sold or kept or exposed for sale by him, any noxious drug or any article prohibited by rule made under section 90, clause (9), sub-clause (i), and such mixing does not amount to an offence punishable under section 272 of the Indian Penal Code, 1860 or has in his possession any intoxicant in respect of which such admixture has been made,

he shall be liable to imprisonment for a term <sup>1</sup>[which shall not be less than five years but may extend to seven years and also to fine which shall not be less than twenty thousand rupees, but may extend to fifty thousand rupees].

**53. Penalty for fraud by licensed manufacturer or vendor or his servant :** If any licensed manufacturer or licensed vendor, or any person in his employ and acting on his behalf –

- (a) sells, or keeps or exposes for sale, as foreign liquor, any liquor which he knows or has reason to believe to be country liquor, and such sale does not amount to an offence punishable under section 417 or section 418 of the Indian Penal Code, 1860, or
- (b) marks any bottle, case, package or other receptacle containing country liquor, or the cork of any such bottle, or deals with any bottle, case, package or other receptacle containing country liquor,

with the intention of causing it to be believed that such bottle, case package or other receptacle contains foreign liquor,

---

1. substituted by OGE no. 301 Dt. 23.2.99.

such marking or dealing does not amount to an offence punishable under section 482 of the said Indian Penal Code, 1860,

he shall be liable to imprisonment for a term [which shall not be less than six months but may extend to two years and also to fine which shall not be less than five thousand rupees, but may extend to twenty thousand rupees].

**4. Penalty for certain unlawful acts of licensed vendors or their agents :**

(1) If any licensed vendor, or any person in his employ and acting on his behalf -

(a) in contravention of section 25, employs or permits to be employed, in any part of his licensed premises referred to in that section, any person under the age of eighteen years or any woman; or

(b) sells any intoxicant to a person who is drunk or intoxicated; or

(c) sells or delivers any spirit or intoxicating drug to any person apparently under the age of twentyone years, whether for consumption by such person and or by any other person and whether for consumption on or of the premises of such vendor; or

(d) permits drunkenness, intoxication, disorderly conduct or gaming on the premises of such vendor; or

(e) permits any persons whom he knows, or has reason to believe, to have been convicted of any non-bailable offence, or who are reputed prostitutes, to meet, or any such person to remain, on the premises of such vendor, whether for the purposes of crime or prostitution or not, he shall be liable to fine which may extend to [five thousand] rupees.

(2) When any licensed vendor, or any person in his employ and acting on his behalf, is charged with permitting drunkenness or intoxication on the premises of such vendor, and it is proved that any person was drunk or intoxicated on such premises, it shall lie on the person charged to prove that the vendor and the persons employed by him took all reasonable steps for preventing drunkenness or intoxication on such premises.

**5. Penalty for possession of intoxicant in respect of which an offence has been committed :** If any person, without lawful authority, has in his possession any quantity of any (intoxicant) knowing, or having reason to believe, the same to have been unlawfully imported, transported or manufactured, or knowing, or having reason to believe, that the prescribed duty has not been paid thereon, he shall be liable to imprisonment for a

term which may extend to six months or to fine which may extend to one thousand rupees, or to both.

**56. Penalty for consumption in chemist's shop, etc :** (1) If any chemist, druggist, apothecary, or keeper of a dispensary allows any intoxicant (intoxicant) which has not been *bona fide* medicated for medicinal purposes to be consumed on his business premises by any person, not employed in his business; he shall be liable to imprisonment for a term which may extend to three months, or to fine which may extend to one thousand rupees, or to both.

(2) If any person not employed as aforesaid consumes any such intoxicant on such premises, he shall be liable to fine which may extend to two hundred rupees.

**57. Penalty for certain acts by licensee or his servant :** If any holder of a licence, permit or pass granted under this Act, or any person in his employ and acting on his behalf –

- (a) fails to produce such licence, permit or pass on the demand of any officer empowered by the State Government, by notification to make such demand, or
- (b) in any case not provided for in section 47, wilfully contravenes any rule made under section 89 or section 90, or
- (c) wilfully does any act, in breach of any of the conditions of the licence, permit or pass, for which a penalty is not prescribed elsewhere in this Act,

he shall be liable, in case (a) to fine which may extend to [five thousand] rupees, and in case (b) or case (c) to fine which may extend to [ten thousand]<sup>1</sup> rupees.

**58. Import, export, transport, manufacture, sale or possession by one person on account of another :** (1) When any intoxicant has been imported, exported, transported, manufactured or sold or is possessed by any person on account of any other person, and such other person knows or has reason to believe that such import, export, transport manufacture or sale was, or that such possession is, on his account, the article shall for the purposes of this Act, be deemed to have been imported, exported, transported, manufactured or sold by, or to be in the possession of, such other person.

(2) Nothing in sub-section (1) shall absolve any person who imports, exports, transports, manufactures, sells or has possession of an intoxicant on account of another person from liability to any punishment under this Act for the unlawful import, export, transport, manufacture, sale or possession of such article.

1. Substituted vide OGE no. 301 Dt. 23.2.99.



**Criminal liability of licensee for acts of servant :** When any offence punishable under section 47, section 52, section 53, section 54, section 55 or section 56 is committed by any person in the employ and on behalf of the holder of a licence, permit or pass granted under this Act, such holder shall also be punishable as if he had himself committed the offence, unless he establishes that all due and reasonable precautions have been exercised by him to prevent the commission of such offence.

**Imprisonment under section 58 or section 59 :** No person on whose account an intoxicant has been illegally imported, exported, transported, stored, sold or held in possession within the meaning of section 58, and no holder of a licence, permit or pass who may be punishable under section 59, shall, on conviction, be punished with imprisonment, or with fine, or in default of payment of fine.

**Penalty on Excise officer making vexatious search, seizure, detention, or arrest or refusing duty or being guilty of cowardice :**  
Exercise, officer –

- (a) without reasonable grounds of suspicion, searches or causes to be searched, any place, under colour of exercising any power conferred by this Act, or
- (b) vexatiously and unnecessarily seizes any property of any person on the pretence of seizing or searching for any article liable to confiscation under this Act, or
- (c) vexatiously and unnecessarily detains, searches or arrests any person, or
- (d) without lawful excuse, ceases or refuses to perform, or withdraws himself from, the duties of his office, unless expressly allowed to do so in writing by the Collector, or unless he has given to his immediate superior two months' notice in writing of his intention to do so, or
- (e) is guilty of cowardice,

shall be liable to imprisonment for a term which may extend to three months, or to fine which may extend to five hundred rupees, or to both.

**Penalty for offences not otherwise punishable :** If any person is convicted of any act in contravention of any of the provisions of this Act, or of any rule, notification, or order made, issued, or given under this Act, for which a penalty is not prescribed elsewhere in this Act, he shall be liable to fine which may extend to two hundred rupees.

**Penalty for contempt of Court :** Every proceeding under this Act before the Collector, or before any officer, of such rank as the State Government may, by notification, prescribe, who is exercising powers of a Collector,

shall be deemed to be a "Judicial proceeding" within the meaning of section 228 of the Indian Penal Code, 1860.

**64. Penalty for attempt to commit offence :** Whoever attempts to commit any offence punishable under this Act shall be liable to the punishment provided for such offence.

**65. Enhanced punishment after previous conviction :** If any person after having previously been convicted of an offence punishable under section 47, section 48-A, section 49, section 52, section 55, or section 56, or under similar provisions in the Bengal Excise Act, 1909, or in any previous enactment repealed thereby, subsequently commits and is convicted of an offence punishable under any of those sections, he shall be liable to twice the punishment which might be imposed on a first conviction under this Act.

Provided that nothing in this section shall prevent any offence which might otherwise have been tried summarily under Chapter XXII of the Code of Criminal Procedure, 1898, from being so tried.

**66. What things are liable :** (1) Whenever an offence has been committed which is punishable under this Act, the intoxicant, material, still, utensil, implement and apparatus in respect of or by means of which such offence has been committed shall be liable to confiscation.

(2) Any intoxicant lawfully imported, transported, manufactured, in possession or sold along with, or in addition to, any intoxicant which is liable to confiscation under sub-section (1),

and the receptacles, packages and coverings in which any such intoxicant as first aforesaid, or any such materials, still, utensil, implement or apparatus as aforesaid, is found,

and the other contents, if any, of such receptacles or packages, and the animals, carts, vessels, rafts or other conveyances used in carrying the same,

shall likewise be liable to confiscation :

Provided that no animal, cart, vessel, raft or other conveyance as aforesaid shall be liable to confiscation unless the owner thereof is proved to have been implicated in the commission of the offence.

**67. Confiscation by magistrate or Collector :** (1) When, in any case tried by him, the Magistrate decides that anything is liable to confiscation under section 66, he may either order confiscation or give the owner of such thing an option to pay, in lieu of confiscation, such fine as the Magistrate thinks fit.

(2) Whenever anything is liable to confiscation under section 66, and the offender or the person entitled to possession is not known or cannot

the case shall be inquired into and determined by the Collector, by order of confiscation :

Provided that no such order shall be made until the expiration of one month from the date of seizing the thing intended to be confiscated, or until after hearing any person who may claim any right thereto and the thing (if any) which he produces in support of his claim :

Provided, further, that if the thing in question is liable to speedy and total decay, or if the Collector is of opinion that its sale would be for the benefit of its owner, the Collector may at any time direct it to be sold; and the provisions of this sub-section shall, as nearly as may be practicable, apply to the net proceeds of the sale.

**5. Power to compound offences and to release property liable to confiscation :** (1) The Collector or any Excise officer specially empowered by the State Government in this behalf, not below the rank of Deputy Collector or Superintendent of Excise -

(a) may, subject to any restrictions imposed by any rules made under clause (k) of section 89, accept from any person whose exclusive privilege, licence, permit or pass is liable to be cancelled or suspended under clause (a) clause (b) or clause (c) of section 42, or who is reasonably suspected of having committed an offence punishable under any section of this Act other than section 61, payment of a sum of money, not exceeding two hundred rupees, in lieu of such cancellation or suspension or by way of composition for such offence, as the case may be; and

(b) in any case in which any property has been seized as being liable to confiscation under section 66, may, at any time before the Magistrate has passed an order under section 67, sub-section (1), release the property on payment of any sum not exceeding the value thereof as estimated by the Collector or such Excise officer.

When the payments referred to in sub-section (1) have been duly made by the accused person, if in custody, shall be discharged, and the property seized (if any) shall be released; and no further proceedings shall be taken against such person or property.

## CHAPTER IX

### *Section, Investigation and Trial of Offences and Procedure*

**Power to enter and inspect and power to test and seize measures** of the following officers, namely -

(a) the Excise Commissioner, or  
(b) a Collector, or

(c) any Excise officer not below such rank as the State Government may, by notification, prescribe, may, subject to any restrictions prescribed by the State Government by rule made under section 89 –

- (i) enter and inspect, at any time by day or night, any place in which any licensed manufacturer carries on the manufacture of or stores any intoxicant; and
- (ii) enter and inspect, at any time; during which the same may be open, any place in which any intoxicant is kept for sale by any licensed person; and
- (iii) examine, the accounts and registers maintained in any such place as aforesaid; and
- (iv) examine, test, measure or weigh any materials, stills, utensils, implements, apparatus or intoxicant found in any such place as aforesaid; and
- (v) examine or test and seize any measures, weights or testing instruments, found in any such place as aforesaid, which the officer has reason to believe to be false.

**70. Power to arrest without warrant, to seize articles liable to confiscation, and to make searches :** Any of the following persons, namely –

- (a) any officer of the Excise, Police, Salt, Customs or Land-revenue department, or
- (b) any person empowered by the State Government in this behalf by notification.

may, subject to any restrictions prescribed by the State Government by rule made under section 89 –

- (i) arrest without warrant any person found committing any offence punishable under section 47, section 49, section 50 or section 56; and
- (ii) seize and detain any article which he has reason to believe to be liable to confiscation under this Act or any other law in force at the time being in force relating to the excise-revenue; and
- (iii) detain and search any person upon whom, and any vessel, boat, raft, vehicle, animal, package, receptacle or covering in which, upon which, he may have reasonable cause to suspect that such article to be.

**71. Power of Collector to issue warrant of arrest :** The Collector or any Magistrate empowered to try offences punishable under this Act may issue a warrant for the arrest of any person whom he has reason

to have committed or abetted any offence punishable under section 49, section 55, or section 56.

**72. Power to issue search warrant :** If any Collector or any Magistrate empowered to try offences punishable under this Act, upon information received, and after such inquiry (if any) as he thinks necessary, has reason to believe that any offence punishable under section 47, section 49, section 55, or section 56 has been, or is likely to be, committed or abetted, he may issue a warrant to search for any intoxicant, material, still, utensil, instrument or apparatus in respect of which the alleged offence has been, or is likely to be, committed or abetted, or any document which throws or is likely to throw any light on the alleged offence.

**73. Power of Collector or Magistrate to arrest or search without warrant :** The Collector or any Subdivisional Magistrate or Magistrate of the First Class may, at any time –

(a) arrest, or direct the arrest in his presence of, any person for whose arrest he is competent at the time and in the circumstances to issue a warrant under section 71, or

(b) search, or direct a search to be made in his presence of, any place for the search of which he is competent to issue a search-warrant under section 72.

**74. Power to search without a warrant :** Whenever any Excise Officer not below such rank as the State Government may, by notification, empower him, has reason to believe that an offence punishable under section 47, section 49, section 55, or section 56 has been, is being, or is likely to be committed or abetted, and that a search-warrant cannot be obtained without affording the offender an opportunity of escaping or of concealing evidence of the offence,

he may, after recording the grounds of his belief, at any time by day or night enter and search any place, and may seize anything found therein which he has reason to believe to be liable to confiscation under this Act; and he may detain and search, and, if he thinks proper, arrest, any person found in any place whom he has reason to believe to have committed or abetted any offence as aforesaid.

**Information and aid to Excise Officers :** (1) Every officer of the Police, Salt, Customs and Land Revenue departments, shall be bound, subject to any rules made under section 89, clause (1), to give immediate information to an Excise Officer of all branches of any of the provisions of this Act which may come to his knowledge.

(2) Every officer referred to in sub-section (1) and every village headman and *dafadar*, shall be bound, subject to any rules made under

section 89, clause (1) to give reasonable aid to any Excise Officer in carrying out the provisions of this Act, or of any rule, notification, or order made or issued or given under this Act, upon request made by such officer.

**76. Duty of owners and occupiers of land and other persons give notice of unlicensed manufacture :** Whenever any intoxicant is manufactured on any land or premises, or any hemp plant is cultivated, or any portion of the hemp plant is cultivated, or any portion of the hemp plant from which an intoxicant drug can be manufactured or produced is collected, on any land, in contravention of this Act,

all owners and occupiers of such land or premises, and their agents, and all *panchayats*, village-headmen, *patwaris*, *sarbarakars*, *chaukidars* and *dafadars* of the village,

shall, in the absence of reasonable excuse, be bound to give notice of the fact to a Magistrate or an officer of the Excise, Police or Land-revenue department, as soon as the fact comes to their knowledge.

**77. What Excise Officers may investigate offences :** (1) A Collector may, without the order of a Magistrate, investigate any offence punishable under this Act which a Court having jurisdiction over the local area within the limits of the Collector's jurisdiction would have power to inquire into or try under the provisions of Chapter XV of the Code of Criminal Procedure, 1898, relating to the place of inquiry or trial.

(2) Any other Excise Officer specially empowered in this behalf by the State Government in respect of all or any specified class of offences punishable under this Act may, without the order of a Magistrate, investigate any such offence which a Court having jurisdiction over the local area within which such officer is appointed would have power to inquire into or try under the aforesaid provisions.

**78. Powers and duties of Excise Officers investigating offences**

(1) Any Collector, or any Excise Officer empowered under section 47, sub-section (2), may, after recording in writing his reason for suspecting the commission of an offence which he is empowered to investigate, exercise –

- (a) any of the powers conferred upon a Police officer making an investigation, or upon an officer-in-charge of a police-station, under sections 160 to 171 of the Code of Criminal Procedure, 1898,
- (b) as regards offences punishable under section 47, section 48, section 55, or section 56, of this Act – any of the powers conferred upon Police officers in respect of cognizable offences by clause (a) of sub-section (1) of section 54 and by section 56 of the said Code;

said portion of the said Code shall apply accordingly, subject to restrictions or modifications prescribed by the State Government by made under section 89, clause (n).

Subject to any restrictions prescribed by the State Government, Collector or an Excise officer empowered under section 77, sub-section (2), without reference to a Magistrate, and for reasons to be recorded in writing stop further proceedings against any person concerned, or any person to be concerned, in any offence which he or any Excise Officer appointed to him has investigated.

For the purpose of section 156 of the Code of Criminal Procedure, 1898, the area to which an Excise officer empowered under section 77, sub-section (2), is appointed shall be deemed to be a police station and such officer shall be deemed to be the officer-in-charge of such station.

As soon as an investigation by a Collector or by an Excise officer empowered under section 77, sub-section (2), has been completed, if it appears that there is sufficient evidence to justify the forwarding of the case to a Magistrate, the investigating officer, unless he proceeds under section (2) of this section or under section 68 of this Act, shall submit a report (which shall, for the purposes of section 190 of the Code of Criminal Procedure, 1898, be deemed to be a Police report) to a Magistrate having jurisdiction to inquire into or try the case and empowered to take cognizance of offences on police reports.

**Security and bail :** (1) Whenever a Collector or Magistrate issues a warrant under this Act for the arrest of any person, he shall direct, by endorsement on the warrant, that, if such person executes the warrant with sufficient sureties for his attendance before the Collector or an Excise officer empowered under section 77, sub-section (2), to inquire into the case, at a specified time and thereafter until otherwise directed by the Collector or an Excise officer empowered as aforesaid the person to whom the warrant is directed shall take such security, and shall release such person from custody.

The endorsement shall state -

- (a) the number of sureties,
- (b) the amount which they, and the person for whose arrest the warrant is issued, are respectively to be bound, and
- (c) the time at which such person is to attend as aforesaid.

Whenever security is taken under this section, the officer to whom the warrant is directed shall forward the bond to the Collector or to an Excise officer empowered as aforesaid.

(4) Whenever any person is arrested under this Act, otherwise than under a warrant, and is prepared to give bail, he shall be released on bail or at the discretion of the officer releasing him, on his own bond.

(5) Any Excise officer not below such rank as the State Government may, by notification, prescribe, may release persons on bail or on their own bond.

(6) Bonds taken under this section from persons arrested otherwise than under warrant shall bind such persons to appear before the Collector or an Excise officer empowered under section 77, sub-section (2), to investigate the case.

(7) The provisions of sections 498 to 502, 513, 514 and 515 of the Code of Criminal Procedure, 1898, shall apply, so far as may be, in every case in which bail is accepted or a bond taken under this section.

**80. Production of articles seized and persons arrested :** (1) Articles seized under the warrant of the Collector and, unless security for the appearance before the Collector be taken, persons arrested under such warrant, shall be produced before the Collector.

(2) Articles seized under section 69, section 70, or section 72 and persons arrested under this Act, by persons or officers not having authority to release arrested persons on bail or on their own bond, shall be produced before or forwarded to -

- (a) the Collector or an Excise Officer empowered under section 77, sub-section (2), to investigate the case, or
- (b) the nearest Excise Officer who has authority to release arrested persons on bail or on their own bond, or
- (c) the officer in charge of the nearest police station who is nearer.

(3) When a person arrested is produced before an Excise officer who has authority to release arrested persons on bail or on their own bond, before an officer-in-charge of a police-station, such officer shall forward such person to, or take security for his appearance before, the Collector or the Excise Officer empowered under section 77, sub-section (2), to investigate the case.

(4) When any articles seized cannot conveniently be conveyed before an officer referred to in sub-section (1) or sub-section (2), as the case may be, the person making the seizure shall dispose of them in some place of safety and forthwith report the seizure to such an officer.

**81. Custody by police of articles seized :** (1) All officers in charge of police-stations shall take charge of and keep in safe custody, pending the orders of a Magistrate, or of the Collector, or of an Excise Officer



covered under section 77, sub-section (2), to investigate the case, all articles seized under this Act which may be delivered to them and to allow any Excise Officer who may accompany such articles to the police-station or who may be deputed for the purpose by an official collector, to affix his seal to such articles and to take samples of and from

(2) All samples so taken shall be sealed with the seal of the officer-in-charge of the police-station.

**82. Reports of arrests, seizures and searches :** When any Excise Officer below the rank of Collector, or any officer-in-charge of a police-station makes, or receives information of any arrest, seizure, or search under this Act, he shall within twenty four hours thereafter, make a full report of all the particulars of the arrest, seizure, or search or of the information received, to the Collector, and to the Excise Officer (if any) empowered under section 77, sub-section (2), within the local limits of whose jurisdiction the arrest, seizure, or search was made.

**83. Execution of Collector's warrant :** Any warrant issued by a Collector may be executed by any officer selected by the Collector for the purpose.

**84. Maximum period of detention - Intimation on grounds of arrest :** (1) Any person arrested for an offence under this Act shall be informed, as soon as may be, of the grounds for such arrest and shall be produced before the nearest Magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the Court of the Magistrate; and no such person shall be detained in custody beyond the said period without the authority of a Magistrate.

(2) A Magistrate to whom an accused person is forwarded under section 167 of the Code of Criminal Procedure, 1898, by a Collector or Excise Officer empowered under section 77, sub-section (2) may exercise the powers conferred upon a Magistrate by the said section 167.

**85. Application of certain provisions of the Code of Criminal Procedure, 1898 :** (1) Save as in this Act otherwise expressly provided, the provisions of the Code of Criminal Procedure, 1898, relating to arrests, detentions in custody, searches, summons, warrants of arrest, search-warrants and the production of persons arrested shall apply, so far as may be applicable to arrests, detentions and searches made, summons and warrants issued, and the production of persons arrested under this Act.

(2) For the purposes of the said provisions of the said Code, a Collector shall be deemed to be a Court.

(3) Officers to whom a Collector's warrant is directed or endorsed, and officers (other than Collectors) making arrests, searches or seizures-

under this Act, shall for the purpose of the said provisions of the said Code be deemed to be Police officers.

**86. Magistrates having jurisdiction to try offences :** No Magistrate other than –

- (a) Magistrate whose powers are not less than those of a Magistrate of the second class, or
- (b) a Magistrate of the third class specially empowered by the District Magistrate in this behalf,

shall try any offence punishable under this Act.

**87. Initiation of certain prosecutions :** No Magistrate shall take cognizance of an offence referred to –

- (a) in section 47, section 49, section 55, or section 56, except on his own knowledge or suspicion, or on the complaint or report of an Excise officer or an officer empowered in this behalf; or
- (b) in section 57, section 61, clause (d) or clause (e) of section 61, except on the complaint or report of the Collector or an Excise Officer authorized by the Collector in this behalf.

**88. Bar to transfer of trial on application of accused :** The provisions of section 191 of the Code of Criminal Procedure, 1898, shall not apply in case in which a Magistrate (not being the Collector) takes cognizance of an offence under this Act on the report of any officer referred to in clause (a) or clause (b) of section 87.

## CHAPTER – X

### *Miscellaneous*

**89. Power of State Government to make rules :** (1) The State Government may make rules to carry out the objects of this Act or any other law for the time being in force relating to the excise revenue. –

(2) In particular, and without prejudice to the generality of the foregoing provisions, the State Government may make rules

- (a) for prescribing the powers and duties of officers of the Excise department;
- (b) for regulating the delegation of any powers by the Board, the Commissioner of a division, the Excise Commissioner or Collector under section 7, clause (g);
- (c) for declaring in what cases or classes of cases and to what authorities appeal shall lie from orders, whether original or appellate, passed under this Act or under any rule made hereunder and for prescribing, the time and manner for presenting, and the procedure for dealing with, such appeals;

- (d) for regulating the import, export or transport of any intoxicant;
  - (e) for regulating the periods for which licences for the wholesale or retail vend of any intoxicant may be granted, and the number of such licence which may be granted for any local area;
  - (f) for prohibiting the grant of licences for the retail sale of any intoxicant at any place or within any local area described in the rules or for defining the places in the vicinity of which shops for the retail sale of any intoxicant shall not ordinarily be licensed;
  - (g) for prohibiting the grant to specified classes of persons of licences for the retail sale of any intoxicant;
  - (h) for declaring, either generally, or in respect of areas described in the rules, the persons or classes of persons to whom any [intoxicant] may or may not be sold;
    - (i) for regulating the procedure to be followed and prescribing the matters to be ascertained before any licence for the wholesale or retail vend of any intoxicant is granted for any locality;
    - [(ii) for regulating the time, place and manner of payment of the sum payable under section 29,]
  - (j) for restricting the exercise of any of the powers conferred by clause (a) of sub-section(1) of section 68 and by sections 69 and 70;
  - (k) for declaring the Excise Officers to whom, and the manner in which information or aid should be given under section 75;
  - (l) for the grant of expenses to witnesses;
  - (m) for the grant of compensation for loss of time to persons released by any Excise Officer under this Act on the ground that they have been improperly arrested, and to persons charged before a Magistrate with offences punishable under this Act and subsequently acquitted; and
  - (n) for prescribing restrictions or modifications in the application to Excise Officers of the provisions of the Code of Criminal Procedure, 1898, relating to powers of Police Officers which are referred to in section 78, sub-section (1) of this Act.
- (3) The powers conferred by this section for making rules are subject to the condition that the rules be made after previous publication;

Provided that any such rules may be made without previous publication if the State Government considers that they should be brought into force at once.

**90. Power of Board to make rules:** The Board may make rules –

- (1) for regulating the manufacture, supply, or storage of any intoxicant and in particular, and without prejudice to the generality of this provision, may make rules for regulating –
  - (a) the establishment, inspection, supervision, management and control of any place for the manufacture, supply or storage of any intoxicant and the provision for maintenance of fittings, implements and apparatus therein;
  - (b) the bottling of liquor for purposes of sale;
  - (c) the cultivation of the hemp plant;
  - (d) the collection of portions of the hemp plant from which intoxicating drugs can be manufactured or produced, and the manufacture or production of intoxicating drugs therefrom;
  - (e) the tapping of *tari*-producing trees and the drawing of *tari* from trees;
  - (f) the marking of *tari producing* trees in areas notified under section 14, sub-section (1), and the maintenance of such marks;
- (2) for fixing the strength, price or quantity in excess of or below which any intoxicant shall not be supplied or sold, and the quantity in excess of which denatured spirit shall not be possessed, and for prescribing a standard of quality for any intoxicant;
- (3) for declaring how spirit manufactured in India shall be denatured;
- (4) for causing spirit so manufactured to be denatured through the agency or under the supervision of Government officers;
- (5) for ascertaining whether any spirit so manufactured has been denatured;
- (6) for regulating the deposit of any intoxicant in a warehouse established, authorized or continued under this Act, and the removal of any intoxicant from any such warehouse or from any distillery or brewery;
- (7) for prescribing the scale of fees or the manner of fixing the fees payable in respect of [\*]<sup>1</sup> any licence, permit or pass granted under this Act, or in respect of the storing of any intoxicant;

---

1. Omitted the words "any exclusive privilege granted u/s 22, or" by O. A. 10 of 1971.

**NOTIFICATION NO. 4830 DT. 10. 6. 96**

*In exercise of powers conferred by Sec 90 (7) of the B & O Excise Act, 1915 read with notification No. 4797 Dt. 10. 6. 96, the Board of Revenue, Orissa do hereby prescribe the following fees for issue of permit on approval of labels and brands of foreign liquor and for renewal of the permit.*

- (A) *Manufacturers' licence within the State of Orissa :*
  - i. *Original licence fee of Rs.2,000/- per label of each brand for each size.*
  - ii. *Renewal fee (annual)*
- (B) *Manufacturers licenced to manufacture foreign liquor in India-outside Orissa.*
- (C) *Original Registration fee of Rs. 5,000/- for each label and for each size.*
- (D) *Renewal fee (annual) of Rs. 3,000/- for each label and for each size.*

*The notification shall have immediate effect. Permits on payment of fees and fulfilment of legal provisions notified vide No. 4794 Dt. 10. 6. 96 and allowed to be obtained by 15. 9. 1996.*

*The above fees shall be deposited in proper head of Account in the office of the Excise Commissioner, Orissa by means of Treasury chalan/ Bank Draft.*

- (8) *for regulating the time, place and manner of payment of such fees;*
- (9) *for prescribing the restrictions under which or the conditions on which any licence, permit or pass may be granted, and in particular, and without prejudice to the generality of this provision, may make rules for –*
  - (i) *prohibiting the admixture with any intoxicant of any article deemed to be noxious or objectionable;*
  - (ii) *regulating or prohibiting the reduction of liquor by a licensed manufacturer or licensed vendor from a higher to a lower strength;*
  - (iii) *prescribing the nature and regulating the arrangement of the premises in which any intoxicant may be sold and prescribing the notice to be exposed at such premises;*
  - (iv) *prohibiting or regulating the employment by the licensee of any person or class of persons to assist him in his business;*
  - (v) *prohibiting the sale of any intoxicant except for cash;*
  - (vi) *prescribing the days and hours during which any licensed premises may or may not be kept open, and*

- providing for the closing of such premises on special occasions;
- (vii) prescribing the accounts to be maintained and the returns to be submitted by licensees, and
  - (viii) regulating the transfer of licences;
  - (10) for prescribing the particulars to be contained in licences, permits or passes granted under this Act;
  - (11) for the payment of compensation to licensees whose premises are closed under section 26 or under any rule made under sub-clause (vi) of clause (9) of this section;
  - (12) for prescribing the time, place and manner of levying duty on intoxicants;
  - (13) for providing for the destruction or other disposal of any intoxicant deemed to be unfit for use; and
  - (14) for regulating the disposal of things confiscated under this Act.

*Explanation* – Fees may be prescribed under clause (7) of this section at different rates for different classes of [\*]<sup>1</sup> licences, permits, passes or storage, and for different areas.

**91. Powers of Board exercisable from time to time :** Any power conferred by this Act on the Board may be exercised from time to time as occasion requires.

**92. Publication and effect of rules and notifications :** All rules made, and notifications issued, under this Act shall be published in the *Official Gazette*, and on such publication shall have effect as if enacted in this Act.

**93. Recovery of dues :** (1) The following moneys, namely –

- (a) all excise-revenue,
- (b) any loss that may accrue when a grant has been taken under management by the Collector or transferred by him under section 46, and
- (c) all amounts due to the State Government by any person on account of any contract relating to the excise-revenue,

may be recovered from the person primarily liable to pay the same, or from his surety (if any), by distress and sale of his movable property, or by the process prescribed for the recovery of arrears of land revenue.

(2) When a grant has been taken under management by the Collector, or has been transferred by him under section 46, the Collector may recover, in any manner authorized by sub-section (1), any money due to the grantee by any lessee or assignee.

---

1. Omitted the words "any exclusive privilege granted u/s 22, or" by O. A. 10 of 1971.

(3) When any money is due, in respect of an exclusive privilege, to a grantee referred to in section 23, from any person holding under him, such grantee may apply to the Collector, and the Collector may recover such money on his behalf in either of the ways provided by sub-section (1) :

Provided that nothing in this sub-section shall affect the right of any such grantee to recover any such money by civil suit.

**94. Power of State Government to exempt intoxicants provisions of the Act :** The State Government may, by notification, either wholly or partially, and subject to such conditions (if any) as it may think fit to prescribe, exempt any intoxicant from all or any of the provisions of this Act, either throughout the State or in any specified local area, or for any specified period or occasion, or as regards any specified class of persons.

*NOTES : The State Government vide LSG Dept. No. 1826 Dt. 31.3.37 exempt throughout the State the following intoxicants from the provisions of the Act relating to possession and sale, namely -*

- (1) *all intoxicants upon which the full tariff or excise duty has been paid, and which are contained in medicinal preparations intended bona fide for medicinal purposes;*
- (2) *perfumed spirit when manufactured from duty paid foreign spirit that has not been denatured; and*
- (3) *medicated wines and similar preparations containing foreign liquor, from the provisions of the Act relating to sale, subject to the conditions specified against each, namely -*
  - (a) *if they contain alcohol equivalent to 20 per cent and not more than 42 per cent of proof spirit, they shall be sold only by -*
    - (i) *persons licensed under the Act to sell foreign liquor, or*
    - (ii) *persons who carry on business as chemists, druggists apothecaries or keepers of dispensaries or who are specially approved by the Collector and who hold special licences granted by the Collector under the Act;*
  - (b) *if they contain alcohol equivalent to more than 42 per cent or proof spirit they shall be sold only by persons licensed under the Act to sell foreign liquor;*
  - (c) *if they have been manufactured in the State of Orissa they shall before sale by the manufacturer, be submitted by such manufacturer to the Excise Commissioner for determination of the percentage of proof spirit contained in them, and on such determination being made, the Excise Commissioner shall decide whether sub-paragraph (a) or (b) of this paragraph applies to them;*

- (d) *a licensee holding a licence for the sale of preparations referred to in sub-paragraph (a) of this paragraph must prove to officers authorised to inspect the licensed premises where such preparations are sold that the preparations kept by him for sale do not contain alcohol equivalent to more than 42 per cent of proof spirit, and such proof shall be either –*
- (i) *a certificate from the Collector of Customs, Calcutta, or other port of import or a certificate of purchase from the importer, together with a copy of the certificate of the Collector of Customs, or*
  - (ii) *if the preparations were manufactured in the State of Orissa a certificate from the Excise Commissioner, or*
  - (iii) *if the preparations were manufactured in any other part of India, a certificate from the Chief Excise authority of that part :*

*Provided that the conditions or restrictions specified under sub-paragraphs (a), (c) and (d) of this paragraph shall not apply to wine. With added principles which have been declared as "aperitif" and are included in the Schedule I appended to this notifications;*

- (4) *rectified spirit made in India, from the provisions of the Act relating to duty, when it is imported by or issued to –*
- (a) *Government institutions and departments, charitable hospitals and dispensaries maintained by local authorities or any other charitable hospitals and dispensaries specified in this behalf by order of the State Government,*
  - (b) *any educational institution, firm, laboratory or museum, specified in this behalf by an order of the Excise Commissioner, for any scientific or industrial purposes other than the preparations of commodities which, when made, will themselves contain alcohol;*
- (5) *medicinal preparations prepared in accordance with prescriptions recognised in standard Ayurvedic and Tibbi medical works, by persons bona fide engaged in the practice of the Ayurvedic and Tibbi system of medicines, from the provisions of the Act in respect of sale, provided no process of distillation is used in the manufacture of such preparations;*

---

1. Paragraph (9) was inserted by Government of Orissa, Excise Department's notification No. IEX -4/66-66/Ex., dated the 4th August 1966. Published in Orissa Gazette No. 33 dated the 19th August 1966.



- (6) such recognised medicinal preparations as contain any hemp drugs in a very small proportion, and as may be notified from time to time by the State Government, from the provisions of the Act relating to import, transport, export, possession and sale :

Provided that their import from foreign countries is permitted only by means other than that of the post;

- (7) rum, from the provisions of the Act relating to duty and import, transport, export and possession when it is intended for the bona fide consumption of the armed forces during the emergency period;
- (8) Pachwai of different kinds brewed by the Scheduled Tribes from rice and cereals for bona fide domestic consumption, but not for sale, subject to the limit of 7 kilograms undiluted or 18 kilograms diluted of any one kind at any one time;
- (9) Rectified spirit and denatured spirit from the provision of the Act relating to import, export and possession when intended for bona fide requirements of the Defence Services.

The State Govt. have exempted country spirit from the provisions of the Act relating to manufacture and possession in the areas as specified below :-

(1) In the Balliguda subdivision in the district of Boudh when it is manufactured and possessed by the Khonds in the said subdivision for their bona fide home consumption and for their use in public ceremonies, that is, village feasts and in private ceremonies, such as, marriages, and other social or religious functions subject to the following conditions, namely -

- (a) in case of village feasts the Khonds of any village in G.Udayagiri Tahsil of the said subdivision shall obtain, through and in the name of the concerned village Headman, a permit for public ceremony in the form prescribed in the Schedule II appended to this notification, from the Inspector or Sub-Inspector of Excise having jurisdiction over such village before they so manufacture and possess country spirit on occasions of village feasts;
- (b) in case of marriages and social or religious functions a Khond in any village of Kumbarkupa, Greassingia, Kurmingia, Raikia and Bakingia, Muthas or in Pundingia village in Bedingia Mutha in the said subdivision shall obtain in his favour a permit for private ceremonies in the form prescribed in the Schedule II appended to this notification from the Inspector or Sub-Inspector of Excise having jurisdiction over such village.

**95. Bar of certain suits :** No suit shall lie in any Civil Court against the Government or any Excise Officer for damages for any act in good faith done or ordered to be done in pursuance of this Act or of any other law for the time being in force relating to the excise revenue.

**96. Limitation of suits and prosecutions :** No Civil Court shall try any suit against the Government in respect of anything done, or alleged to have been done, in pursuance of this Act,

and except with the previous sanction of the State Government, no Magistrate shall take cognizance of any charge made against any Excise Officer under this Act or any other law relating to the excise revenue, or made against any other person under this Act,

unless the suit or prosecution is instituted within six months after the date of the act complained of.

**97. Bar to application of section 261 of the Bengal Municipal Act, 1884 :** Section 261 of the Bengal Municipal Act, 1884, shall not apply to –

- (a) any distillery, brewery, warehouse, or other place of storage licensed, established, authorized or continued under this Act, or
- (b) the premises used for the manufacture or sale of any intoxicant by the holder of a licence granted under this Act for such manufacture or sale.

**98. Bengal Act 5 of 1909 to cease to be in force, but orders, rules, etc., made and licences, etc., granted thereunder to continue :** (1) On and from the commencement of this Act, the Bengal Excise Act, 1909, shall cease to be in force in the State and, for the purposes of section 25 of the Bengal General Clauses Act, 1899, shall be deemed to have been repealed in the said State and to be re-enacted by this Act.

(2) Every licence, permit or pass which was granted under any section of the Bengal Excise Act, 1909, and is in force at the commencement of this Act, shall be deemed to have been granted under the corresponding section of this Act, and shall (unless previously cancelled, suspended, withdrawn or surrendered under Chapter VI of this Act) remain in force for the period for which it was granted.



## CASE-LAWS

### ACCUSED

Car piloting convey of cars carrying contraband articles – Pilot car containing no such article – Not liable to confiscation, especially when the owner thereof was not an accused in the case – ILR 1974 (53) Pat 493.

Accused acquitted of manufacturing illicit liquor in the absence of chemical test in respect of the liquor – Accused cannot be convicted for being in possession of utensils and materials – 1996 (10) OCR 148.  
Acquittal

Accused seen by Excise officials locking up a house in suspicious circumstances – Illicit distilled liquor recovered from the house – The holding is in the name of deceased father of the accused – No clear evidence that the holding related to the house and was in exclusive possession of the accused – Acquittal proper – 36(1970) CLT (Notes 125) 129.

### ACTUAL POSSESSION

Pot alleged illicit liquor found in common courtyard where others also live – Accused cannot be said to be in actual possession – 35 (1969) CLT (Notes 219) 138.

### ALCOHOL

Methyle alcohol is virtually poison – The percentage of methyle alcohol found in the liquor supplied by the firm being what was found to be, it has to be held that the persons responsible for mixing had the knowledge that consumption of the liquor was likely to cause very serious adverse effects – The contention that all the consumers were not adversely affected cannot water down the *mens rea* required to bring home the guilt u/s 326 IPC – AIR 1995 SC 1066.

### AMENDMENT

Supreme Court declared that the amended rule 103 (I) is invalid in so far as it provides that a fee for licence for retail sale (off sale or off-vend) of foreign liquor shall be fixed by auction – 35 (1969) CLT (Notes 133) 79.

Jurisdiction of Board of Revenue after the amendment – Determination of consideration money vests in Govt – Board has no jurisdiction to alter it – 41 (1975) CLT 934.

**ANALYSIS**

Chemical – Only one bottle out of the articles recovered at the raid was sent for analysis and it was not proved that all the bottles and the drums recovered contained rectified spirit – Held, it is wholly unnecessary to send all the bottles recovered by the police in the presence of panchas which contain the same stuff for the purpose of analysis – AIR 1953 SC 247.

Report of the chemical examiner to the police officer does not become inadmissible by virtue of S. 162 (I), Cr.P.C. – AIR 1963 SC 1531.

**APPLICATION**

The Bihar & Orissa Excise Act is a prevailing Act at the time of the constitution of the Indian Constitution – So whether the enhanced duty on 'foreign liquor' which got place in Entry 51 of Constitution of India, can be imposed under the Act – Held, the law is meant to apply later wherever liquor is manufactured – Similarly the same law may provide for the levy of a countervailing duty on the same class of liquor imported into a State from outside. The only restriction put by the Constitution is that the duty on imported liquor must be a countervailing duty, that is to say, it must not exceed the duty authorised by law to be levied on the same class of liquor manufactured in Orissa – 29 (1963) CLT 76.

**AUCTION**

Foreign liquor – Off-vend auction – If contrary to law-for obtaining licences, whether fees can be fixed – Supreme Court declared that the amended Rules 103 (I) is invalid in so far as it provides that a fee for licence for retail sale referred to as 'off' sale or 'off' vend of foreign liquor shall be fixed by auction – 35 (1969) CLT (Notes 133) 79.

Highest bid in auction for sale of country liquor shops – Rejection of by Government not violative of Art. 14 & 19 (I) (g) of Constitution, nor it is subject to judicial review – Sale of shops by private negotiation is not invalid – AIR 1972 SC 1816.

**BENEFIT OF DOUBT**

Recovery of article in the absence of the accused from the courtyard of his house – Absence of evidence as when the article was brought into the house and on the knowledge of the accused – Accused entitled to benefit of doubt – 64 (1987) CLT 764.

**BOND**

Proviso to Rule 147 does not apply to foreign liquor not imported under bond upon which duty has been levied u/s 28(a)(i) – Where foreign liquor is not imported under bond, consequent on revision of duty the dealer is not liable to pay under the proviso to Rule 147, the difference of duty in respect of its stock of foreign liquor which is not imported under the bond. The demand for payment of the difference of duty in respect of the stock is not authorised by the Act or the proviso to Rule 147 – AIR 1970 SC 1171.

**BREAKAGE**

Import of foreign liquor to a bonded warehouse for storage without payment of duty – Loss of liquor due to breakage in transit, the quantum of breakage is not exigible to excise duty – 69 (1990) CLT 317.

**CHARGE**

Seized Ganja whether duty paid or non-duty paid not proved – Absence of evidence in regard to chemical examination – Held, charge not proved – 1984 (58) CLT 388.

**COGNIZANCE**

Institution of prosecution occurs on the Court taking cognizance of offence and not with the filing of the F.I.R. – Cognizance of offence beyond six months of its commission u/s 96 vitiates the trial – 1979 B.L.J. 241-1979 Cr.L.J. noc 29)

A prosecution can be said to be instituted when the Court takes cognizance of the offence – 1978 BLJ 778.

**CONSCIOUS POSSESSION**

The prosecution cannot merely rely on the recovery of the articles but has further to prove that the articles were in conscious possession of all or any of the accused persons – 31 (1965) CLT 990.

The accused was in possession of foreign liquor without licence – To examine the liquor, a chemical analysis is not a must – When there is no chemical analysis the court can fall back upon other evidence on record to hold whether the particular article seized is excisable or not – 1991 (4) OCR 554.

The liquor was not produced at the time of trial. It cannot be held conclusively that the accused was not in possession – Court can convict the accused basing on other evidence there would be regarding possession – 1991(4) OCR 209.

**CONSUMPTION**

Under Proviso (III) to Sec 13 it is said that the owner of a tree can keep 4 seers of tari for his own consumption – U/s 48, presumption is in favour of the guilt – Onus on the accused to establish that the tari was for domestic consumption in as much as it was in his special knowledge – 1987 (II) OLR 355.

**CONSIDERATION MONEY**

Once the consideration money is determined it reaches finality – Board has no jurisdiction to reduce the sum – 41(1975) CLT 934.

Collector has power to direct deposit of some portion of consideration money at the time of auction and the balance money on a future date – He can also extend the date for depositing money before making recommendation – 62 (1986) CLT 641.

**CONTRACT**

Orissa Excise Privilege Rules 1970 – Rr 6,6A – Contract to lift – Particular quantity of liquor every month obligation to remit excise duty – Is Independent of sale/purchase of liquor unrelated to lifting of minimum guaranteed quota? – AIR 1997 SC 1493.

**CONVICTION**

When there is no definite evidence to prove guilt – where there was no incriminating article found in possession of a person accused u/s 47 (a) and (f) and no other definite evidence to prove his guilt thereunder, his conviction which was bound only on the fact that he was found at the alleged place of offence at an unusual hour and had run away seeing Excise officials, was held to be unfounded and misconceived – 1960 Cr.L.J. 682 – 1982(53) CLT 366.

The case against the accused petitioner was so clearly proved on evidence, that there is no doubt that he was not entitled to benefit of doubt and he was rightly convicted – But under the Excise Act, as this was the first offence, should be spared the stigma of imprisonment – 25 CLT (Notes 34) 21.

When the various methods of testing liquor as prescribed in the Excise Manual are not applied and there is no evidence except the evidence of the Excise Sub-Inspector who also says that except smell there was no other data on which he could say it was outstill liquor, no conviction can be based – 26 CLT 307.

Excise officials arrested the petitioner after they have seized the liquor inside his house – No material to show any grudge, the officer had towards the petitioner – Conviction challenged on the ground that

two independent witnesses were turned hostile, thus there is no corroboration – Held, conviction justified – 1992(3) Crimes 1074.

A suit-case containing bottles of foreign liquor seized from the accused at the bus stand – Sec 70 has no application – Held, conviction u/s 47(a) is not vitiated for non-compliance of the provisions of Act u/s 70 – 1989 (2) OCR 473.

Uncorroborated testimony of ASI – Excise not supported by independent witness – No production of liquor or container – Not sufficient for conviction – 1990 (3) OCR 248.

Appreciation of evidence in revision – Sole eye-witness's evidence casts doubt and non-examination of witness to search and seizure – Conviction set-aside – 79 (1995) CLT 788.

Petitioner found guilty of selling liquor inside his premises and the containers seized – Conviction challenged on the ground that independent public witnesses were hostile and thus there was no independent corroboration – No material to show that the Excise Inspector and police A.S.I. who captured accused has any grudge – No reason to suspect the conduct and performance of two officials – Petitioner aged about 40yrs was not a previous convict and faced trial for six years – Sentence reduced to one month's imprisonment from six month's awarded by trial Court – 1992 (III) Crimes 1074.

Evidence of Excise Sub-Inspector not corroborated with that of seizure witnesses – Seized liquor neither measured nor sent for chemical test – Hydrometer chart not prepared – Order of conviction set aside – 1992 (I) Crimes 652.

Witness to seizure withheld without any explanation – Seized liquor not produced or proved at trial – Chemical report not produced – Possession not proved beyond reasonable doubt – Sentence set aside – 1993 (6) OCR 654.

Except the label, there is no evidence regarding percentage of alcohol – In the absence of any chemical test or other evidence leading to the conclusion that the contents is prohibited alcohol, it is difficult to convict the petitioner solely basing on the percentage given in the labels affixed to – 33 (1967) CLT 1192.

In order to sustain a conviction u/s 19 for possessing liquor in excess of quantity as prescribed in Notification dated 14. 8. 65, it is necessary to prove actual quantity possessed by the accused – 46 (1978) CLT 373.

If from evidence on record, Court is satisfied what was seized was a contraband intoxicant which includes non-duty paid Ganja, Court

can direct conviction – No chemical examination would be necessary – 1993 (6) OCR 724.

Legality of conviction under Opium Act – Sec 9(a) – Personal search of Excise-staff and witnesses before search and seizure from party concerned not established – Held, it must be held that story of recovery of incriminating articles was not established by prosecution beyond doubt – 1976 CLR 81.

Mere keeping articles for preparation is sufficient to be convicted under Sec 47 (f) of B&O Excise Act, 1915 – 1995 Cr.L.J. 1128 (Ori)

Offence u/s 47(a) – Liquor seized from the accused kept in the custody of one of the villagers who produces the same before an excise officer – If such custody is an offence – P.W. was simply in interim custody of the same until an officer properly authorised to seize the same reached the spot next morning – Sec 47 (a) does not contemplate such possession to be an offence – 28 (1962) CLT 47.

Allegation of possession of non-duty paid Ganja – The excise officer stating it to be so, should have long experience, otherwise conviction is bad – 1993 (6) OCR 527.

Conviction for possession of illicit liquor – Whether provisions of Probation of Offenders Act to be applied – Consideration by Court – Not only the nature of offence, but also the "character of offender" to be taken into consideration – Probation officer reported for release on probation – Antecedents taken into consideration – Provision of Act applied – 1994 (7) OCR 22.

### **CORROBORATION**

Need of independent corroboration depends upon facts of each case – Prosecution case can be held, doubtful due to absence of corroboration – 1992 (III) Crimes 1092.

### **DELAY**

Cognizance of offence beyond six months of its commission and without sanction u/s 96 vitiates the trial – 1979 BLJ 241.

### **DEFINITION**

"Officers in charge of Police Stations" in Sec 81 do not include Excise officers deemed to be police officers u/s 78 – 1974 ILR 53 (Pat) 493.

### **DELEGATION**

Notification No 470/7 Dt. 15.1.1919 issued under Sec 7(2) – Govt delegating its power of control over administration of Excise Deptt. and collection of Excise revenue to Excise Commissioner under notification – Absence of relation of power of control by Govt.



notification – effect – General control of Govt. is not lost – Sec 35 doesnot override Sec 7 – Directive by Govt. to Commissioner to fix licence fee by public auction is invalid.

Appointment of Excise Commissioner by the State Govt. under notification Dt. 15.1. 1919 to have control over the administration of the Excise department and collection of Excise revenue does not mean that the Commissioner has been made the final authority and the general power of control of the Govt. is lost because of the absence of retential of such power in the notification in express terms.

The right in relation to intoxicants in all manifestations is vested in the Govt. is merely choosing the Commissioner as the delegate for the purpose of exercising the powers vested in the Govt. – Delegation doesnot imply a parting with powers by the Govt, but points to conferring an authority to do things which otherwise the Govt. would have to do itself. Therefore, by issuing the notification, the Govt. didnot denude itself of the powers in relation to the sale of liquor. Therefore, the directive by the Govt. to the Commissioner to fix the licence fee for sale of liquor through public auction is valid – 1985 Tax. L.R. 2416 refered in AIR 1966 SC 1404 relied on AIR 1970 SC 1896 & AIR 1985 SC 322.

### **DEDUCTION**

Where the importers-cum-wholesale dealers have no liability, Govt. cannot deduct from the lump-sum deposit made by them towards the duty to be paid by retailers – 1988 (II) OLR 402.

Foreign-liquor – Wholesalers make a lump-sum deposit and when they import foreign liquor from other States, duty payable by them is adjusted –When retailers take the liquor they have to pay a separate duty before releas-ing the stock from the warehouses – The importer-cum-wholesale dealers have no liabiltiy – Government cannot deduct from the lump-sum deposit made by them towards the duty to be paid by retailers – 1988 (II) OLR 402.

### **DEFINITION**

Unfermented juice come under the definition. The common parlance that the juice after sunrise is fermented and it can then be said to be tari is not applicable – 1987 (3) Crimes 801.

### **DOMESTIC USE**

Under Section 13 it is said that the owner of tree can keep 4 seers of tari for his domestic use – But u/s 48, the presumption is in favour of guilt – Onus on accused to establish that the tari was

for his domestic use in as much as it was in his special knowledge – 64 (1987) CLT 488-1987(3) Crimes 801.

### **DUES**

Excise dues of a certain State are not realisable by the Collector in that State sending certificate to Collector in another State for realisation of dues, because these dues are recoverable as "arrears' of revenue" u/s 93 of the Act and not as "arrears of land revenue". The arrears of revenue can be realised within the State and procedure for realisation of this kind of revenue is mentioned in Orissa Public Demand Recovery Act – A certificate for realising the same can not be sent outside the State as the provision of Revenue Recovery Act doesnot apply – In case of "Land Revenue" Revenue Recovery Act, 1890 will apply and u/s 3, certificate can be transferred from one State to another for realising the same – 1979 Tax. L.R. 2503 (Pat).

### **EXCLUSIVE PRIVILEGE**

Statutory order, granting privilege, not a contract – Writ can lie against it – Prior hearing must be given to Administrative order – AIR 1978 Pat 157.

Auction notice by Collector in form G.L. 10 – Interpretation – Licensee whether granted exclusive privilege to manufacture and sale liquor under outstill system – AIR 1977 SC 722.

Amount realised by grant of Exclusive privilege was not a tax – Sec 29 is not *ultra vires* the Constitution – AIR 1977 SC 722.

Grant of Exclusive privilege for vending liquor and amount deposited by bidder is consideration for the privilege – Neither fee nor tax – Bid not accepted by State Govt. – Bidder is entitled to refund the deposit – Authorities cannot unilaterally settle the shop upon him – AIR 1994 Ori 327.

The State Govt. can issue administrative circulars regarding excise matters – But once having decided the policy of settlement and having issued order, right cannot be taken away by administrative circular – 1994 (II) OLR 613;74(1994) CLT 877.

### **FEEES**

Foreign-liquor-off-vend auction – If contrary to law – For obtaining licences, whether fees can be fixed – Supreme Court declared that the amended rules 103 (1) is invalid in so far as it provides that a fee for licence for retail sale referred to as 'off' sale or 'off' vend of foreign liquor shall be fixed by auction – 35 (1969) CLT (Notes 133) 79.

**GOVT. ORDER**

Order of State Govt u/s 29 nominating itself to be authority to determine sufficiency of sum payable u/s 29 (1) – Sec 29 (2) (b) does not prohibit such course – AIR 1977 SC 722.

As amended by Act 10 of 1971, has retrospective effect – State Govt's power to accept or reject a tender without assigning any reason cannot be said to arbitrary – AIR 1997 SC 722.

Order of Excise Commissioner u/s 35 is final and not amenable to appellate or revisional jurisdiction u/s 8 – AIR 1976 Pat 137.

Expression 'or ootherwise' in 1 (a) is not unconstitutional and hence cannot be sturck down – AIR 1977 SC 722.

The State Govt. had conferred exclusive privilege on the successful party at the Public auction for the manufacturer or sale of outstill liquor in a particular area for a particular time for which a proper licence was granted. On account of the exclusive privilege at the public auction which was realised as a levy was not a fee, but a contractual sum of money for leasing out exclusive privilege – There is therefore no substance in the submission that Rule 100 authorising holding of the public auction in that regard was *ultra vires* the Act – AIR 1971 Ori 158.

**GOVERNMENT'S POWER**

Govt has power to restrict the sale of country liquor beside the power conferred on it for foreign liquor which is not unconstitutional – 38 (1972) CLT 481.

Power of granting exclusive privilege by the Govt. can be exercised either by auction or calling tenders or by negotiations – 38 (1972) CLT 481.

State Govt. can dissect re-auction when the bids at the auction were found to be unsatisfactory – AIR 1977 SC 722.

Govt. policy of 1994-95 regarding prohibition of manufacture and sale of country liquor w.e.f. 1.4.94 – Higher consideration amounts and licence fees for opening of new foreign liquor shops whether legal or not – 79 (1995) CLT 204.

'Grant' and 'licence' – The grant of exclusive privilege lives with State Government, but granting of licence, the power is in the hand of Collector. The person granted with exclusive privilege cannot operate his business without licence – 68 (1989) CLT 481.

Govt neednot make any order indicating that they are going to grant the privilege by negotiation – 38 (1972) CLT 481.

**GRANT OF LICENCE**

Only because a criminal case has been filed against petitioner, that will not debar him from grant of licence or renewal – Unless there has been completion of case and there has been conviction, the bar under the Rules would not arise – 78 (1994) CLT 877.

**INTERPRETATION**

“Excise duty” and “countervailing duty” – Countervailing duty is imposable at the time of import which essentially means first entry into the State – For the sake of administrative convenience, collection of duty can be postponed but the duty is actually on the goods imported irrespective of what happens to these goods after import – 1995 (I) OLR (FB) 67.

Imported liquor stock destroyed being unfit for human consumption – Notice demanding payment of countervailing duty on said stock – 79 (1995) CLT 329.

**JURISDICTION**

Collector had no jurisdiction to cancel the exclusive privilege granted to petitioner – This fact have been realised later on by the authorities and accordingly the *ex-post facto* approval was obtained from the Govt. That would not cover up the defect which is an act vitiated by want of jurisdiction – 39 (1973) CLT 271.

*Jurisdiction of Board* – Once the consideration money is determined it reaches the finality – Board of Revenue has no jurisdiction to reduce the sum – Sec 39 of the Act cannot be interpreted in such a way so that the finality contemplated under sec. 29 (3) would stand abrogated – In view of the finality, provided by statute, petitioners, right to move for a variation of the amount must be found to have been taken a way. Once accepted, the liability is final and is not open to dispute – 41 (1975) CLT 934.

Excise duties of a certain State are not realisable by the Collector in that State by sending certificate to Collector of another State, because these dues are recoverable as “arrears of revenue” u/s 93 of the Act and not as “arrears of land revenue” – 1979 BLJR 379.

Assault on Excise Inspector when he proceeded to search car of accused on behalf of commission of offences stated in sec 74 – Reasons for belief not recorded- Seizure and search are without jurisdiction – 1984 CrL.L.J. 1409.

Articles or vehicles seized under Excise Act and in custody of Excise officers—not coming under the jurisdiction of Sec. 516–A Cr P.C.– 1974 BBLJ 803.

Where the petitioners bid at an auction of license of certain liquor shops with the full knowledge of its terms and voluntarily accept a provisional settlements they have no right to invoke the jurisdiction of the High Court under Art 226, as the alleged rights of the petitioners are merely contractual – AIR 1954 Ori 74.

### **LEGALITY**

Accused was arrested and contraband articles seized from him by person not authorised by law – Whether the entire trial is vitiated and without jurisdiction – An illegal arrest or seizure will not affect the validity of the trial before a competent Court – 28 (1962) CLT47.

It can not be laid down as a rule of universal application that a witness having departmental experience cannot state that liquid seized is illicit liquid – It depends on the facts of the case – 1995 (I) OLR 102; 1995 CrL.L.J. 1128.

### **LEVY**

Excise duty cannot be levied on undrawn liquor, Govt declaration vide Privilege Rules – 1995 (II) OLR 361.

Liquor stored in bonded warehouse point of levy of duty is the point of removal, if the goods has become unfit for human consumption before removal – Excise duty cannot be levied – 34 (1992) O.J.D. (CrI) 311.

Sec 15 (1) (C) is clear that the stock of intoxicant coming for deposit has to be kept in the warehouse without payment of any duty and the calculation of duty has to be made at the stage of removal of the intoxicant either from the distillery, brewery or from the warehouse, the provision is u/s/17 – It would not be proper and just that what has not been reached the petitioners, warehouse would be a subject matter of levy of duty – Held, Excise duty is not exigible on the quantum of breakage of foreign liquor imported under a bond from a distillery/ brewery or warehouse – 1989 (II) OLR 282.

Rule 33 doesnot create a right in any authority to levy any duty – applicable only if transportation or export is done under bond – Rule 33 has no application whatsoever, as is the case with rectified spirit despatched from the premises of the petitioner without bond – It only deals with permissible and allowable wastage on which quantity is exempted from payment of duty. It is also well-settled that if an article becomes dutiable at a later stage by becoming fit for human consumption, duty cannot be levied at the prior stage where it is not fit for human consumption – The order of a week's suspension of the licence as passed by the Commissioner of Excise is also uncalled for

and is declared to be entirely without legal justification, the petitioner was neither required to pay duty nor to execute a bond – 1982. (30) BLJR 562.

### **LIABILITY**

Vicarious liability of the owner for unauthorised possession of contraband goods by his salesman – Being the salesman, they were authorised to sale the licensed goods, and hence while sitting in the shop of the petitioner, they must be held to have been acting on behalf of the petitioner – 31 (1965) CLT 221.

### **LICENCE**

Board of Revenue directing that there should be no change in amount of security during currency of licence but that proper security may be demanded from next licensing year – Legality – AIR 1966 SC 343.

Only because a criminal case has been filed against petitioner that will not debar him from grant of licence or renewal – Unless there has been completion of case and there has been conviction, the bar under the rules wouldnot arise – 78 (1994) CLT 877.

Licence for sale of foreign liquor in favour of a Hotel which is a company – Company being a distinct legal entity cannot be equated with an individual – Held, licence in favour of Hotel cannot be a bar for granting licence in favour of petitioner for sale off of the Hotel premises – Provision under rule 46 (4) can not be applied – 68 (1989) CLT 481.

Licence for sale of country liquor or foreign liquor – Licensee cannot claim resettlement of liquor shop on expiry of licence – Fixation of licence fee by Govt. by holding public auction is valid – 1985 Tax. L.R. 2416.

In case of transfer of licence, the Collector is not required to record reasons – 1982 Tax. L.R. Noc 210.

Cancellation of licence – Show-cause must be issued by authority competent to cancel licence, i.e. the Collector – Fact that licensee showed cause or had opportunity to explain before appellate or revisional authority is immaterial – 1983 Tax. L.R. 2758.

### **LIMITATION**

Sec 17 of the Limitation Act provides a period of 3 years for relief on the ground of mistake became known to the plaintiff. On the question as to when the petitioners came to know of the mistake in the present case, it is stated that they came to know of the mistake

when the decision of the Supreme Court in Kalyani Stores Vrs. State-1966 SCD 303 came out – The High Courts have power for the enforcement of statutory rights and fundamental rights under the Constitution to give consequential reliefs by ordering repayment of money realised by the Govt. without the authority of law – It has been held that where tax is levied by mistake of law it is ordinarily the duty of the State, subject to any provision of law relating to Sales Tax to refund the tax. If refund is not made, remedy through Court is open subject to the same restrictions and also to the period of limitation namely 3years from the date when the mistake had become known to the person who has made the payment by mistake. Opposite parties are directed to refund the countervailing duty illegally collected from the petitioners- 34 (1968) CLT 236.

### **LITIGATION**

A person who comes to Court should come with clear hands, mind and objective – Question of shifting a licensed liquor shop from one place to another in the same area – Petition under Public Interest Litigation filed by the people of the village not maintainable – 1997 (I) OLR 270.

### **MENS REA**

*Mens rea* not a necessary ingredient for consideration when statute provides punishment for an act prohibited in the interest of public welfare – The object of the penal provision is an important factor to determine whether *mens rea* is an essential ingredient of the said offence – 40 (1974) CLT 1040.

### **NOTICE**

Where the auction notice by Collector in Form G.L.10 showed that it related to the auction of the right to open a shop at the site named in the notice and the payment of licence fee therefore and the requirement of Sec 22(I) had already been complied with by the State Government's decision it would be wrong to hold that by the issue of such notice what was proposed to be given was not the exclusive privilege to manufacture and sell country liquor – 1977 Tax L.R. 1701 – AIR 1977 SC 722.

Terms of auction notice advertised making it clear that money tendered was to be deemed as deposited tentatively pending acceptance of bid – Petitioner's tender accepted and his name entered in prescribed register – Two months fees deposited in advance – State Govt. could direct re-auction when it found that the bids at the auction were unsatisfactory – AIR 1977 SC 722.

**OFFENCE**

Complaint not stating that women were employed or were permitted to be employed by the club and that cabaret was being performed in the part of the club, where liquor was being consumed by public – Complaint also not stating which condition of licence was broken – Held, no offence was made out either u/s 54 (1) (a) read with Sec. 25 (2) or u/s 57 (c) – AIR 1977 SC 1754.

**OFFICIAL WITNESS**

The evidence of excise officer is reliable on ground of his long experience of nine years, so far as liquor is concerned – No suggestion made in respect of lack of his knowledge in the line – In terms of Sec 114 (e) of Evidence Act, a presumption arises that Excise officer performed his part well – *Omnia prausu muntur rite et solemintorease acts* (all acts are presumed to have been rightly and regularly done) – 1995 (II) OLR (NOC)1.

Law doesnot put any embargo for relying on evidence of such witness – Insistence on corroboration is a mere requirement of prudence and caution – No reason as to why the officials would falsely implicate the accused – Sufficient to establish the guilt of the accused – 1991(4) OCR 409.

When the two official witnesses have no hostility against the accused, it is not proper to dsscard their evidence – 1991 (I) OLR 267.

Prosecution evidence for distillation of illicit liquor – Credible and acceptable evidence of departmental officer – Independent witness not must for conviction of accused – 1991 Cr.L.J. 3266.

Conviction can be maintained on the basis of evidence of departmental officers – Examination of an independent witness is a requirement but not mandatory whose availability is a relevant factor – So the evidence of official witness is credible and acceptable – 73 (1992) CLT 28.

Recovery effected only by two official witnesses – Presence of one is doubtful – Inconsistency in the statement of these two on the point of seizure – Unsafe to hold conviction – 75 (1993) CLT 745.

Conviction can be based on the evidence of official witness even though the independent witnesses do not corroborate if the evidence of official witness is reliable – 78 (1994) CLT 1000; 1994 (7) OCR 779.

Evidence of official witnesses clearly proves seizure and about the tests conducted – Absence of any material to show that they acted with *mala fide* – Conviction can be maintained on their evidence only – 78 (1994) CLT 277.



The Excise Sub-Inspector who seized the goods was specially trained and has an experience of 20 years and this fact goes unchallenged – This evidence is to be accepted and conviction upheld – 1994 (7) OCR 919; 1995 (II) OLR (NOC) 1; 1995 (I) OLR 102.

“Bottles seized contain foreign liquor,” opined by the Excise Sub-Inspector who is a trained and has long experience, from smell and cork manufacture label of the container – Chemical analysis corroborated – Conviction up-held – 1989 (2) OCR 473.

An experienced Excise official identified the contents and opined as liquor and his evidence corroborated by litmus test and hydrometre test – Sufficient to rely for conviction – 1997 (I) OLR 398.

Materials in possession for preparation of illicit liquor and also wash – Conviction can be sustained only on the evidence of official witness – 1995 (I) OLR 102.

Offence of being in possession of illicit liquor – Proof that the substance recovered from accused is liquor – Evidence of prosecution witness that he is a trained officer and had long experience in the field – Court can act upon his evidence – No further proof is necessary – AIR 1974 SC 639 followed; 1996 (10) OCR 162.

### **PARTNERSHIP**

Registration of partnership – Licensee entering into partnership for carrying on liquor business in Orissa with head office in M.P. Held, as then was no transfer of licence to partnership, sec 23 was not contravened – 1982 Tax. L.R. 567.

### **POSSESSION**

Possession of illicit liquor – Spoken to by two official witnesses who had undergone distillery training and found the contraband to be illicit liquor having conducted litmus test – There evidences cannot be disbelieved merely on the ground that the seizure witnesses have turned hostile – 1996 10 OCR 513.

Seizure of I.D.Liquor – Witnesses to seizure withheld – No explanation offered for withholding them from witness box – Corroborative evidence wilfully hold back sole testimony of S. I. of Excise as to seizure – Not acceptable – 1993(6) OCR 654.

Liquor was not produced at trial – It cannot be conclusively held that accused was not in possession of it – Court can convict a person if otherwise it accepts the evidence that accused was in possession of it – 1991(4) OCR 209.

Possession of contraband – Must be conscious and exclusive – Contraband recovered from open space – Accused cannot be held liable

unless it is established that he had control or dominion over the same – 1996 (11) OCR 393; 82 (1996) CLT 514.

Presumption u/s 48 – Ifemp plants grown in the bari of the accused uprooted and siezed – No evidence that accused cultivated the same in his bari – Possession proved – Accused offered no explanation with regard to such possession – Held, a presumption can be drawn u/s 48 that he is guilty of an offence u/s 47 (b) of the Act – 67 (1989) CLT 712.

Simple possession of materials, steel utensils, implements, instruments or apparatus for purpose of manufacturing, intoxicating drug or liquor other than 'Tari' – Not sufficient for the commission of an offence u/s 47 of the Act – 1991 (II) OLR 95.

Exclusive possession of distillation apparatus of manufacture of liquor with fermented mohua wash except under the authority or licence is culpable – 67 (1989) CLT 365.

Possession must be conscious – The prosecution cannot merely rely on the recovery of the articles but has further to prove that the articles were in conscious possession of all or any of the accused persons – 23 CLT 192 – AIR 1951 Pat 638 – 31 (1965) CLT 990.

Possession cannot be found with wife residing with her husband – Possession means actual physical possession and conscious possession – 76 (1993) CLT 581.

Possession beyond the prescribed limit of any intoxicant would amount to an offence – 1993 (6) OCR 179.

Possession of intoxicants – Quantity in excess of that fixed by Revenue Board – Liable for conviction – Notification Dt. 14.8.65 prescribing quality of pachwai to be possessed – Conviction u/s 19 for possessing liquor in excess of quantity prescribed by the notification – Proof of actual quantity possessed by accused is necessary – 1978 CLR 293; 1979 Cr.L.J. (Noc) 22; 1978 (46) CLT 373.

Limit of possession of intoxicant by retail seller – Notification No 618- Ex. Dt. 13. 3. 1956 by Board of Revenue suspended all previous notifications issued by Orissa Govt. and prohibits possession of any intoxicant by any person in all districts including Koraput – Warrant case, tried as a summon case – Legality of concession in sentence due to age – 25 CLT (Notes 36) 21.

Liquor seized from the accused, kept in the custody of one of the villagers who produces same before the Excise officer – Does not contemplate such possession to be an offence – 28 (1962) CLT 47.

Once conscious possession is proved, guilty mind or *mens rea* of the accused is not required to be proved to constitute an offence u/s 47 of the Act – 40 (1974) CLT 1040.

Possession of Tincture zingiber Mitis – Except the label, there is no evidence regarding percentage of alcohol – In absence of any chemical test or other evidence leading to the conclusion that the contents contained prohibited alcohol, it is difficult to convict the petitioner. A mere passive possession or passive awareness of the existence of the articles would not be conscious and exclusive possession as it required to be established for the purpose of the provision of the Act – 1993 (6) OCR 127.

Exclusive possession of distillation apparatus of manufacture of liquor with fermented mohua wash except under the authority or licence is culpable – 67 (1989) CLT 365.

### **PROCEDURE**

Sec 47(a) r/w Opium Act, sec 9(a) – Offences under – Procedure to be adopted for trial- The Magistrate ought to have proceeded with the trial in accordance with the procedure laid down in sec. 252 Cr.P.C. and the succeeding sections and not that prescribed in section 251 – 27(1961) CLT 224.

### **PROHIBITION**

Sec 19(4) of the 1915 Act was not such an expression of the legislative will as to empower the State Government to issue a notification imposing complete prohibition covering the entire public of the State in general. However, laudable the object may be and whatever be the rationale behind the exercise of legislative power in the direction in the absence of such a legislative mandate it was not open to the State Govt. by issuing an executive fiat to do that which the legislative did not empower it to do. The notification contemplated u/s 19 (4) empowers the State Govt. to prohibit the possession of intoxicants not by 'any person but by 'any person' or class of persons' which means any designated person or class of persons which in its turn means any person or class of person designated by name or description. The preamble did not indicate that the Act 1915 was brought on the statute book for the purpose of enforcing total prohibition, it was mainly for the benefit of the provincial fisc – AIR 1941 Pat 53; 1980 Tax. L.R. NOC 13.

### **PROMISSORY ESTOPPEL**

Grant of Privilege communicated to applicants by letter and accepted by the petitioner – Formal applications for issue of licences made and also done on that basis – Board revising rates thereafter and petitioner supplying liquor at new rates but under protest – Their

right not waived – Principle of Promissory estoppel must apply against the Board – AIR 1978 Pat 157.

### **REFUND**

Right to manufacture and sell country liquor – Responsibility of providing place not of State – Bidder not allowed to open shop by public – Refund of fees and compensation cannot be claimed – AIR 1976 SC 1913.

Ganja attached on the expiry of licence period and sold by Excise authorities – Whether vendor is entitled to return the price – 31 (1965) CLT 832.

U/ss 42 and 43 of the Act the licence can be cancelled or withdrawn by Government – In that case there is provision for remission or refund of licence fee – The licence holder has to deal with country liquor which he is to be supplied by the warehouse – There is nothing in law as to how much of supply is to be made even if there is no supply of liquor from warehouse, the licensee can not claim any refund of fees on the ground that his business suffered and he incurred loss – There is no such provision in law – Held, no provision under the law has been relied upon by the learned counsel for the petitioners which makes it obligatory for the licencing authority for supply of a particular quantity of country spirit to a licence or privilege holder during the term of the licence – Even if no country spirit is supplied by the authorities, the licensee continues to be a licensee during that period – Hence, the prayer for refund of the licence fee to any of the petitioners as per their demand could not be accepted by the authorities, as law does not permit the same – 1989 (II) OLR 46.

### **REJECTION**

Petitioner, a managing director was granted licence in the name of the Hotel at Bhubaneswar. He applied for privilege of vending on Berhampur, and his application was rejected on the ground that he already held a licence in respect of the Hotel – Held, company is a distinct legal entity and petitioner is an individual – Two distinctive entities – The ground for rejection wrong – Hence invalid – 1989 (1) OLR 587.

### **RESTRICTION**

There is statutory restriction for import, export and transport of intoxicant – Liquor being an intoxicant can not be imported or transported exceeding the prescribed limit without a pass – Transportation

of a huge quantity of country liquor without a pass constitutes an offence u/s 47(a) of the Act – 67(1989) CLT 365.

Govt. notification no. 49749-III-Ex-91/65 Dt. 24.7.65 and Board's Notification No. 2768-Ex-dated 14.8.1965 – There is statutory restriction for import, export and transport of intoxicant – Liquor being an intoxicant can not be imported or transported exceeding the prescribed limit without a pass – Transportation of a huge quantity of country liquor without a pass constitutes an offence u/s 47(a) – 67(1989) CLT 365.

Excise duty is not exigible on the quantum of breakage of foreign liquor imported under a bond from a distillery/brewery to a warehouse establishment – 1989 (II) OLR 282.

Ganja attached on the expiry of licence period and sold by Excise authorities – Whether the vendor is entitled to return of the price ? Held, the article is unfit for use and is destructible is a thing or act either done or alleged to have been done in pursuance of the Act – The Act doesnot countenance the theory that if the stock is good and fit for human Consumption and is attached on the expiry of the licence, on sale, the price of the article would not be paid to the ex-licensed vendor and would be forfeited to the State – 31 (1965) CLT 832.

### **REVISION**

Power of revision can be exercised *suo motu* by Board of Revenue – No limitation – AIR 1966 SC 343.

Order of Excise Commissioner demanding additional security – Order set aside on review by him – Order is not one u/s 35 but one u/s 7(2) (a) and 8 r/w Sec 2(7) – Order is not final and can be revised by Board of Revenue – AIR 1966 SC 343.

Petitioner has an alternative remedy by way of a civil suit for a decree for refund of the duty unlawfully collected from him – As regards the unpaid excess duty also if Govt. insist on Payment by the petitioner, it is open to him to pay it under protest and then file a civil suit for recovery of the sum paid – 29 (1963) CLT 76.

### **RIGHTS**

Objection u/s 22 (f) – Right of applicants begins as soon as grants made are accepted by them – They didnot wait for factual drawing up of grants once orders are passed – AIR 1978 Pat 157.

### **SALE & RE-SALE**

Accused, a licence holdor, sold liquer in a place which was not specified in the licence – Whether the offence is u/s 47 of 57 or the Act and whether sanction is required u/s 87 of the Act – 16 CLT 195.

Retail vend of country spirit – Provincial licences for – Collector empowered to settle – Reserved fee confidential – Resale under orders of Board of Revenue – Not against natural justice – Auction of liquor shop – Not judicial but administrative act – The Collector is empowered to settle the licences for retail vend of country spirit only provisionally when the reserved fees are not reached – As a matter of administrative policy it is quite reasonable that the reserved fee is kept confidential – If, as desired by Board, the Collector orders a resale when the first sale was provisional, no principle of natural justice is contravened – 19 CLT 501.

Right to manufacture and sale country liquor- Responsibility of providing place not of Government – Bidder not allowed to open shop by public – Refund of fees and compensation cannot be claimed – AIR 1976 SC 1913.

### **SANCTION**

Sanction of State Govt. must be obtained, in a case u/s 47, if prosecution is launched after six months from the date of act complained of – 1978 Cri.L.J. NOC 54.

### **SEARCH**

Material not produced to show that any reason was recorded before taking the search – Search was illegal and incompetent – 58 (1984) CLT 201, 1994 Cri.L.J. 1409.

Search and recovery not in conformity with sec 74 – 64 (1987) CLT 763.

Warrant of search and recording of reasons not necessary – Sec 70 is applicable, not sec 74 – For want of search warrant or recording of reasons, the search does not become illegal – 63 (1987) CLT 370.

Search was illegal and incompetent, as the material not produced to show that any reason was recorded before taking the search – 58 (1984) CLT 201.

The essence of Sec. 74, is recording the grounds of belief before conducting search and seizure without search warrant. In order to satisfy the Court that the provisions of the section were strictly complied with evidence should be placed before the Court that the appropriate Excise officer recorded grounds of his belief – If no such evidence is produced, it will not be possible for the Court to uphold the search and seizure in accordance with the provisions of the section – Consequently such search and seizure must have to be declared illegal – 1985 (60) CLT 510.

**SENTENCE**

Accused sentenced to undergo a substantive term of imprisonment for six months – Accused is first offender – If sent to jail, he would mix with harden criminals – If he is allowed to remain outside the prison bar, he might give up nefarious activities in dealing with contraband article – Sentence of imprisonment is reduced to the period already undergone with a sentence of fine – 1991 (4) OCR 40.

Revision against conviction of accused – Accused found to be first offender – Quantity of Ganja small – Sentence of imprisonment for one month reduced to that for the period already undergone – 1976 CLR 448.

Where an accused is a first offender and the quantity of ganja seized is small, the sentence of one month imprisonment was reduced to that for the period already undergone – 1976 CLR 448.

Liquor was not produced at trial – It cannot be conclusively held that accused was not in possession of it – Court can convict a person if otherwise it accepts the evidence that accused was in possession of it – 1991 (4) OCR 209.

**SEPARATE TRIAL**

Several persons found in possession of non-duty paid ganja at the same time, on the same day and at the same place – No concert or association proved – Separate trial is legal – 1974 (40) CLT 1132.

Different persons possessing non-duty paid ganja seized at the same time – No evidence of premeditated plan or conspiracy – Whether all can be tried in the same case – Sec 239 (a) Cr. P.C. not applicable and cannot be tried in one trial – When the evidence is of doubtful veracity, no re-trial should be ordered – 24 CLT 230.

Articles or vehicles seized under Excise Act and in custody of Excise Officer – Sec 51/6-A Cr. P.C. not to be applied – 1974 BBLJ 803.

**SITE**

When an excise shop is settled, what is settled is the right of vend of a certain intoxicant in a certain locality. As a general rule, it is not desirable that the sites of shops should be absolutely fixed in the sale proceedings, as the person who takes settlement may find difficulty in coming to terms with the owner of specified premises – On the other hand, vagueness, which may misled as to locality, is to be avoided – Ordinarily it will be sufficient to specify as the locality of vend, a village or certain tolas of a village or in towns street of certain streets – Where this is insufficient, the Collector should specify a particular distance from some fixed spot as the limit within which

the shop may be opened or some particular tract, the boundaries of which should be so described as to leave no possible room for misapprehension, the locality must be fixed and notified in the sale notification published before the settlement is made. The sites of all shops are subject to the approval of the Collector. After the Commissioner of Excise has sanctioned settlement proposals, his approvals must be obtained before any change of site is sanctioned or required – (Govt. Notifn. vide NO IEX-20/90 (Part II) 671/Ex Dt. 23. 4. 1990).

Change of site is to be effective only with the approval of the Excise Commissioner – 1997 (1) OLR 270.

### **STATE**

On facts it is held that the State is rendering no service to the consumer. It is merely protecting its own rights. The co-relationship between the services rendered and the fee levied is essentially a question of fact. *Prime facie* the levy appears to be excessive even if the State can be said to be rendering some services to the licensees. The State ought to be in possession of the material from which the co-relationship between the levy and the services rendered can be established at least in a general way. Therefore, the levy under the impugned rule cannot be justified – 37 (1971) CLT 539 (S.C.)

Order of State Govt. u/s 29 nominating itself to be authority to determine sufficiency of sum payable u/s 29 (1) – Sec 29 (2) (b) doesnot prohibit such course – AIR 1977 SC 722.

### **STATUTORY OBLIGATION**

Rule 144 of the Excise Rules doesnot put any statutory obligation to record the reasons of the satisfaction of the officer concerned in passing any order. But as stated above that in a quasi-judicial proceeding, every order must be supported by reasons. Rule 144 does not impose any express obligation to record reasons of satisfaction. Each case has to be judged independently to find out whether the absence of recording reasons in passing an order offends the principle of natural justice and whether every such order becomes illegal. There cannot be a set of rules on this score which may with lock, stock and barely apply in all cases. So far as the instant case is concerned, admittedly there is no statutory obligation on the part of Collector to record reasons. The Collector considered the reasons recorded therein by the Excise Superintendent in his recommendation, which prompted the Collector to put his signature and thereby he has adopted the reasons as his own in passing the order. Thus there is no infirmity therein – 1982 BLJR 161.



**STORE**

On the finding that the stock of ganja had deteriorated, the licensee is debarred by the statute from selling or even storing such stock – When the sale and storing of such stock is prohibited in law, the stock can carry no value – 31 (1965) CLT 832.

**STRENGTH**

In the notification of the Board of Revenue so far as outstill liquor is concerned, no strength is prescribed by the Government. Hence irrespective of the strength of the liquor if the volume found in possession of any person is in excess of the permissible limit, the offence u/s 47(a) of the Act is made out – 26 CLT 620.

**SUMMON PROCEDURE**

When an offence u/s 47, C/s (a) and (f) r/w sec 65 of the Excise Act, 1915 is triable as a warrant case, its trial as a summons case is highly prejudicial to the accused even though the accused pleads guilty – 23 CLT 22.

**TAX**

Amount realised by grant of exclusive privilege was not a tax – Sec 29 is not *ultra-vires* the Constitution – AIR 1977 SC 722.

**TEST**

If sufficient proof is there, smell can not be a reliable test to find out whether the substance seized is liquor or not – AIR 1967 SC 1550.

Foreign liquor seized – When the examination by chemical analyst is not must in practice, Court can come to conclusion on the basis of other evidence – 1991 (1) OLR 170; 1990 (4) OCR 554.

The most common test for determining whether it is outstilled liquor or distillery liquor is the litmus test – The hydrometer test is not accurate test – 47 (1979) CLT 113.

In a case of illicit distilled liquor – Blue litmus and hydrometer tests conducted – Tests performed by officer having experience and training – Identification could not be doubted – 1991 Cr.L.J. 3266

Blue litmus test only shows the liquid to be acidic and no more – Hydrometer test is only to show the density of the liquid – The strength of diluted liquor raised from 75° to 93° and the average may be taken at about 85° as per the Technical Excise Manual – 1993 (6) OCR 612.

When the part of the prosecution case regarding manufacture of illicit liquor has been disbelieved in absence of chemical test in respect

of the liquor, the accused cannot be convicted for mere possession of certain utensils and materials – 1996 (10) OCR 148.

Both litmus test and hydrometer test should be positive and single test alone would not suffice. In absence of confirmation in both the tests the conclusion is irresistible, the seized article is not country spirit – As per the PW3, in his examination-in-chief, has stated that he conducted the hydrometer test but not the chart prepared by him, for which it is unsafe to rely on the testimony without chart – So hydrometer test to be done and hydrometer chart to be produced – Mere conducting litmus test not sufficient – (1996) 10 OCR 525.

Among the series of tests, chemical test is the surest test – Litmus and hydrometer tests are not surest unless these tests were made by an experienced and specially skilled officer, not merely he has been working in the department for a number of years – 1993 (II) OLR 392.

Test to be done by Excise official specially trained and experienced – Density of acidity to be tested by such person to arrive at the conclusion that it is ID Liquor – 1994 (7) OCR 549.

In a case of country liquor both hydrometer and Blue litmus tests must be conducted – The chart of hydrometer test should be produced – Evidence of official witness with special training should be corroborated with other evidences – 1996 (10) OCR 525.

Smell cannot be a reliable test to find out whether the substance is liquor – 34 (1968) CLT 527; 34 (1968) CLT (NOTES) 95.

There are various methods of testing liquor with a view to find out whether it is outstill or distillery liquor – The most common test being litmus test CLT 620.

The most common test for determining whether it is outstilled or distillery liquor is the litmus test. The hydrometer test is not an accurate test as the hydrometer set tells only the specific gravity or density of the liquid in which that instrument is put – Not accepted by I.S.I. as a surest test – Where the Sub-Inspector of Excise who seized the liquid from the accused applied only hydrometre test for reaching the conclusion that the liquid was outstill liquor and the Sub-Inspector was not associated with the distillation of liquor or the chemical analysis thereof or the method of testing liquor, the prosecution must be deemed to have failed to prove that outstill liquor was seized from the accused and bring the case within ambit of sec 47(a) – 1979 Cr.L.J. 163; 1979 CLR 32; 1979 (47) CLT 113.

Hydrometer test is not an accurate test – There must be litmus test or other chemical test – 1979 (47) CLT 113 refer to 1983 (55) CLT 260.

**TRANSFER**

Transfer of liquor licence – Allegation of fraud – Application for renewal of licence by transferee as well as original licensee – Collector withdrawing licence after hearing both parties – Propriety- Held, that the order is made on administrative approach – 1982 B.L.J. 54.

**TRANSPORT**

Liquor being an intoxicant cannot be imported or exported excluding the proscribed limit without a pass excepting a limit of 300 litres of outstill liquor – 1988 (I) OCR 710.

**TRANSPORTATION**

Offence of 'Export' – Exporting some article would necessarily mean the articles being on the move – But the car, not in moving condition, the vehicle seized could not be said on the move – Therefore no transportation – 64 (1987) CLT 144.

**VALIDITY**

Secs 22 and 29 of the Act as amended are valid and that what is realisable u/s 29 is neither fee nor excise duty nor a tax but it is revenue incidentally derived in the exercise of the regulatory power vested in the State to control the manufacture and sale of liquor and that as such it is valid. If by the time the auctions were held, the amendments brought about by the amending Act had been in force, the Court would have held that the sum realised or realisable by auction is valid – But no retrospective effect is given to secs 2 to 5 of the Amending Act with the result that the validity of the sum realised has to be judged with reference to the provisions of the Act as they stood before some of the provisions were amended by the amending Act. It is held, that what was auctioned was not the exclusive privilege referred to in sec 22 and the bid amount is a tax and as such invalid – 37 (1971) CLT (Notes 1103) 81 – 40 (1974) CLT 455.

**WASTAGE**

Provision in State Excise laws prescribing maximum allowable wastage in transit and/or storage of intoxicant – Permissible – It is regulatory in nature and does not propose to impose any excise duty – AIR 1981 Pat 30.

Reduction in the maximum wastage limit in respect of intoxicants transported from place to place or stored sought to be made by the amendments to Rule 33(1)(a) was held to be invalid as the State had not by means of sufficient materials shown that the newly laid limits

were capable of compliance. Therefore, they could not be held to be regulatory in character. Though on account of improved road transport and storage conditions and facilities there could be scope for reducing the transit and/or storage wastage, it should be proved by results of experiments actually conducted and not merely by stating that the near reduced limits were capable of compliance – AIR 1976 SC 2020 ref. to AIR 1981 Pat 30.

**NOTIFICATION NO. 4834 DT. 10. 6. 96.**

***Particulars to be printed on labels affixed on the foreign liquor bottles by manufacturers for the purpose of issuing permit.***

*For the purpose of issue of permit for approval of labels and brands of foreign liquor for the year ending 31. 3. 1997, the effective date shall be 15. 9. 1996 after which no foreign liquor labels of which do not contain the following particulars will be allowed to be stored for sale in Orissa.*

*Particulars to be Printed on labels*

1. *Brand name of the foreign liquor.*
2. *Description of the foreign liquor (whether Rum, Whisky, Brandy, Gin, Cordial, Mixture liquor etc)*
3. *Alcoholic strength of the foreign liquor (Both Sike's proof and also in percentage of alcohol at 15° (cgd.)*
4. *Place of manufacture.*
5. *Name of the Bottler.*
6. *Name of the principal manufacturing company, if any.*
7. *"For sale in Orissa" English and Oriya.*  
     *“କେବଳ ଓଡ଼ିଶାରେ ବିକ୍ରୟ ପାଇଁ”*
8. *Maximum Retail Price (MRP) inclusive of all Taxes and Duties.*
9. *Statutory warning etc.*
10. *Batch No. and date of manufacture.*
11. *Contents.*
12. *If produced in India, that it is a " produce of India"*
13. *Any other information required by Indian law*

**NOTIFICATION NO. 13623/DT 14.9.93. BY DIRECTORATE OF DRUGS CONTROL, ORISSA.**

**Implementation of Judgement of Orissa High Court.**

(1) *The details of supply and receipt of Ethyl alcohol from Aska Distillery or any other distillery for manufacture/for sale of any pharmaceutical items of drugs through Excise Commissioner should be intimated to the Drugs Controller, Orissa and concerned area Drug's Inspector.*

(2) *Both the raw materials (Ethyl Alcohol, and finished products of each lot manufactured by utilising the said Ethyl alcohol should be tested by the manufacturer as required under rule 74(c) of D & C Rules, 1945 and the test reports be submitted to the Drugs Controller, Orissa as well as area Drug Inspector.*

3) *The area Drugs Inspector on receipt of information from the concerned manufacturer will draw statutory samples of each batch of raw material (Ethyl alcohol) and finished product manufactured utilising the said Ethyl alcohol immediately and send the same to the testing laboratory for test and analysis.*

4) *On receipt of the test report from the Govt. Analyst due release order will be issued by the Drugs Controller for marketing the said batch of product on the basis of result of test and analysis.*

*For the purpose of issuing release order the manufacturer must submit the followings :-*

- (a) *Detail source of procurement of Ethyl alcohol with copies of purchase invoices.*
- (b) *Copies of internal test report of Ethyl alcohol and finished products along with Govt. Analyst reports.*
- (c) *Name of the formulation, quantity, manufactured, with batch number, date of manufacturing and consignment of Ethyl alcohol or batch No. and quantity of alcohol used for manufacturing of each batch of formulation.*

*Any deviation of the above stipulation will be viewed seriously by this Administration and you will be liable for strict penal action as per law.*

*Drugs Controller, Orissa.*

**GOVT. LETTER NO 1504 / 6. 8. 1991*****Grant of Exclusive Privilage.***

*The State Govt. may grant to any person on such conditions and for such period as it may think fit, the exclusive privilege for retail sale of foreign liquor, country liquor or intoxicating drugs within any specified local area provided that public notice is given of the intention to grant any exclusive privilege and that any objections made by any person residing within the area affected shall be considered before an exclusive privilege is granted.*

*Orissa Excise (Exclusive Privileges) Rules prescribe the procedure for issue of public notice and also the form of public notice. A point was raised whether inviting of public objections afresh is necessary in case the locality of the shop is changed to another place within the same exclusive privilege area, earlier notified wither the same excise year. The legal position is that since the locality of the shop is to be changed to another place and in view of the admitted position that the licence was granted for opening a shop by inviting public objection, the same method of inviting public objection is to be adopted before shifting the shop from one place to another within the same local area.*

*Addl. Secretary to Govt.  
6. 8. 1991.*

**CIRCULAR NO. 585 -- NEW DELHI, THE 27TH NOV. 1990.**

***Sub:- Collection of income-tax at source under section 206C of the Income Tax Act, 1961 in respect of profits and gains from the business of trading in alcoholic liquor, forest produce etc. regarding.***

*1. Reference is invited to Boards circular No. 565 F No. 275A/1/90-IT (B)/dated 11.7.1990/printed at (1990) 184 ITR 166(st)/regarding collection of income tax at source under Section 206C of the Income Tax Act in respect of profits and gains from the business of trading in alcoholic liquor, forest produce etc. as also earlier circulars referred in paragraph 1 of circular No. 656.*

*2. As a result of different systems prevailing in different Atatcs, the term "purchase price", used in section 44AC of the Income Tax Act was being understood in different ways. In order to clarify this point, the Finance Act, 1990 has amended the said section to provide that the purchase price would mean any amount (by whatever name called) paid or payable by the buyer to obtain the goods referred to in that section, except the bid amount in an auction. Accordingly, the excise duty paid or payable, by*

the buyer will also form part of the purchase price for the purposes of section 44AC. On the same analogy, the "Nirgam Mulya" or Issue Price which is paid by a buyer in the State of Uttar Pradesh will also form part of the purchase price. Thus, income tax will have to be collected at source under the provisions of Section 206C by all persons referred to in Section 44 AC of the Income-Tax Act, 1961 (e.g. Central Government, State Government, local authority, corporations etc.) at the specified rates, with reference to the purchase price including the excise duty etc.

3. The above amendment has come into force with effect from the assessment year 1991-92 and therefore, will be applicable to the collections under Section 206C made during the financial year 1990-91.

4. The Finance Act 1990 has further amended section 44AC so as to include a "Co-operative Society" also within the meaning of the term "seller" as defined therein. The said amendment has also come into effect from assessment year 1991-92 and will, accordingly, apply to collections made under section 206C during the financial year 1990-91.

5. This may please be brought to the notice of all concerned. In case any assistance is required in this regard, the concerned assessing officer the local public relations officer of the Income Tax Deptt. may be approached.

6. Copies of this circular are available with the Director of Income Tax (RSP&PR), 6th floor, Mayur Bhawan, Connaught circus, New Delhi.

Sd/-

Under Secretary- II

(B)Central Board of Direct Taxes.

---

**INSTRUCTIONS VIDE - LETTER NO. 5357 / 6. 8. 97**

**Sub:- Instructions regarding sale of Low Strength I.M.F.L. in exclusive out-let.**

Government in Revenue & Excise Department in its Excise Policy released for the year 1997-98, have decided for opening of Low Strength I.M.F.L. 'off' shops in 21 non-O.S. Districts of the State (excluding Sambalpur, Jharsuguda, Bargarh, Deogarh, Kalahandi, Nuapada, Sonapur, Bolangir and Boudh districts) for exclusively dealing with the sale of Low Strength I.M.F.L. Accordingly instructions have also been issued to all concerned vide this office letter No. 2231 dated. 29.

3. 1997.

*In the meanwhile, shops to exclusively deal with I.M.F.L 'off' (Low Strength) have been put to auction and are being confirmed by Government for issue of licence.*

*For operation of such Low Strength I.M.F.L 'off' shops the following instructions are issued for guidance of all concerned.*

- (1) *Such shops will be captioned as I.M.F.L (Low Strength) 'off' shops and boards should be prominently displayed in the shop.*
- (2) *Such shops will only deal with Low Strength I.M.F.L. having 60 or below strength like India made liquor, cordial, Mixture whose duty has been fixed by Government at Rs 25/- per L.P.L. or any change to be done by Government revising the duty from time to time.*
- (3) *To deal with such liquor licence is to be issued in separate licence Form in F.L. 2(A). Necessary amendments in this connection to Paragraph-155 of Orissa Excise Manual, Volume-III has been made and communicated to all concerned. a sample form of F.L.2(A) is enclosed for your ready reference. Necessary pasting in your relevant Act, Rules and Guard File may be made in this regard.*
- (4) *The Low Strength I.M.F.L. as defined above should not be sold in I.M.F.L. 'off' shops having licence in Form No. F.L.-2, I.M.F.L. 'ON' shops, 'ON' shops attached to Hotel/restaurant having licence in F.L.-3, F.L.-7, F.L.-8 and I.M.F.L. 'ON' Club.*
- (5) *The stock of such Low Strength I.M.F.L. now available with the existing F.L.-2 licencees should be transferred forthwith to F.L.-2(A) licencees according to the provisions contained in Paragraph-124 of the Orissa Excise Manual, Volume-III.*
- (6) *Minimum Guaranteed Quota (M.G.Q.) fixed for the shop should be implemented and differential duty on short-fall should be realised soonafter communication of necessary Rules in this regard by Government.*
- (7) *The present system of issue of Low Strength I.M.F.L. stock from Trade 'off'/Bottling Plants should continue to F.L.-2(A) licencees.*
- (8) *Other conditions and maintenance of records and accounts should be according to the regular I.M.F.L. shops.*

*These instructions should be meticulously followed. Any doubt raised at any quarters should be brought to my notice.*

*Yours faithfully,*

*Excise Commissioner, Orissa, Cuttack.*



**OFFICE LETTER NO 5305 DT 6.8.97**

**Sub :- Guide-lines for opening of new I.M.F.L. 'ON' shops in the State.**

Government in the meanwhile, have released the Excise Policy for 1997-98. There has been a provision for opening of new I.M.F.L. 'ON' shops in the State. Proposals are being received from different Superintendents of Excise without proper justification for opening of I.M.F.L. 'ON' shops.

According to the Excise policy for 1997-98, it has been stipulated that I.M.F.L. 'ON' shops should be attached to any Hotel/Restaurant. Therefore, it is clarified that before recommending grant of licence to such I.M.F.L. 'ON' shops, the following aspects should be enquired into and recommended to the undersigned with full justification for opening of such shop.

- (1) The I.M.F.L. 'ON' shops should be attached to any Hotel/ Restaurant having importance of such Hotel, good catering facilities and location. The pre-conditions should be that it should be an established Hotel first for which the I.M.F.L. 'ON' shop licence can be recommended.
- (2) Proper justification for having such 'ON' shop should be explained in the letter and location of the shop should be important from tourist point of view attracting a large number of floating public or the location should be important attracting public for consumption of liquor/beer.
- (3) Necessary formalities as required under Bihar and Orissa Excise Act and Rules should be observed and early mentioned in the draft while recommending the proposal.
- (4) It should be made clear that the M.G.Q. for I.M.F.L. 'Off' shop is not disturbed/hampered by way of opening of the proposed I.M.F.L. 'ON' shop.
- (5) While recommending the case monthly/annual M.G.Q. for consumption of liquor and beer should be specifically indicated for such 'ON' shop. The amount of duty as would be derived from such shop per month/year, should be given with justification.
- (6) The number of existing I.M.F.L. 'ON' shop should be indicated in the District while recommending the proposal.
- (7) The Hotel/Rastaurant having any 'Star' facility should be indicated in your proposal. Therefore, I would request you that while recommending the case, the above guide-lines should be kept in view and followed meticulously.

Yours faithfully  
Excise Commissioner, Orissa.

**BOARD OF REVENUE - ORDER NO. 5682 DT. 10.10.92**

*In exercise of the powers conferred by clause 8(c) and 9 of the Molasses Control Order 1961, I Sri D.N. Panda, I.A.S., Molasses Controller, Orissa do hereby order as follows :-*

- (1) *Every Sugar Factory shall provide covered storage tank for storage of Molasses produced by them. Immediately after the cane crushing is started, the Inspector of Excise of the Area shall submit stock and production account of Molasses in the Sugar Factory every month in the prescribed form No. M.F.1.*
- (2) *The Inspector of the Excise of the Area shall keep accurate account of Molasses produced and sold in the form prescribed as Form No. M.F.7.*
- (3) *The tanker/container/Conveyance intended to transport Molasses from the Sugar Factory on the strength of permit granted by the Molasses Controller in form No. M.F.4 shall be loaded in presence of the Inspector of Excise of the Sugar Factory.*
- (4) *Immediately after loading of Molasses is completed, the Inspector of Excise shall affix his seal in the Tanker/container/Conveyance carrying Molasses and also issue transport permit in Form No. M.F.5, mentioning the details about the specific route to be followed and the particulars of tankers/lorries/containers to carry molasses, such as registration Nos, number of vehicle, road permit No., nos. of barrels if any, etc. The seal of the Tanker container carrying molasses shall be broken in presence of the Inspector of Excise of the place of destination and the Molasses shall be taken into stock of the permit holder. In case any deficiency has occurred, the same shall be intimated by the Inspector of Excise of the place of destination to the Inspector of Excise of the concerned Sugar Factory forthwith. The Inspector of Excise in his turn shall intimate forthwith the deficiency occurred, if any, to the Molasses Controller, Orissa and to the district authorities for necessary action.*
- (5) *The Inspector of Excise of the area where the Factory/Industrial Units person(s) to whom molasses has been sold shall inspect the stock and accounts of Molasses at least every month and furnish a return to the Molasses Controller in form No. M.F.6 so as to reach him by 10th of the succeeding month to which the return relates under intimation to the district authorities.*

Sd/-

D.N. Panda,

Molasses Controller, Orissa,  
Cuttack.

**LETTER NO. 15021/24/91-CH-II. - MINISTRY OF CHEMICALS & FERTILISERS - DEPARTMENT OF CHEMICALS & PETROCHEMICALS - NEW DELHI - 110 001.**

**DECONTROLLING MOLASSES CONTROL ORDER AND ETHYL ALCOHOL (PRICE CONTROL) ORDER GOVT. OF INDIA**

X X X X X

2. The question of decontrolling molasses and ethyl alcohol was under consideration for quite some time. The two orders in question have served an important purpose in the past. They have helped in the utilisation of molasses, which are waste products of the sugar industry for useful purposes, including production of industrial alcohol and the downstream alcohol based chemical industry. However, now it is felt that these orders have outlived their utility and in fact the regime of controls is inhabiting the free movement of molasses and alcohol and causing unnecessary delays which are having an adverse effect on the downstream industries. In line with the economic liberalization programme of the Government, market forces need to be allowed to operate and controls minimised for allowing the realisation of full potential of the growth of industries and proper utilisation of molasses. The price control on molasses has inhibited the creation of modern storage facilities for them. A similar situation is found to exist for ethyl alcohol. In fact, estimates indicated that the ethyl alcohol distilleries are utilising only 60% to 70% of their capacity. As against this, about 6 to 7 lakh tonnes of molasses is allowed to rot for want of allocation. Molasses are being exported when the alcohol industry with spare capacity is not being able to expand production. The withdrawal of the control orders is expected to provide a better opportunity for all the sectors dependent on molasses to function optimally in a free market economy.

3. While taking the decision to decontrol molasses and alcohol, the Govt. has emphasised the need to ensure that there is no undue diversion of molasses to the potable alcohol sector. Fears have been expressed that molasses in a decontrolled situation may be diverted for potable alcohol production. It has also been alleged that the potable alcohol sector, with its ability to pay higher prices for molasses, may corner a major part of the molasses in the country. This would have a serious impact on the availability of molasses for industrial alcohol. It is, therefore, particularly important that strict vigilance is exercised in this regard. It hardly needs to be emphasised that even after the decontrol of molasses and alcohol, the powers of the State Governments/Union Territories Administration to regulate the potable alcohol sector under their excise regulations and other laws would remain intact.

4. The Govt. of India have been clear about controlling potable alcohol manufacture in the country. From 1975 there has been a ban on the molasses based potable alcohol capacity. No licences have been issued under the ID&R Act. It has, however, been seen that many State Govts. have been permitting potable alcohol distilleries to come up in their areas of jurisdiction without industrial licences. This has complicated the situation and has brought to the industrial licences. This has complicated the situation and has brought forth the question of jurisdiction over production of potable alcohol. In recent years any doubt that may have existed in this regard has been set at rest. The judgement of the Supreme Court in the Synthetics and Chemicals case makes it clear that new distilleries cannot come up without due licensing by the Central Govt. under the ID&R Act.

5. The same judgement also emphasises that the State Governments have a responsibility towards controlling potable alcohol. Since potable alcohol is a major source of revenue to the States and State Excise Deptt. Officers constantly monitor the production, storage and sale of potable alcohol, it should not be difficult for the States to ensure that new capacity for potable alcohol does not come up and the national Policy in respect of potable alcohol is universally followed. The State Govts. further need to take steps to check the flow of molasses for illicit distillation. For this they have adequate powers under various laws. In the changed situation, as a result of decontrol of molasses, particular attention would need to be given to this aspect. In fact, State Govts would need to work out a comprehensive scheme for preventing flow of molasses for illicit distillation and checking their diversion to the potable alcohol sector. The success of the efforts of the State Governments in this regard would also go to ensure adequate availability of molasses for production of industrial alcohol which is required for a large number of alcohol based chemical industries. Govt. is particularly concerned that even after decontrol of molasses, their availability for production of industrial alcohol should not be affected adversely.

6. The State Governments also have a responsibility under Article 47 of the Constitution to further the goal of prohibition. Some States have made considerable progress in this matter. It is, however, found that in some States this responsibility is not receiving adequate attention. It is necessary that States take up social education programmes, which create awareness among the people about the evil of alcoholism, in right earnest. As curtailment of supply of alcohol is not the only way in which alcohol consumption can be curbed, the need for social education to reduce the drinking habit becomes particularly important. It is, therefore, hoped that the States will adopt a multi-pronged approach to the entire policy of reducing potable alcohol consumption.

7. I shall be grateful if the points made in the foregoing paragraphs are given due consideration and a comprehensive scheme is kindly worked out to ensure that the capacity for manufacture of molasses based potable alcohol is not expanded, illicit distillation is kept under control and there is no undue diversion of molasses to the potable alcohol sector after the decontrol and thereby their availability for production of industrial alcohol is not affected adversely. A copy of the scheme formulated by the State Government in this regard may kindly be sent to us for our information as early as possible and in any case not later than 60 days from the date of issue of this letter.

**LETTER NO. 15021/33/90 – GOVERNMENT OF INDIA – MINISTRY OF PETROLEUM & CHEMICALS – DEPTT. OF CHEMICALS & PETROCHEMICALS – NEW DELHI DT. THE 26TH DEC. 90.**

To

The Excise Commissioner, Orissa,

Sub :- Ethyl Alcohol (Price Control) Order – Implementation of

Sir,

As you may be aware, section 18-G of the Industries (Development & Regulation) Act, 1951 (65 of 1951) empowers the Central Govt. "so far as it appears to be necessary or expedient for securing the equitable distribution and availability at fair price of any article or class of articles relatable to any schedule industry, may, notwithstanding anything contained in any other provision of this Act, by notified order, provide for regulating the supply and distribution thereof and trade and commerce therein". "Alcohol" and "Other products of fermentation industries" appear as entry 26 in the first schedule of the said Act.

2. In order to secure the availability of alcohol at fair prices, the prices of Ethyl Alcohol are regulated under the provisions of Ethyl Alcohol (Price Control) Order, 1971 as amended from time to time. These orders have been issued by the Govt. of India under section 18-G of the I.D&R. Act. The prices were last revised vide Ethyl Alcohol (Price Control) Amendment Order 1989 dated the 7th June, 1989.

3. There appears to be some confusion in the minds of some State Excise Commissioners about the responsibility for implementation of these orders. It is clarified and reiterated that the responsibility and authority for implementation of provisions of Ethyl Alcohol (Price

*Control) Order vests with the Excise Commissioners of the concerned States/ Union Territories who have to ensure implementation and compliance of the same.*

*Yours faithfully,*

*Sd/- R.S. Mathur*

*Joint Secretary to the Govt. of India.*

**LETTER NO. 2094 (13) D/5.4.1984**

*From*

*Shri B.B. Panda, Excise Commissioner, Orissa, Cuttack.*

***Sub :- Procedure for issue of Important Passes for Import of India-Made-Foreign Liquor.***

*I am to state that the rules for import and export of India-made foreign liquor are contained in Part-II of the Orissa Excise Rules, 1965. It was advised in this office letter No. 6184/Ex.Dt. 15.9.82 that export of India-made foreign liquor and Beer from one bond inside the State to another bond outside the State should be discouraged though in exceptionally genuine cases permission with prior approval of the Excise Commissioner can be given for the export. With the labelling of bottles of India-made foreign liquor "For sale in Orissa only", there is no scope now of export from this State without removing the labels. It was therefore decided and intimated to you in this office letter No. 927/Ex. dt.26.2.84 that no pass for export of I.M.F.L. and Beer from one bond in the State to another outside the State should be allowed except from a distillery or brewery. It was further provided that even in case of a distillery or brewery export pass may be granted subject to full satisfaction of the Collector that duty has been paid in advance in the district of the importing State to which the liquor is to be despatched. Where export under bond is allowed the distillery or brewery concerned should furnish bank guarantee to cover the amount of duty chargeable at the rates clarified in the letter.*

*No copy of the import permit granted by Importing State is at present given to the Bond Officer of this State. The Bond Officer has no means of knowing whether the bonder is able to import the quantity of liquor as per the permit within the date prescribed. It appears that there is often delay in receipt of the copy of the export pass by the Officer issuing the import permit. There is no regular system to check whether the licensee applying for and obtaining import permit actually imports the stock within*

*the stipulated date and there is a communication gap between both the Superintendent of Excise who under delegated authority issues the passes and permits and the Bond officer on the one hand and the exporting State on the other. It is therefore necessary that import of I.M.F.L. is properly regulated and watched. To be able to do this the following procedure should be followed :-*

- (i) A register of intoxicants imported, exported or transported under bond in Form No. G.L.-29 under Chapter XIV, Volume IV of Orissa Excise Manual for maintenance in the Excise Office has been prescribed. It is necessary that every import permit granted by him is at once entered in this Register and the register is regularly checked and signed by the Superintendent of Excise at least once in every fortnight.*
- (ii) A copy of the import pass should be sent to the Board Officer concerned and he should be required to report the actual date of receipt of the imported quantity to the Superintendent of Excise. Where the imported quantity of I.M.F.L./Beer doesnot reach the Bond within the date stipulated in the import pass, a special report should be sent on the every next date of the expiry of the period for import of the Superintendent of Excise.*
- (iii) Before issuing import permit the Superintendent of Excise should call for the stock position of I.M.F.L./Beer from the bond Officer and satisfy himself that there is genuine need for import. The average issues from the bond to the trade off during the last three months should be taken into account to determine the quantity of import to be permitted.*
- (iv) A copy of the import permit should be sent to the Excise Commisioner of the State in which the exporting district is stituted in addition to Collector of the Exporting district and any other authority who should be kept informed of the issue of permit.*
- (v) In the case of export perimit in favour of breweries and distilleries in addition to the safe-guards prescribed of either pre-payment of duty or furnishing bank guarantee, the Superintendent of Excise should make cross reference to the importing authority and satisfy himself that the import permit is genuine. This verification should normally be made by correspondence. In exceptionally urgent case, the Superintendent of Excise can depute a responsible officer at the cost of the party concerned for verification. It is desirable that the Superintendent of Excise, Cuttack and Koraput for the Paradeep Breweries and Distillery,*

*Rayagada Distillery, obtain specimen signature of the officers duly countersigned by a superior authority who have been issuing importing passes for proper authentication and verification.*

- (vi) *Under the Rules a copy of the import pass duly endorsed alongwith the copy of export pass is sent to the officer issuing the import passes. The Superintendent of Excise should keep a watch for the return of the import passes duly endorsed. The Superintendent of Excise should also check the export passes to satisfy himself that the truck or any other vehicle carrying the liquor has the necessary stamp of the check gates through which it passes to reach the importing destination.*
- (vii) *No import export pass except the pass meant for accompanying the consignment should be sent through the export/import. They should be invariably sent by registered post. Any import pass produced before the Superintendent of Excise by the party concerned must be held to be suspect and full verification of the authenticity should be made before holding any action on it.*
- (viii) *The Superintendent of Excise should keep a note of import passes issued by him whether from outside the State or from any other warehouse in the State and during his tours scrutinise the registers and stocks of the importing bond to satisfy himself that the stock permitted to be imported has actually been taken into account.*

*3. I am to request that these instructions may kindly be followed by Superintendents of Excise meticulously. Receipts of this letter may please be acknowledged.*

*Yours faithfully,  
Excise Commissioner, Orissa, Ctc.*

**OFFICE OF THE I.G.R. CUM-EXCISE COMMISSIONER, ORISSA,  
CUTTACK**

**Sub :- Issue of Import and Transport Pass for Foreign Liquor.**

*I am to say that the discussion with the Superintendents of Excise/ Deputy Superintendents of Excise and other officers of the Department held on 12.12.1995 on the subject of issue of passes for Import and Transport of Foreign Liquor revealed serious chinks in the existing system. This matter subsequently went to the notice of the Member, Board of Revenue and the Member has kindly observed that expeditious steps should be taken to stop leakage of revenue through manipulation of Passes.*



*Till receipt of a new set of guide-lines from Govt., I would request you to please ensure immediate compliance of the following instructions so that leakage of revenue worth crores of rupees can be brought to a halt immediately.*

### **GENERAL :**

1. *Since Passes for Import and Transport of Foreign Liquor are issued on pre-payment of Excise Duty etc., these Passes should be issued on DEMAND by the licensee. There should be no cause of complaint from any quarters regarding delay, harassment or refusal to issue Passes.*
2. *The Superintendents of Excise have been using form F.L.-16, a sample of which has been given in the Orissa Excise Manual, 1965, Volume-IV, both for the purpose of Import of Foreign Liquor and also for Transport of Foreign Liquor. This practice which has grown out of convention may continue till suitable alternative forms are prescribed by the Government.*
3. *However, when the Form- F.L.-16 is used for Import "I" or "IP" or "Import Pass" may be written by hand on top of the blank portion to indicate its use as an Import Pass. Similarly, when the same Form- F.L.-16 is used for Transport of Foreign Liquor within the State "T" or "TP" or "Transport Pass" may be written by hand on the blank top portion to indicate that this is a Transport Pass.*

### **TRANSPORT PASS :**

1. *When F.L.-16 is used as Transport Pass it should be issued for the duration of transport i.e. time for loading and un-loading and the time for passage of the loaded vehicle from the point where the goods are loaded to its destination. Under no circumstance the duration should exceed more than one day (twenty four hours) in addition to the time necessary to carry the Pass from the Office of the Superintendent of Excise of the issuing district the point from which the Foreign Liquor is to be transported.*
2. *While issuing the pass, the date and time of issue (Column-2) of Pass should be mentioned. The probable date and time of arrival of the Foreign Liquor may also be mentioned in the space below Column-9.*
3. *The space for description of the Foreign Liquor in Form- F.L.-16 (Table under Column-5) is not adequate in the existing forms.*

Hence, additional plain paper may be used which should indicate the name of the Manufacturer, the place of Manufacturer, Brand of Foreign Diquor, Strength and other details. It should also mention in a separate Column- (5-A) the nature and number of receptacles (such as cases, vats, etc.) in which the Foreign Liquor is transported.

4. After arrival of the Foreign Liquor, the Superintendent of Excise be kept informed at the earliest by filling up Columns-'E' and 'F' and sending a copy to the Superintendent of Excise.
5. There should be no bar to issuing a number of Passes on the same day if different Brands of Foreign Liquor is intended to be procured from several whole-salers at a time.
6. However, the entire quantity covered under one Pass shall be transported in bulk/one lot/convoy and shall not be broken in transit.

#### IMPORT PASS :

1. When F.L.-16 is used as an Import Pass it should contain as many details of the Foreign Liquor as described above under "Transport Pass". It should clearly indicate on additional plain paper the name of the Manufacturer, place of Manufacturer, the Brand of Foreign Liquor and also the nature and number of the receptacles (Column-5, 5-A and also Column-11 and 11-A).
2. Import Pass should be issued with a maximum duration of 30 days. The importer should make all previous arrangements and after payment of duty etc., will obtain the Import Pass and import foreign Liquor into the State as expeditiously as possible.
3. After arrival of the Foreign Liquor, the Superintendent of Excise or his office should be kept informed by the importer within twenty four hours and a copy of the Pass with Columns-12 duly filled in be made over to the Superintendent of Excise.
4. The entire quantity covered under one import Pass shall be transported in one bulk/lot/convoy and shall not be broken in transit.

The Excise Deputy Commissioners will verify the records of the Superintendents of Excise in course of their tours to ensure that these instructions have been implemented properly and there is no clandestine manipulation of Passes. Special attention of the Excise Deputy Commissioners is directed to issue of Import Passes for small quantities of Foreign Liquor

*(less than a truck-load) a number of times rather than one Import Pass for a full load. These Passes should be verified thoroughly to ensure that they have not been misused.*

*These instructions are simple and supplemental in nature and are aimed at plugging loopholes which have developed in the system over the years. The Collectors will please devote some personal attention to this area and review the matters from time to time.*

*Yours Faithfully*

*(P.C.Mishra)*

*Excise Commissioner, Orissa, Cuttack.*



# ORISSA EXCISE RULES, 1965

<sup>(1)</sup>In exercise of the powers conferred by section 89 of the Bihar and Orissa Excise Act, 1915 (Bihar and Orissa Act 2 of 1915), and in supersession of all existing rules on the subject including those contained in the notification of the Government of Orissa in the Local-Self Government Department No. 1827-L.S.G., dated the 31st March 1937, the State Government do hereby make the following rules, the same having been previously published as required under sub-section (3) of the said section of the said Act.

## CHAPTER - I

### GENERAL

1. **Short title :** These rules may be called the Orissa Excise Rules, 1965
2. **Definitions :** In these rules, unless the context otherwise requires –
  - (1) "Act" means the Bihar and Orissa Excise Act, 1915 (Bihar and Orissa Act 2 of 1915)
  - (2) "Additional District Magistrate" means any officer appointed as such under sub-section (2) of section 10 of the Code of Criminal Procedure, 1898 (Act 5 of 1898);
  - (3) "Boards rules" means rules made by Board under section 90 of the Act;
  - (4) "Civil Surgeon" means the Civil Surgeon of a district or any other Officer of equivalent or higher rank of the Department of Health Services having control or exercising supervision over the institution in respect of which he is required to exercise any powers or discharge any function under these rules;
  - (5) "Commissioner" means the Excise Commissioner;

---

1. For previous publication of these rules as required under sub-section (3) of section 89 of the Bihar and Orissa Excise Act, 1915, See Government of Orissa, Revenue and Excise Departments notification No. 68745-R., Dated the 27th October 1964, published in *Orissa Gazette*, dated the 30th October 1964 (Part II, pages 1799-1816).

These rules were finally published in Government of Orissa, Revenue and Excise Departments notification No. 497540-R., dated the 24th July 1965, vide *Orissa Gazette Extraordinary* No. 1176, dated the 7th August 1965.

- (6) "Director" means the Director of the Department of Animal Husbandry & Veterinary Services, Orissa and includes a Deputy Director of that department;
- (7) "District" means a district as defined in the Orissa Revenue Administration (Units) Act, 1963;
- (8) "Government" means the State Government of Orissa;
- (9) "Inspector" means an Inspector of Excise;
- (10) "Medicinal preparation" shall have the same meaning as assigned to it in the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 (Act 16 of 1955);
- (11) "Section" means a section of the Act;
- (12) "Sub-Inspector" means a Sub-Inspector of Excise;
- (13) "Superintendent" means a Superintendent of Excise;
- (14) "Toilet preparation" shall have the same meaning as assigned to it in the Medicinal and Toilet Preparations (Excise Duties) Act, 1955.
- (15) Words and expressions used but not defined in these rules shall have the same meaning as respectively assigned to them in the Act.

## CHAPTER - II

### IMPORT, EXPORT AND TRANSPORT OF INTOXICANTS

#### PART I

#### PRELIMINARY

**3. Restrictions on import, export and transport of certain intoxicants:** (1) Subject to the provisions of the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 and the rules made thereunder by the Central Government, the import, export and transport of the intoxicants herein specified shall be regulated by the rules in this Chapter and shall also be subject to the restrictions imposed by sections 9, 10 and 12 or under section 90 and to any prohibition made under section 11.

(2) *Validity and Currency of Pass* - A pass issued for import, export or transport of any intoxicant shall remain valid for such period as may be specified in it by the person issuing it:

Provided that the period can be extended or reduced by the said person or his successor in office for reasons to be recorded on the pass.

**PART II**  
**FOREIGN LIQUOR**

**A. IMPORT**

**4. Import of India-made foreign liquor for private consumption prohibited :** Import of India-made foreign liquor (except perfumed spirit and spirit contained in drugs, medicines and chemicals) in any quantity whatever by any person for his private consumption is prohibited.

**5. Import of India-made foreign liquor by clubs and by licensees for sale to be subject to certain conditions :** (1) Import of India-made, foreign liquor by clubs or by persons holding licences for sale, are allowed only under cover of passes from the Collector of the importing district and only after the following conditions have been satisfied –

- (i) the importer has obeyed all rules in the district or place from which the liquor is brought;
- (ii) the Chief Revenue Authority of such district or place or the Officer-in-charge of the distillery, brewery or warehouse from which it was taken has made endorsements on the pass granted by the Collector of the importing district or place, and also on a copy thereof sent to him by the Collector of the importing district or place, or has himself issued an export pass in such form as may be prescribed for use in the district or place of issue;
- (iii) the Collector of the importing district has received back from the officer making the endorsement or issuing the export pass, referred to in clause (ii), the copy of the import pass issued by the former, either endorsed by the latter or accompanied by the export pass issued by the latter; and
- (iv) the liquor has been brought by the route and within the period specified in the pass.

<sup>1</sup>[(2) The passes referred to in sub-rule (1) will be issued on the application of the intending importer on pre-payment of duty].

**6. To whom pass for import of foreign liquor to be issued :**

(1) Passes for the import [x x x x]<sup>2</sup> of foreign liquor other than denatured spirit or rectified spirit shall be issued only to –

- (a) clubs,
- (b) persons authorised to cater for troops,
- (c) persons holding licences for the sale of foreign liquor, and

1. Substituted by Ex. Deptt. Notifn. No 2721 Dt. 24.7.1993

2. Omitted by *ibid*.

(d) persons holding licences to denature spirit;

Provided that the pass for the import of perfumed spirit and spirit contained in drugs, medicines, and chemicals from the licensed manufacturers or licensed bonded warehouses can be granted to any person.

(2) Passes for the import of denatured spirit shall be issued only to persons holding licences –

- (a) for wholesale or retail sale of denatured spirit, or
- (b) to possess denatured spirit in excess of the quantity fixed by the Board as the limit of a retail sale.

*NOTE – For the purpose of this rule, the countersignature of the Director or Civil Surgeon on any indent for denatured spirit for use in institutions under their respective control or supervision shall be deemed to be a pass.*

(3) Passes for the import of rectified spirit shall be issued only to –

- (a) charitable hospitals or dispensaries maintained by local authorities;
- (b) other charitable hospitals or dispensaries specified in this behalf by order of the Government, on requisitions countersigned by the Civil Surgeon;
- (c) Veterinary Assissant Surgeon, on requisitions countersigned by the Director;
- (d) educational institutions, firms, laboratories or museums authorised by an order of the Commissioner to possess rectified spirit made in India and exempted from the provisions of the Act relating to duty, for any scientific or industrial purposes other than the preparation of commodities which, when made, will themselves contain alcohol;
- (e) any other person approved by the Commissioner who may require rectified spirit for the manufacture of medicinal or toilet preparations <sup>1</sup>[or for the manufacture of India-made fereign liquor].

**7. Import of rectified spirit under certain special circumstances :**

Import of rectified spirit made in India and exempted from the provisions of the Act relating to duty by the State Government under section 94, shall be made under a pass granted by the Collector.

**8. Steps to be taken for transport and storage of foreign liquor imported :** Foreign liquor imported as aforesaid shall on arrival in Orissa be taken as soon as possible to the distillery, excise warehouse or place specified in this behalf in the pass and by the route specified therein.

**B. EXPORT****9. Export of foreign liquor to be subject to certain restrictions :**

(1) When any person desires to remove foreign liquor from any distillery, brewery or spirit warehouse for export to any other State under a bond for the payment of duty, he shall execute a bond in the prescribed form, before the Collector of the district in which the distillery, brewery or spirit warehouse is situated.

(2) Such bond may be either a general or a special bond.

(3) The Collector shall sign the bond on behalf of the Governor of Orissa as a party to the instrument.

(4) The Collector shall then intimate the fact of the execution of the bond to the Office-in-charge of the distillery, brewery or spirit warehouse, who shall, after the particulars thereof have been entered in the prescribed bond register, issue the liquor as if duty had been paid.

**10. Issue of foreign liquor for export only after measurement and proving :** No liquor shall be so issued until it has been measured and proved by the Officer-in-charge of the distillery, brewery or warehouse.

**11. Pass for export to be in triplicate :** (1) A pass, in triplicate, shall be prepared by the Officer-in-charge of the distillery, brewery or spirit warehouse when any liquor is issued under sub-rule (4) of Rule 9.

(2) One copy of the pass shall be delivered to the exporter, the second shall be forwarded to the Collector of the district to which the liquor is to be taken, and the third shall be retained for record.

**12. Vessel containing foreign liquor for export to bear certain marks :** (1) Each cask or other vessel containing liquor issued from a distillery, brewery or spirit warehouse, under sub-rule (4) of rule 9 shall bear marks showing clearly the name of such distillery, brewery or warehouse and the number of the cask or other vessel, and the nature, quantity and strength of its contents.

(2) Each such cask or other vessel shall be sealed by the Officer-in-charge, and distinct impression of the seal shall be affixed on the pass forwarded to the Collector of the district to which the liquor is to be taken under sub-rule (2) of rule 11.

**13. Accounts of export to be maintained :** Accounts of all exports shall be kept, in the prescribed form, by the Officer-in-charge of the distillery, brewery or warehouse.

**14. To whom pass for denatured spirit to be issued :** Passes for the export of denatured spirit to other State shall be issued only to –

(a) persons holding licences in this State for the manufacture or wholesale sale of denatured spirit for being sent to a licensed



premises or any other destination approved for the purpose subject to a "no objection" certificate issued by the Collector of the district of destination, or

- (b) persons who obtain the denatured spirit from a licensed distillery or warehouse and produce permits from the Collector of the district of destination.

### C. TRANSPORT

**15. Transport of foreign liquor on which duty has been paid :** Foreign liquor (excluding denatured spirit) on which full duty has been paid under the Indian Tariff Act, 1934, or the Customs Act, 1962 or under section 27 of the Bihar and Orissa Excise Act, 1915, may be transported from the premises of the holders of "sale to trade" licences to the premises of other licensed dealers, only under a pass.

**16. Transport of India made foreign liquor (other than denatured spirit and rectified spirit) on which full amount of duty has not been paid :** India-made foreign liquors (excluding denatured spirit and rectified spirit) on which the full amount of duty under section 27 has not been paid may be issued from a distillery or a bonded warehouse to a person holding a licence for sale of foreign liquor on prepayment of duty in the district to which the liquor is intended to be transported and on the production of a pass granted by the Collector of that district.

**17. Transport of rectified spirit on which full amount of duty has not been paid :** Rectified spirit on which the full amount of duty under section 27 has not been paid may be issued from a distillery or a bonded warehouse –

- (a) to a chemist and druggist holding a licence to sell such spirit by retail for *bona fide* medicinal or surgical purposes, or
- (b) to a chemist or druggist holding a permit to obtain such spirit for the manufacture of medicines or chemicals, or
- (c) to a person holding a licence for compounding and blending foreign liquor, on prepayment of duty in the district to which the spirit is intended to be transported and only on the production of a pass granted by the Collector of that district.

**18. Transport of duty free rectified spirit :** Rectified spirit may also be issued free of duty only under a pass granted by the Collector of the district to which such spirit is intended to be transported by the following –

- (a) Government institutions and departments,
- (b) charitable hospitals and dispensaries maintained by the local authorities, or when authorised by an order of the State

Government to possess rectified spirit made in India and exempted under section 94 from the provisions of the Act, relating to duty,

- (c) educational institutions, firms, laboratories or museums authorised by an order of the Commissioner to possess rectified spirit, made in India and exempted under section 94 from the provisions of the Act relating to duty, for any scientific or industrial purposes other than the preparation of commodities which, when made, will themselves contain alcohol.

**19. Transport of denatured spirit :** Denatured spirit may be transported from a distillery or from wholesale shop to another or to a retail shop or to the premises of a person holding a licence for possession of such spirit for business purposes only under a pass granted by the Collector of the district to which the spirit is intended to be taken and subject to the other conditions enjoined in rule 14.

*NOTE - For the purpose of this rule, the countersignature of the Director or Civil Surgeon on an indent for denatured spirit for use in institutions of their respective administrative control or supervision shall be deemed to be a pass.*

### PART III

#### COUNTRY SPIRIT

##### A. Import

**20. Import by certain persons and subject to certain conditions :**

- (1) Country spirit may be imported only with the permission of the Commissioner and under a bond for the payment of duty and by -
- (a) a person to whom an exclusive privilege for the supply or sale of such spirit has been granted under section 22, or
  - (b) a licensed wholesale dealer in country spirit.
- (2) Rules 5, 6 and 8 shall, so far as may be apply to such imports.

##### B. Export

**21. Export to be subject to certain conditions :** (1) Country spirit may be exported only under a bond for the payment of duty and with the permission of the Commissioner which will not be given without the concurrence of the authorities of the place to which the spirit is to be taken.

- (2) Rules 9 to 13 shall, so far as may be, apply to such exports.

**C. Transport**

**22. Transport to be subject to certain restrictions :** Rules 9 to 13 shall, so far as may be, apply to the transport of country spirit between distilleries and spirit warehouses.

**PART IV****GANJA AND BHANG****A. Import**

**23. Conditions for import of Ganja :** Ganja may be imported on Government account or by licensed wholesale vendors of Ganja from such places as ordered by the Commissioner and under the following conditions –

(1) In case of licensed wholesale vendors the importer shall execute a bond, which may either be a general bond in respect of imports to be made from time to time or a special bond in respect of any specific consignment, in the prescribed form in favour of the Collector of the importing district binding himself, his heirs, successors and assigns within a specified time to pay to the Collector of the importing district –

(a) the duty imposed under section 27, and

(b) if on arrival of ganja at its destination, any deficiency in quantity (as compared with the quantity received at the source of supply) is found, a duty not exceeding double the duty at the rate imposed by the State Government under section 27 :

Provided that the whole, or any portion of such duty may be remitted should the Commissioner hold such deficiency to be caused on account of dryage due to natural causes, and

(c) on failure to lodge ganja in a licensed warehouse in the importing district within a reasonable time from the date of its receipt the source of supply, a sum equal to the duty on the entire quantity of ganja not so lodged.

(2) For each consignment of ganja to be imported, the importer shall obtain a pass from the Collector of the importing district in the prescribed form authorising import of ganja from the source of supply fixed by the Commissioner into a departmentally managed warehouse or a licensed warehouse in the district which is either a Government warehouse for which the importer pays such rent as may be fixed by the Collector or a private warehouse in respect of which the importer holds a licence granted by the Collector with the approval of the Commissioner.

(3) The pass shall be in force for the period mentioned in the pass, but the term may be extended by the Collector of the importing district.

(4) The Collector issuing the import pass shall forward two copies thereof to the Superintendent of the exporting district noting on them the fact of the execution of the bond by the importer.

(5) The importer or his authorised agent shall present such pass to the Superintendent of the exporting district and obtain on it the written permission of that officer to purchase *ganja*.

(6) He shall further comply with the rules that may be in force in the State of export regulating the taking of *ganja* out of that State and also such instructions in conformity therewith as he may receive from the Superintendent of the exporting district.

(7) The *ganja* shall be brought by the route mentioned in the pass and shall, on arrival in Orissa be taken direct and with all reasonable despatch to the licensed warehouse mentioned in the pass.

(8) It shall then be presented with the pass to the Superintendent or such other officer as may be authorised by the Superintendent to examine, weigh and store the *ganja* on arrival.

(9) If brought by rail, the consignment shall be duly insured.

(10) The consignment shall be weighed at the railway station before a clear receipt is given for the consignment. If brought by any means of transport other than by rail, it shall be weighed at the point of destination and the luggage ticket or the money receipt issued by the transporting concern indicating the exact weight of the consignment and the freight paid therefor shall be obtained. In all cases such receipts or tickets shall be produced with the pass for verification in the warehouse.

(11) In cases of deficiency noticed in weight from the quantity despatched, the shortage should be noted on the railway receipt.

**24. Conditions for transport of *ganja* :** *Mutatis mutandis* rules 23 shall apply to the transport of *ganja* from the central gola to a warehouse and from one warehouse to another.

**25. Conditions for export of *bhang* :** (1) *Ganja* may be exported to any other State provided that -

- (i) the exporter has paid the duty, if any, imposed under section 27 or has executed a bond which may be either a general or a special bond as mentioned under ruler 23, in favour of the Collector either of the district to which the *ganja* is to be taken or of the exporting district, binding himself, his heirs, successors, assigns within a specified time either to lodge the *ganja* in a licensed warehouse in the district to which the *ganja* is to be taken or to pay to the Collector of the district to which the *ganja* is to be taken, a sum equal to the amount of duty chargeable on the said *ganja* in the district to which the *ganja* is to be taken under the law in force

o  
tc  
th  
fo  
sh  
an  
im  
rul  
cot  
A t  
lan  
whi

in that district and the said bond may also provide for the payment of duty at the rate as mentioned and referred to in clause (b) of sub-rule (1) of rule 23 of these rules on any deficiency noticed between the quantity of the ganja lodged in the said licensed warehouse and the quantity despatched for being so lodged from the district of export;

- (ii) it is covered by a pass granted by the Collector of the district to which the ganja is to be taken and is exported by the person to whom such pass has been granted or by an authorised agent of such person;
- (iii) the officer issuing the said pass has forwarded two copies thereof to the Collector of the district from which the ganja is to be exported;
- (iv) the Collector of the district from which the ganja is to be exported has endorsed on such pass an order authorising the exports;
- (v) the ganja is exported direct from the Central Gola or departmentally managed warehouse or a licensed warehouse; and
- (vi) the officer-in-charge of such warehouse has noted on the pass referred to in clause (ii) the following particulars –
  - (a) the number of each package,
  - (b) the gross weight of each package,
  - (c) the net weight of ganja in package, and
  - (d) the name of the person to whom delivery is to be given.

(2) After the entries have been made as required by clause (vi), the officer shall make similar entries on the two copies of the pass referred to in clause (iii) of which he will file one copy in his office and return the other by post the same day to the officer who issued the import pass.

(3) *Ganja* shall not be issued to the exporter except within the period for which the pass referred to in clause (ii) is current, and after issue it shall be forwarded by him with all reasonable despatch to the destination and by the route specified in the pass.

**26. Conditions for import or transport of *bhang* :** *Bhang* may be imported and transported under conditions similar to those laid down in rules 23 and 24 respectively.

**27. Conditions for export of *bhang* :** *Bhang* may be exported under conditions similar to those laid down in rule 25.

**28. Import of *ganja* and *bhang* within the limit of possession :** A traveller may bring with him *ganja* or *bhang* personally into Orissa by land from any other State up to the minimum limit of the quantity within which possession by him is allowed without a pass in Orissa.

## PART V

**HEMP DRUGS, EXTRACTS AND TINCTURES OF HEMP AND MEDICINAL PREPARATIONS CONTAINING HEMP DRUGS**

**29. Import of medicinal preparations containing hemp drugs under cover of permits :** Medicinal preparations containing hemp drugs (other than recognised medicinal preparations) prepared in accordance with prescriptions recognised in standard Ayurvedic and Tibbi medical works, by persons *bona fide* engaged in the practice of the Ayurvedic and Tibbi system of medicines, provided no process of distillation is used in the manufacture of such preparations, may be imported, only by a chemist or druggist for *bona fide* medicinal purposes, under cover of permits issued by the Commissioner in such form as the Board may prescribe :

Provided that if the import is from outside India it must be by means other than the post.

**30. Prohibition of transmission of hemp drugs by post except under certain conditions :** Transmission of hemp drugs, extract and tincture of hemp (*Cannabis indica*) or medicinal preparations containing hemp drugs by post into, within or out of Orissa is prohibited except on the following conditions –

- (i) in making such transmission, only the parcel post shall be used and the parcels shall be insured;
- (ii) The transmission shall be covered by a permit which shall, in the case of transmission to a district in Orissa, be issued by the Collector or Superintendent of the district to which the consignment is to be sent and in all other cases by the proper authorities in the State to which the parcel is addressed;
- (iii) the parcel shall be accompanied by a declaration stating the names of the consignee and the consignor, the contents of the parcel in detail, the number and date of the licence or permit, if any, held by the consignee and such other particulars as may be required from time to time by the Commissioner;
- (iv) persons licensed to possess and sell hemp drugs and preparations thereof and chemists and druggists permitted under rule to import medicinal preparations containing hemp drugs shall show distinctly in their account books the quantity of drugs received by them from time to time and post the names of the consignor; and
- (v) provisions of the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 (Act 16 of 1955) and the rules made thereunder shall be complied with prior to the transmission.

**CHAPTER – III****SALE OF INTOXICANTS****PART I****DURATION AND NUMBER OF LICENCES, PRINCIPLES FOR GRANT OF LICENCE AND LOCATION OF SHOP.**

**31. Licence for sale of intoxicants to be subject to certain conditions :** Licences for the wholesale or retail vend of intoxicants may be granted for one year from the 1st April to the 31st March following, subject to the following provisions –

- (1) Licences for the retail vend of *pachwai* may be granted for any number of years up to three beginning on the 1st April in cases where the Commissioner considers this advisable.
- (2) If any licence is granted at any time after the 1st April it shall be granted only up to the 31st March next following.
- (3) Season licences for the sale of either fresh or fermented *tari* may be granted for periods fixed by the Collector.
- (4) Temporary licences may be granted to provide for the supply of intoxicants on temporary and special occasions, like fairs regimental camps or exercise etc., and shall be limited to the period during which such temporary or special occasions last.
- (5) Wholesale licences for the supply and sale of intoxicants may be granted for any number of years not exceeding five as the Board may decide in each case.
- [(6) If, for any reason it becomes so necessary, licences for the wholesale or retail vend of intoxicants may be granted for any shorter period.]

**32. Regulation of number of licences for any local area :** The number of licences which may be granted for any local area shall be regulated by the needs of the people of that area, and no licence for the sale of any intoxicant in any local area shall be granted unless it is required either to meet an ascertained demand for such article or to counteract supply through illicit sources :

*Special provision for foreign liquor licences* – Provided that increase or decrease in the number of licences for the sale of foreign liquor shall be subject to the prior approval of Government to be obtained by the Collector through the Commissioner.

**33. Fixation of number of licences :** The general principles that shall be borne in mind and shall so far as possible be applied in fixing the number of licences to be granted for the retail sale of liquor for consumption on the premises of the vendor are –

- (1) liquor shops shall not be so sparsely distributed as to give to each a practical monopoly over a considerable area, and
- (2) two or more shops should not be equally convenient to a considerable number of persons.

**34. Licences for shops for consumption of liquor on vendor's premises not to be granted at certain places :** [(1) No new shop shall be licensed for the consumption of liquor on the vendor, premises –

- (a) in a marketplace, or
- (b) at the entrance to market-place, or
- (c) in close proximity to a bathing ghat, or
- ~~d~~ (d) within at least five hundred meters from a highway.
- (e) within at least five hundred meters from a place of worship, recognised educational institution, established habitant especially of persons belonging to scheduled castes and labour colony, mills and factories, petrol pumps, railway stations/yard, bus stands, agricultural farms or other places of public resort, or
- ~~f~~ (f) within at least one kilometre from industrial, irrigation and other development projects areas, or
- ~~g~~ (g) in the congested portion of a village :

Provided that the restriction on the minimum distance as mentioned under clauses d,e and f may be relaxed by the State Government in special circumstances.

(2) So far as practicable, an established liquor shop licensed for the consumption of liquor on the premises shall not be allowed to remain on a site which would not under sub-rule (1) be permissible for the location of a new shop.

(3) In areas inhabited by Scheduled Tribes, country spirit shops shall not be licensed to be placed immediately on the side of a main road or in any other prominent position that is likely to place temptation in their way.]

**35. General principles to be observed in granting licences for liquor shops :** In granting licences for new liquor shops and as far as practicable, in granting licences for established liquor shops, the Collector shall have regard to the following principles –

- 
1. Substd. by OGE No 1892 Dt 1.4.77



- (a) liquor shop shall not be inaccessible to consumers but it should not be in such a situation as to obtrude itself on the attention of the public or to render persons passing by subject to annoyance from persons drinking;
- (b) in towns, the position of a liquor shop should be so far public that persons entering it should not escape observation, and it should be such as to render supervision easy, but it should not be so prominent as to compel attention;
- (c) a liquor shop should never occupy a position to which the near neighbours object on grounds which upon inquiry appear to be sufficient and free from malice or ulterior motives.

**36. Restriction on grant of licence on border of a district :** No new licences for the retail sale of liquor at any place within two miles of the border of another district shall be granted unless the Collector of both districts concur or, if they fail to concur, unless the Commissioner so directs.

**37. Restriction on grant of outstill licence near distillery area :** No outstill licence shall be granted for any place within '[Eight kilometres] of any distillery area situated in the State :

<sup>2</sup>[Provided that the restriction in the minimum distance between and outstill liquor shop and any distillery area may be relaxed by the State Government in special circumstances.]

**38. Restriction on grant of licence for sale of foreign liquor for consumption on vendor's premises and otherwise :** Licence for the sale of foreign liquor for consumption on the vendor's premises may be granted only in places where there is a proved demand on the part of a class of drinkers accustomed to foreign liquor, and subject to the restrictions laid down in rule 32.

## PART II

### ASCERTAINMENT OF LOCAL OPINION PRIOR TO THE GRANT OF LICENCES FOR THE RETAIL SALE OF SPIRIT OR TARI FOR CONSUMPTION ON VENDOR'S PREMISES

**39. Preparation of list of licences proposed to be granted for the next period of settlement to be complete by 20th October :**

(1) On or before the 20th October the Collector shall prepare a list showing what licences it is proposed to grant for the retail sale of spirit or *tari* (toddy) for consumption on the vendor's premises for the next period of settlement.

---

1. Substituted by SRO No. 284 Dt. 23.4.1977.

2. Added by *ibid*.

(2) The said list shall specify, as accurately as may be possible, the locality of the premises to be licensed, and shall distinguish proposed new licences from existing licences, which it is proposed to renew.

**40. Notice of the proposal for grant of licences to be given to certain authorities :** Before the 1st November the Collector shall-

- (a) affix the notice required by clause (a), and proclaim the notice required by clause (b) of section 31;
- (b) send an extract to the Chairman of each municipality as required by clause (d) of section 31;
- (c) send to the Commanding Officer of each cantonment an extract reproducing so much of the said list as relates to shops within the limits of the cantonment;
- (d) give such opportunity as he thinks to be required for the expression of opinion -
  - (i) by railway authorities, on proposals for the grant of licences for shops near railway stations,
  - (ii) by forest officers, on proposals for the grant of licences for shops for supplying spirit or *tari* (toddy) to Scheduled Tribes inhabiting forests; and
  - (iii) by large employers of labour in tea gardens, mills, factories, transport corporations and coal mines, on proposals for the grant of licences for shops for supplying spirit or *tari* (toddy) to their labourers.

**41. Publication of the notice in a municipal area :** The Chairman of each municipality shall cause a copy of the extract sent to him under clause (b) of rule 40 to be conspicuously affixed at the central office of the municipality for a period of not less than seven days expiring before the 14th November and shall send to each member of each ward committee (if any), not later than the 5th November, a copy of so much of the extract as relates to shops situated in his ward.

**42. Objection to the proposal to be sent to Collector by the 15th November :** (1) All objections and opinions with respect to proposals contained in the list referred to in rule 40 shall be sent so as to reach the Collector by the 15th November and the Commanding Officer of each cantonment shall inform the Collector by the said date whether he consents to the proposals contained in the extracts sent to him under clause (c) of rule 40.

(2) Any objection or opinion received after the said date may not be taken into consideration.

**43. Local committees to be constituted in certain localities for consideration of the proposal :** (1) In all municipalities, and in all towns

other than municipalities with a population of 20,000 or more, a local committee, constituted in such manner as the Board with the approval of the Government may decide, shall unless the Government in any case otherwise direct, be formed by the 15th November to consider and advise the Collector upon the proposals contained in the list referred to in rule 39 regarding the number of licences and the location of shops.

(2) The Collector shall record the opinion of the committee upon the proposed number of licences and location of shops and upon the objections which he has received by the said date, and if that opinion is not accepted by him, he shall record his reasons for disagreement.

**44. Submission of the proposal with objections etc. by the Collector to Commissioner :** On or before the 30th November the Collector shall submit to the Commissioner the list referred to in rule 39 as revised by him under section 34 and the objections and opinions which he has received by the 15th November and a report of the proceedings of the Committee referred to in rule 43 and his own opinion.

**44-A.** The State Government may change the dates as prescribed in rules 39 to 44 if they consider it necessary in any year in any area.

### PART III

#### RESTRICTION REGARDING GRANT OF LICENCE AND SALE

**45. To whom licences for sale of intoxicants not to be granted :** Licences for the retail sale of any intoxicant shall not ordinarily be granted –

- (1) to a person, who has been convicted by a Criminal Court of a non-bailable offence; or
- (2) to a former licensee who –
  - (a) is in arrears to Government, or
  - (b) whose conduct has been found to be unsatisfactory, or
  - (c) who has been found guilty within the previous five years of any serious breach of the conditions of his licence, or
- (3) to a person who is known to be insolvent or who fails to provide adequate proof in support of his solvency :

<sup>1</sup>[Provided that nothing contained in this clause shall apply where the license is granted to Star Hotels and Military Canteens].

**<sup>2</sup>46. Restriction on grant of licence for retail sale of distillery spirit or Tari and foreign liquor :** (1) No licence shall be granted to an outstill

1. Inserted by R & E Deptt. No. 789 Dt 15. 4. 89.

2. Rule 46 was substituted by Government of Orissa 'Excise Departments's notification No. 33-III-Ex-61/66-E., dated the 9th March 1966 published in Orissa Gazette Extraordinary No.215 dated the 9th March 1966.

licensee for the retail sale of distillery spirit or *Tari* in a shop within five miles of his outstill.

(2) No licence for retail vend of foreign liquor shall be granted to a person holding licence for wholesale vend of foreign liquor.

(3) Licence for sale of foreign liquor for consumption 'Off' the vendor's premises shall not be granted to a person holding licence for sale of foreign liquor for consumption 'On' the vendor's premises and *vice versa*.

(4) Licence for sale of foreign liquor for consumption 'Off' the vendor's premises shall not be granted to a person holding licence for the retail vend of foreign liquor in a hotel to be consumed on the premises and *vice versa*.

(5) No licence for retail sale of foreign liquor shall be granted to a person holding licence for sale of country liquor.

**47. Restriction on grant of licence for retail sale of outstill spirit or tari :** No licence shall be granted to a distillery shop licensee for the retail sale of outstill spirit or *tari* in a shop within five miles of his distillery shop.

**48. Restriction on sale of intoxicants to certain person :** (1) No intoxicant shall be sold –

- (a) to any railway servant or the driver of a motor vehicle at the time he is on duty, to any Excise or Police Officer below the rank of a Sub-Inspector or any village Choukidar being in uniform, any vagrant under police escort, or any insane person by any licensed vendor or by the agent or servant of any licensed vendor, or
- (b) to any soldier, whether in uniform or not, or any member of a soldier's family, or any camp follower by any licensed vendor or the agent or servant of any licensed vendor, unless such licensed vendor has been approved by the General Officer Commanding the Division or the Officer Commanding a cantonment or camp.

(2) In this rule –

- (i) "Soldier" does not include a commissioned officer, a volunteer, or a soldier in civil employ, and
- (ii) "Camp-follower" means a person (other than a soldier or a private servant) whom the person selling an intoxicant knows or has reason to believe to have a right to be in cantonments;
- (iii) The expression "soldier", "member of a soldier's family", "camp-follower" do not include an Indian soldier or a member of an Indian Soldier's family, or an Indian camp-follower, when such soldier or camp follower is absent from his regiment.

**CHAPTER - IV****RESTRICTIONS ON CERTAIN POWERS OF EXCISE OFFICERS**

**49. Excise Officer below the rank of Inspector not to exercise certain powers :** No Excise Officer below the rank of Inspector shall exercise any of the powers conferred by section 69 (entry, inspection, testing, and seizure, etc.) in respect of any licensed place of manufacture or storage which is under the charge of an Excise Officer, unless he is specially authorised in writing by the Collector to do so.

**50. Officers below certain ranks to exercise power in certain circumstances only :** (1) Officers below the rank of Sub-Inspector in the Excise or Police Department or of Preventive Officer in the Customs Department or of Revenue Inspectors in the Land Revenue Department may exercise the powers conferred by section 70 (arrest without warrant, seizure and search) in open places only.

(2) The expression "open places" in this rule means "open" in the ordinary sense as opposed to "closed", but does not include a dwelling house.

**51. Exercise of certain powers outside local jurisdiction to be followed by certain formalities :** Any officer who, outside his local jurisdiction, arrests any person or seizes any article under section 70 shall, without delay, make over such person or article to an Excise Officer having local jurisdiction or to the Officer-in-charge of the nearest police-station.

**CHAPTER - V****INFORMATION AND AID TO EXCISE OFFICERS**

**52. Information on breach of provision of the Act to whom to be given :** The information which officers referred to in section 75 are required to give of breaches of provisions of the Act shall be given to the Collector or the Subdivisional Officer or to the nearest Excise Officer having jurisdiction to investigate the offence.

**53. Aid not to be given under certain circumstances :** No Excise Officer below the rank of Sub-Inspector shall request any officer referred to in sub-section (1) of section 75 to aid him in carrying out the provisions of the Act or of any rule or order made, issued or given under the Act.

**54. Aid how to be asked for :** (1) When any Excise Officer not below the rank of Sub-Inspector requires the aid of any officer referred to in

sub-section (1) of section 75, in making any arrest or search under the Act, he shall send –

- (a) if the aid of the police is required, to the officer in charge of the police-station within the limits of which the arrest or search is to be made, or
- (b) if the aid of any other officer referred to in the said sub-section is required, to the nearest superior officer of the department or body which he serves, a requisition (which shall be in writing, if the exigencies of the occasion permit) stating the nature of the aid required and the reasons for which it is required.

(2) If any officer to whom a requisition is sent under sub-rule (1) feels unable to render the aid required, he shall forthwith inform the officer, who sent the requisition of his reasons, for withholding it and shall, if necessary, refer to his immediate superior for instructions.

**55. Restriction on the aid to be given by village Choukidar or Dafadar to Excise Officer :** A village Choukidar or dafadar shall not be required to aid, any Excise Officer in carrying out any provisions of the Act, or of any rule, notification or order made, issued or given under the Act, except in the matter of making an arrest, search or seizure or a distraint of movable property within the village union or circle for which he is appointed.

## CHAPTER – VI

### GRANT OF EXPENSES TO WITNESSES

**56. Scale of expenses to be granted to witnesses :** Expenses of witnesses appearing under summons or produced before any Court in excise cases may be granted by the Court in accordance with the following rules, namely –

- (a) In the case of Government servants, rules in force for the grant of travelling allowance to such servants.
- (b) In the case of other persons the rules made by the High Court for the grant of expenses to witnesses in criminal cases.
- (c) Expenses of witnesses appearing under summons or produced before the Collector or the Superintendent in excise cases dealt with departmentally may be paid from their contingent allowances.

**CHAPTER - VII****GRANT OF COMPENSATION**

**57. Compensation for loss of time :** Compensation for loss of time may be granted to persons referred to in clause (n) of section 89 by the Collector or by the Magistrate before whom they are charged.

**58. Scale of such compensation :** Such grant shall be made under the same conditions as grant of expenses under the rules referred to in clause (b) of rule 56 and shall be subject to the maximum limit prescribed by those rules for the grant of expenses.

**CHAPTER - VIII****APPEALS**

**59. Appeals to Collector from orders of officers subordinate :** An appeal shall lie to the Collector from an order of any officer subordinate to him and discharging functions under the Act or under any rule or order made under the Act :

Provided that this power of the Collector may be exercised by the Additional District Magistrate.

**60. Appeals to Commissioner from orders of Collector :** An appeal shall lie to the Commissioner from any order made by the Collector or the Additional District Magistrate :

Provided that there shall be no appeal against an order increasing or decreasing in the number of licences under the proviso to rule 32 of these rules for the sale of foreign liquor.

**61. Appeals in certain cases how and when to be prepared :** (1) Every memorandum of appeal relating to cancellation, suspension or withdrawal of a licence for the retail sale of any intoxicant shall be submitted within fifteen days from the date of the order appealed against to the Commissioner through the Collector or the Additional District Magistrate, as the case may be, against whose order the appeal is made.

(2) The memorandum of appeal shall invariably be forwarded to the Commissioner within ten days of its presentation with the original order and with observations, if any, which the Collector or the Additional District Magistrate, as the case may be, may wish to make on it.

(3) The period of fifteen days referred to in sub-rule (1) shall be counted from the date of the original order and not from the date of any order made on any subsequent petition for revision or review of the said order.

**62. Appeals to Board from orders of Commissioner :** (1) An appeals shall lie to the Board from any order made, whether on appeal or otherwise, by the Commissioner :

Provided that when an order made by a Collector, or an Additional District Magistrate whether on appeal or otherwise, is upheld by the Commissioner, no further appeal shall lie.

(2) No appeal shall lie against orders of composition under section 68.

**63. Limitation for appeal to Board :** Every memorandum of appeal to Board shall be presented within one month from the date of the order appealed against.

**64. Mode of presentation and disposal of certain appeals :** The presentation of an appeal to Board and its disposal and disposal of appeal by the Commissioner shall be regulated by the Board of Revenue, Orissa Regulations, 1963.



4  
5  
6  
7  
8  
9  
0  
1.  
2.  
3.  
4.  
5.  
6.  
7.  
8.  
9.  
0.  
1.  
2.