

## EXECUTIVE SUMMARY

---

**What we have highlighted in this Chapter** In this Chapter we present illustrative cases of ₹ 70.19 crore from observations noticed during our test check of records in the Entertainment Tax Department and Geology and Mining Department. We found several instances of non/short realisation of tax, royalty and interest by these Departments.

---

**Status of compliance to Inspection Reports (2012-13)** We conducted test check of the records of 24 and 73 offices of Entertainment Tax Department and Geology and Mining Department respectively during the period 2012-13 and found cases of non/short realisation of tax, royalty, interest and other irregularities involving ₹ 665.93 crore in 490 cases.

The Departments accepted and recovered under assessment and other deficiencies of ₹ 18.20 lakh.

---

**Our conclusion** The Departments need to improve the internal control system including strengthening of internal audit so that weaknesses in the system are addressed and omissions of the nature detected by us are avoided in future.

They also need to initiate immediate action to recover non-realisation, short levy of tax, penalties etc. pointed out by us, more so in those cases where it has accepted our observation.

---

## CHAPTER-VI OTHER TAX AND NON-TAX RECEIPTS

### 6.1 Impact of audit

Test check of the records of the 24 and 73 offices of Entertainment Tax, Geology and Mining respectively, conducted during the year 2012-13 revealed non-realisation of tax and interest etc. of ₹ 665.93 crore in 490 cases which fall under the following categories as mentioned in table no. 6.1:

Table No. 6.1

			(₹ in crore)
Sl. No.	Category	Number of cases	Amount
<b>Entertainment Tax Department</b>			
1.	Non-charging of interest	09	0.05
2.	Non-realisation of tax	18	1.52
3.	Other irregularities	70	1.51
<b>Total (A)</b>		<b>97</b>	<b>3.08</b>
<b>Geology and Mining Department</b>			
1.	Non-realisation of royalty	102	26.52
2.	Non-realisation of revenue due to non-execution of lease deed	13	2.45
3.	Non-imposition of penalty	66	141.27
4.	Non-realisation of cost of minerals	31	170.74
5.	Non-imposition of transit fee	23	85.31
6.	Other Irregularities	158	236.56
<b>Total (B)</b>		<b>393</b>	<b>662.85</b>
<b>Grand total (A+B)</b>		<b>490</b>	<b>665.93</b>

During the year 2012-13, the Departments accepted and recovered underassessment and other deficiencies of ₹ 18.20 lakh involved in five cases.

A few illustrative cases involving ₹ 70.19 crore are mentioned in the succeeding paragraphs.

### 6.2 Audit Observations

*Our scrutiny of records in the offices of the Entertainment Tax, Geology and Mining, etc. revealed cases of non-realisation of license fee/non-deposit of maintenance charges, non/short realisation of royalty and interest, non-levy of penalty and application fee, non-short levy of price of minerals on illegal mining, unauthorised extraction, non-conformity of Government Orders with Act/Rules non-realisation of fee and additional fee etc. as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on a test check carried out by us. We point out such omissions each year, but not only do the irregularities persist; these remain undetected till we conduct an audit. There is need for the Government to improve the internal control system so that recurrence of such lapses in future can be avoided.*

## ENTERTAINMENT TAX DEPARTMENT

### 6.3 Non-realisation of licence fee

Under Section 4 of Uttar Pradesh Cinemas (Regulation) Act, 1955 (UP Act No.3 of 1956), Rules 12, 16 and 18(2) of The UP Cinema (Regulation of exhibition by means of video) Rules 1988 and Rule 18(2) of Uttar Pradesh Cinemas (Regulation of exhibition by means of video) Rules, 2011, the Licensing Authority may grant or renew the licence for a period not exceeding three financial years at a time for keeping a video library/television signal receiver agency in a local area having population mentioned in column I below, on payment of fee for one financial year or part at the rates specified\* in column II or III, as the case may be.

★

Column I (Local area)	Column II (License fee for video library)	Column III (License fee for television signal receiver agency)
(a) Municipal corporation, NOIDA and Greater NOIDA	Five thousand rupees.	Ten thousand rupees.
(b) Municipal board	Three thousand rupees.	Six thousand five hundred rupees.
(c) Town Area/Others places	One thousand five hundred rupees.	Three thousand rupees.

We observed between June 2012 and February 2013 from the files<sup>1</sup> of four offices of Assistant Commissioner Entertainment Tax/ Entertainment Tax Office<sup>2</sup> for the period between April 2010 and January 2013, that no licence fee<sup>3</sup> as per rules was recovered from 50 television signal receiver

agencies and 72 video libraries which were operating in the districts concerned. Thus, Government was deprived of revenue of ₹ 5.47 lakh as dues of licence fee and ₹ 74,000 as interest. The details are given in the following table:

Table No. 6.2

(₹ in lakh)

Sl. No.	Name of the District	Television signal receiver agencies	Video libraries	Licence fee due	Interest due (calculated till the date of audit)
1	Bareilly	-	72	1.90	0.09
2	Bijnore	14	-	0.91	0.13
3	Moradabad	13	-	1.27	0.26
4	Muzaffar Nagar	23	-	1.39	0.26
<b>Total</b>		<b>50</b>	<b>72</b>	<b>5.47</b>	<b>0.74</b>

The matter was reported to Department/Government between June 2012 and February 2013. The Department accepted our observations and stated (August 2013) that in case of Bareilly, licence fee has now been deposited and late fees realised from 19 video libraries which were found functioning. The Department has initiated action of recovery in remaining cases of other three districts.

<sup>1</sup> Licence fee register of video library/television.

<sup>2</sup> ACET: Moradabad and Muzaffar Nagar.

ETO : Bareilly and Bijnore.

<sup>3</sup> Out of 78 television signal receiving agencies and 113 video libraries.

## 6.4 Non deposit of maintenance charges

Under Section 3A(1) of the UP Entertainment and Betting Act, 1979, the Cinema hall owners were authorised to collect additional charges in shape of maintenance charges of ₹ 3 per seat besides 60 paise and 25 paise for air conditioning and air cooling facility respectively from the viewers entering in the cinema hall. This facility was withdrawn from 16 June 2009 by enactment of UP Entertainment and Betting (Amendment) Ordinance 2009. The Entertainment Tax Commissioner (ETC) also clarified (October 2009) that if any additional charges towards maintenance charges or providing of air conditioning /cooling facility has been realised from the viewers after 16 June 2009 the same should be remitted into the Government account.

We observed between April 2012 and June 2012 from the records<sup>4</sup> of two Assistant Commissioners of Entertainment Tax<sup>5</sup> for the period April 2010 to May 2012, that 13 cinema hall owners had realised ₹ 5.53 lakh<sup>6</sup> as maintenance charges during the period 16 June 2009 to 03 September 2009, but ACETs did not initiate any action to get the amount

remitted in to the Government account. This resulted in unjustified enrichment of cinema hall owners.

The matter was reported to the Department and Government between May 2012 and July 2012. The Department accepted (August 2013) our observation and stated that the process of recovery has been started and in case of Aligarh and Allahabad a sum of ₹ 2.81 lakh<sup>7</sup> has been remitted into Government account.

## GEOLOGY AND MINING DEPARTMENT

### 6.5 Non-realisation of royalty and interest from brick kiln owners

Under the One Time Settlement Scheme (OTSS) issued in December 2004, brick kiln owners are required to pay consolidated amount of royalty at the prescribed rates, based on Category of the brick kiln areas after obtaining permit by paying an application fee of ₹ 400 per brick kiln. Further, the OTSS provide that if the brick kiln owner fails to make payment of consolidated amount of royalty, the competent officer shall stop such business and initiate certificate proceedings for realisation of outstanding royalty/penalty under Paragraph 3 of the OTSS. Besides, interest at the prescribed rate may also be charged on the rent, royalty, fee or other sum due to the Government as per Paragraph 1(5) of the OTSS.

We observed during test check of brick kiln register and other relevant records maintained in the individual files of the brick kiln owners between May 2012 and December 2012 in 22 District Mining Offices<sup>8</sup> that 1655 brick kilns (Category<sup>9</sup>-A: 1028, Category<sup>10</sup>-B: 290 and Category-C<sup>11</sup>: 337) were operated

<sup>4</sup> Maintenance charges register of cinema.

<sup>5</sup> Assistants Commissioner of Entertainment Tax Aligarh and Allahabad.

<sup>6</sup> Aligarh ₹ 3.82 lakh, Allahabad ₹ 1.71 lakh

<sup>7</sup> Aligarh ₹1,34,652 and Allahabad ₹ 1,46,608

<sup>8</sup> Aligarh, Allahabad, Auraiya, Azamgarh, Badaun, Bagpat, Ballia, Balrampur, Barabanki, Bulandshahar, Chandauli, Fatehpur, Gautam Budh Nagar, Hathras, Jalaun, Kannauj, Kanpur, Maharajganj, Mau, Moradabad, Pilibhit and Saharanpur.

<sup>9</sup> Category A- Aligarh, Auraiya, Badaun, Bagpat, Bulandshahar, Gautam Budh nagar, Hathras, Kanpur, Moradabad, Pilibhit and Saharanpur.

<sup>10</sup> Category B- Allahabad, Barabanki, Chandauli, Fatehpur, Jalaun and Kannauj.

<sup>11</sup> Category C- Azamgarh, Ballia, Balrampur, Maharajganj and Mau.

in brick season<sup>12</sup> during 2009-10 to 2012-13. However, these brick kiln owners did not pay royalty of ₹ 7.48 crore. In Bulandshahar and Gautam Budh Nagar 44 brick kilns<sup>13</sup> owners had defaulted in payment of royalty for all three years. Action was not initiated by the concerned District Mines Officers (DMOs) to stop their business. Non-initiation of follow-up action by the DMOs for stopping of illegal operation of brick kilns resulted in non realisation of royalty amounting to ₹ 7.48 crore besides interest of ₹ 2.74 crore as shown in **Appendix-XVI**.

We reported the matter to the Department/Government between May 2012 and May 2013. The Department accepted (August 2013) our observation and stated that instructions have been issued to recover the royalty and interest from the defaulters through the Collector. Further reply has not been received (December 2013).

## 6.6 Removal of brick earth

### 6.6.1 Non-levy of penalty for illegal removal of brick earth

Under Rule 3 and 57 of UPMMC Rules, no person shall undertake any mining operation in any area, except under and in accordance with the terms and conditions of a quarrying permit or a mining lease granted under these Rules.

Sections 21 (1) and (5) of MMDR Act prescribes that the penalty for any illegal mining includes recovery of the price of the mineral, rent, royalty or taxes as the case may be, for the period during which the land was occupied by such person without any lawful authority. Further, Rule 57 of the UPMMC Rules *ibid* prescribes initiation of criminal proceedings attracting punishment of simple imprisonment that may extend to six months or with fine which may extend to rupees one thousand or both.

We observed between July 2012 and February 2013 from the Demand and Collection and Permit Register of brick kiln owners, in 13 District Mining Offices<sup>14</sup> that 1400 brick kilns (Category-A<sup>15</sup>: 560, Category-B<sup>16</sup>: 712, Category-C<sup>17</sup>: 128) were operated during the period April 2009 to February 2013 without application for grant of permit

along with requisite fee and obtaining quarrying permit for excavation of earth and paying the consolidated amount of royalty. Thus, the excavation of brick earth without quarrying permit was illegal. Despite the fact that the mining activities were being carried out, the Department did not take any action to stop the business or levy penalty as per the UPMMC Rules. Thus, taking the price of mineral equivalent to five times of royalty, there was non-levy of price of mineral of ₹ 30.75 crore<sup>18</sup> besides detrimental effect on environment.

We pointed this out to the Government and the Department (between September 2012 and April 2013). The Department accepted our observation (August 2013) and stated that due to shortage of staff, survey of brick kilns was not conducted, as such illegal removal of earth by brick kiln owners was not detected and also that brick kiln owners may be bringing earth from

<sup>12</sup> Brick season starts from the month of October every year to September of the subsequent year.

<sup>13</sup> Eight in Bulandshahar and 36 in Gautam Budh Nagar.

<sup>14</sup> Aligarh, Badaun, Barabanki, Chandauli, Etawah, Firozabad, G.B.Nagar, Gonda, Hathras, Mirzapur, Sonbhadra, Sultanpur and Varanasi.

<sup>15</sup> Aligarh, Etawa, Firozabad, G.B.Nagar and Hathras.

<sup>16</sup> Barabanki and Chandauli.

<sup>17</sup> Gonda, Mirzapur, Sonbhadra and Sultanpur.

<sup>18</sup> Determined as five times the cost of royalty as defined in Rule 21(2) of UPMMC Rules.

elsewhere. We do not agree with the reply as it is the responsibility of the Department to ensure that revenue interest of the state is not compromised and also enforce provisions under Section 21(5) of the MMDR Act wherein realization of price of minerals is mandatory.

### 6.6.2 Non/Short levy of application fee for removal of brick earth

Rule 52 of UPMMC Rules 1963, provides the system of application for grant of mining permit. The application fee was fixed ₹ 400 which has been increased to ₹ 2,000 vide Government Notification No.7338/86-2011-18 dated 01 December 2011.

We scrutinised the records<sup>19</sup> of eight DMOs<sup>20</sup> between July 2012 to April 2013 and observed that during the

period April 2011 to March 2012, 299 brick kiln owners paid application fee for taking mining permit at pre-revised rate of ₹ 400 instead of ₹ 2000 and 150 Brick Kiln owners did not pay any application fee. The DMOs concerned did not detect the short/non-payment of the application fee and did not initiate steps to recover the same. This resulted in non/short levy of application fees of ₹ 7.75 lakh as shown in the table no. 6.3:

Table No. 6.3

(₹ in lakh)

Sl.No.	Name of the Unit	Year	No. of cases	Application fee due	Application fee deposited	Difference
1.	DMO Allahabad	2011-12	72	1.44	0.29	1.15
2.	DMO Azamgarh	2011-12	25	0.50	0	0.50
			49	0.98	0.23	0.75
3.	DMO Chandauli	2011-12	125	2.50	0	2.50
			45	0.90	0.18	0.72
4.	DMO Jaunpur	2011-12	42	0.84	0.17	0.66
5.	DMO Lucknow	2011-12	26	0.52	0.10	0.42
6.	DMO Mau	2011-12	13	0.26	0.05	0.21
7.	DMO Shahjahanpur	2011-12	31	0.62	0.12	0.50
8.	DMO Shravasti	2011-12	21	0.42	0.08	0.34
<b>Total</b>			<b>449</b>	<b>8.98</b>	<b>1.22</b>	<b>7.75</b>

We pointed this out to the Government and the Department (between September 2012 and May 2013). The Department (August 2013), accepted our observation and stated that recovery proceeding has been started.

<sup>19</sup> Brick Kiln register and concerned files.

<sup>20</sup> Allahabad, Azamgarh, Chandauli, Jaunpur, Lucknow, Mau, Shahjahanpur and Shravasti.

## 6.7 Non/Short levy of price of mineral on illegal mining

Under Rule 3 and 57 of UPMMC Rules, no person shall undertake any mining operation in any area, except under and in accordance with the terms and conditions of a quarrying permit or a mining lease granted under these Rules.

Sections 21 (1) and (5) of MMDR Act prescribes that the penalty for any illegal mining includes recovery of the price of the mineral, rent, royalty or taxes as the case may be, for the period during which the land was occupied by such person without any lawful authority. Further, Rule\* 57 of the UPMMC Rules *ibid* prescribes initiation of criminal proceedings attracting punishment of simple imprisonment that may extend to six months or with fine which may extend to ₹ 25000/- or both.

\* Amended vide notification no. 7338/86-2011-183/2011 Lucknow: dated 01 December 2011

We observed between July 2012 and January 2013, from the files and registers of illegal mining, in five District Mining Offices<sup>21</sup> that in 35 cases 4,80,358 cubic meter of minor minerals were extracted between the period April 2009 and December 2012 without any lawful authority.

Excavation of minerals without mining permit/lease was not only illegal but also affected the

ecological balance. Despite the fact that these cases of illegal mining were in knowledge of the Department, the Department did not take any action to levy the royalty at the specified rate of five times the price of the mineral illegally mined and the penalty thereof as per UPMMC Rules. This inaction led to non/short levy of price of minerals ₹ 2.78 crore and non/short levy of penalty as detailed in the table no. 6.4:

Table No. 6.4

(₹ in lakh)

Sl. No.	Name of the district Mines Office	Name of the mineral	No. of cases	Quantity of the mineral in Cubic Meter	Rate of Royalty (in ₹)	Royalty of the mineral	Price of the mineral <sup>22</sup>	Due Amount	Paid/levied Amount	Balance Amount to be paid	Penalty levied/short levied/not levied
1	Aligarh	Ordinary earth	1	32410	9	2.92	14.58	17.50	0	17.50	Not levied
		Ordinary earth	1	209700	9	18.87	94.37	113.24	37.75	75.49	Levied
2	Bijnore	Sand/ Bajari	1	84520	22	18.59	92.97	111.57	20.71	90.86	Not levied
		Ordinary earth	1	85050	9	7.65	38.27	45.93	7.65	38.27	Not levied
		Sand	1	17560	22	3.86	19.32	23.18	3.10	20.08	Not levied
3	Meerut	Ordinary earth	2	16222	9	1.46	7.30	8.76	0	8.76	Not levied
4	Shravasti	Ordinary earth	23	22997	9	2.07	10.35	12.42	0	12.42	Levied at differential rates
		Sand	4	8099	22	1.78	8.91	10.69	0	10.69	Levied at differential rates
5	Varanasi	Sand	1	3800	22	0.84	4.18	5.02	0.84	4.18	Levied
<b>Total</b>			<b>35</b>	<b>480358</b>		<b>58.04</b>	<b>290.25</b>	<b>348.31</b>	<b>70.05</b>	<b>278.25</b>	

The matter was reported to the Department/Government (September 2012 to March 2013). The Department in reply stated (August 2013) that there is no provision in Act and Rules to charge price of minerals and provisions are limited to only imposition of penalty. The Department further stated that it is discretionary to the authorities that whether they impose penalty or to realise price of mineral or royalty, hence in these cases the competent authorities on their discretion imposed the penalty instead of realising price of minerals.

<sup>21</sup> Aligarh, Bijnore, Meerut, Shravasti and Varanasi.

<sup>22</sup> Royalty is 20 percent of value of minerals as specified in Rule 21(2) of UPMMC 1963

The reply of Department is incorrect as the penalty for any illegal mining specified in section 21(1) to (5) of MMDR Act includes recovery of the price of the mineral, apart from rent, royalty or taxes. The UPMMC Rules prescribes the penalty to be imposed in such cases and/or initiation of criminal proceedings. By not recovering the price of minerals and non-imposition of penalty, the Department has violated the Act and Rules.

### 6.8 Non-levy of interest for belated payment of royalty

Rule 58 (2) of UPMMC Rules provides that interest at the rate of 24 *per cent* per annum will be charged for the delay in payment of any rent, royalty, demarcation fee and any other dues to the State Government after the expiry of 30 days notice period. In case of royalty due to be realised from brick kiln owners alone, the Government vide order dated 18 May 2009 reduced the rate of interest to 18 *per cent* from 24 *per cent*. The rate of interest is again increased to 24 *per cent* vide order dated 22 November 2011.

We observed (between May 2012 and December 2012) from the lease files in nine DMOs<sup>23</sup>, that royalty of ₹ 2.07 crore which was due to be deposited during

the period 2009-10 to 2011-12 was paid with delays ranging from 37 to 851 days in 493 cases. Though the details of delay in payment were available on record, the Department did not initiate any action for levy and recovery of interest on these belated payments. This resulted in non realisation of interest of ₹ 19.10 lakh as detailed in the table no. 6.5:

Table No. 6.5

(₹ in lakh)

Sl. No.	Name of Office	Due Period	No. of cases	Amount due	Amount Deposited	Interest leviable <sup>24</sup>	Total amount due including interest	Period of delay in days	Net interest due to be realised
1	Bagpat	2009-10	68	36.43	36.43	3.04	39.47	43 to 732	3.04
2	Bijnore	2009-10	88	45.43	45.43	4.19	49.62	91 to 851	4.19
		2010-11	5	2.62	2.62	0.33	2.95	142 to 290	0.33
		2011-12	2	1.023	1.02	0.03	1.05	37 to 85	0.03
3	Chandauli	2011-12	45	16.28	16.28	2.23	18.51	84 to 422	2.23
4	Ghaziabad	2009-10	62	34.06	34.06	1.89	35.95	60 to 324	1.89
5	Kaushambi	2011-12	05	2.09	2.09	0.05	2.14	64 to 221	0.05
6	Mirzapur	2011-12	24	7.37	7.37	1.01	8.38	126 to 398	1.01
7	Moradabad	2010-11	13	6.62	6.62	0.98	7.60	69 to 454	0.98
		2011-12	7	3.74	3.74	0.24	3.98	46 to 140	0.24
8	Sant Ravidas Nagar	2009-10	23	8.18	8.18	0.97	9.15	119 to 399	0.97
		2010-11	12	4.05	4.05	0.44	4.49	103 to 343	0.44
9	Varanasi	2009-10	139	39.44	39.44	3.70	43.14	65 to 562	3.70
<b>Total</b>			<b>493</b>	<b>207.33</b>	<b>207.33</b>	<b>19.10</b>	<b>226.43</b>		<b>19.10</b>

The matter was reported to Department/Government (between July 2012 and January 2013). The Department has accepted our observation in their reply (August 2013) and stated that notices for the delayed deposit were not issued in time. The Department has further stated that as notices were not served within the time limit prescribed in the Rules, interest cannot be realised now. The reply of the Department shows its indifference to recovery of Government dues. The Department should take steps to immediately issue notices of demand and recover the interest due on the delayed deposit of royalty and also fix responsibility on the officials who did not issue the notices on time.

<sup>23</sup> Bagpat, Bijnore, Chandauli, Ghaziabad, Kaushambi, Mirzapur, Moradabad, Sant Ravidas Nagar and Varanasi.

<sup>24</sup> Rate of interest 18% per annum in 2009-10, 24% per annum in 2010-11 and 24% per annum in 2011-12.

## 6.9 Unauthorised extraction

Rule 22A of Mineral Concession Rule, 1960 provides that mining operations shall be undertaken in accordance with duly approved Mining Plan and modification of the approved Mining Plan during the operation of a mining lease also requires prior approval. Under Section 21(5) of the MMDR Act, whenever any person raises without lawful authority, any mineral from any land, the State Government may recover from such person the mineral so raised or where such mineral has already been disposed off, the price thereof along with royalty. Further, under Rule 21 (2) of UPMMC Rules, the total royalty is fixed at the rate of not more than 20 per cent of the pits mouth value of minerals.

Under Rule 34 (2) of UPMMC Rules, in the case of mining of marble, limestone, building stones like sandstone and granite, stone ballast (*gitti*), *bajri* etc., the lease holder is required to attach a Mining Plan with MM-1 (A) form of application. A Mining Plan is not needed for mining of sand and *morrum* found in river beds.

**6.9.1** Our test check (September 2012) of the mining lease case files and mining plans of DMO Sonebhadra, revealed that during the period July 2003 to March 2012, lessees had excavated 260049.66 cubic meter of stone ballast over and above the quantity mentioned in the approved mining plan. Thus, the mineral excavated by the lessees was unauthorised and the cost of the excavated mineral amounting to ₹ 7.08 crore was recoverable from the lessees. The fact was

not seen by the DMOs who continued to issue MM-11 forms to the lease holders despite their excavating more than the permitted quantity of minerals. The DMO did not initiate any action against the lessees for excavation of the excess mineral over the mining plan and did not take any action for recovery of the cost of excavated mineral of ₹ 7.08 crore and penalties as detailed in the table no. 6.6:

Table No. 6.6

(₹ in lakh)

Sl. No.	District	Name of the firm M/S	No. of cases	Quantity allowed as per Mining Plan in Cubic Meter	Total quantity excavated in Cubic Meter	Excess excavation in Cubic Meter	Price of mineral to be recovered	Penalty imposable
1	Sonebhadra	AK Maurya	1	6000	77071.66	71071.66	131.43	0.25
		KK Stone Product	1	6000	79800	73800	184.68	0.25
		Saurabh Crushers	1	30000	48178	18178	61.80	0.25
		Bashir Beg	1	20000	117000	97000	329.80	0.25
<b>Total</b>			<b>4</b>	<b>62000</b>	<b>322049.66</b>	<b>260049.66</b>	<b>707.71</b>	<b>1.00</b>

Source: Files of lease holders.

### 6.9.2 Excavation of mineral without renewal of Mining Plan

We observed (September 2012 and November 2012) from the files of lessees in DMO Mirzapur and Sonebhadra that the lease holders excavated and dispatched minerals without renewal/approval of their Mining Plan. The Mining Plan of the lease holders had been approved only for three years however the lease holders continued to extract the mineral even after the expiry of the Plan. Between April 2003 and May 2012, for periods ranging from 1 to 1060 days, 626783 cubic meter of minerals were illegally excavated by the lessee. This fact was not seen by the DMOs who continued to issue MM-11 Forms to the lease holders even after expiry of the Mining Plan.

The DMOs did not take any action to stop the unauthorised excavation and also did not recover the cost of the excavated mineral which amounted to ₹ 18.82 crore and penalty thereof from the lessees.

After this was pointed out (November 2012 and December 2012), the Department replied (August 2013) that this violation of mining plan/ excavation without renewal of mining plan is not illegal but a violation of Rule 34 of UPMMCR.

We do not agree as the mining operations were required to be undertaken in accordance with the approved mining plan and Department had to take action for recovery of cost of the excavated and penalty thereof against lessees for violation of the same. Further reply has not been received (December 2013).

### 6.10 Non-conformity of Government Orders with Act/ Rules

As per Section 4(1-A) and Section 21(1) to (5) of the Act read with Rule 70(1) of the UPMMC Rules, 1963 provides that the holder of a mining lease or permit or a person authorized by him in this behalf may issue a pass in form MM-11 to every person carrying, consignment of minor mineral by a vehicle, animal or any other mode of transport. Rule 70(2) provides that no person shall carry, within the State a minor mineral by a vehicle, animal or any other mode of transport, excepting railway, without carrying a pass in Form MM-11 issued under sub rule (1) Rule 70 (6) provides that any person found to have contravened any provision of this rule shall, on conviction, be punishable with imprisonment of either description for a term which may extend to six months or fined ₹ 25,000/- or with both.

Government Order no.594/77-5-2001-2002/77 TC-1 Lucknow dated 02 February 2001 and Government Order no. 4951(1)/77-5/2006-506/05 Lucknow dated 25 October 2006 provide that the executing were authorized to recover royalty in such cases where minor minerals were supplied to executing agencies of public works without valid MM-11 or copy of challan as proof of payment of royalty.

During our audit of DMO Firozabad in February 2013, we noticed that seven executing agencies<sup>25</sup> got 15 civil works done through contractors. In all these cases the contractors did not submit the MM-11 forms along with the bills of minor minerals used by them in the work, hence the executing agencies, in compliance of the Government orders dated 02 February 2001 and 25 October 2006 deducted

the royalty from the bills and deposited ₹ 7.47 lakh in lieu of royalty.

We noticed that the above GOs were not in consonance with the MMDR Act and UPMMC Rules as vide these Government Orders the executing agencies were authorised to recover only royalty in such cases where minor minerals were supplied without MM-11 and copy of treasury challan as proof of payment of royalty. Under the provisions of Section 21(5) and 21(1) of the MMDR Act, the recovery of price thereof and imposition of penalty is mandatory. As the G.Os are silent about the recovery of the price of the minerals and imposition of penalty the same are not being imposed /

<sup>25</sup> Development Authority Firozabad, EE, RES, Firozabad, Jila Panchayat, EO, Nagar Palika, Firozabad, SS PDPWD, Firozabad, EE PWD PD Firozabad, and DD construction Firozabad.

recovered. In the instant case of DMO Firozabad alone the cost of minerals ₹ 37.33 lakh was leviable as per Act besides penalty of ₹ 25000 in each case of illegal transportation.

After this was pointed out the Department replied (August 2013) that the executing agencies have taken action as per the GO, which was issued in exercise of the powers given in Rule 68. The Department has not replied to our specific observation which is non-conformity of the GOs with the MMDR Act and UPMMC Rules. The said GOs have been issued without the provision of recovery of the price of the minerals and penalty which is the main thrust of the Section 21 of the MMDR Act. The provision of UPMMC Rules that a penalty and /or punishment shall be imposed on the person found transporting minerals without valid MM11 has also not been taken into account in the GOs. The non-conformity of GOs with the relevant provisions of MMDR Act and UPMMC Rules have left a lacuna by which illegal transportation of minerals and illegal mining of these minerals is indirectly being permitted as there is no deterrent to this illegal transportation of minerals.

We recommend that the Government revise its orders to be in conformity with the MMDR Act and UPMMC Rules.

## **WEIGHT AND MEASUREMENT DEPARTMENT**

### **6.11 Non-realisation of fee/additional fee**

Under the provision of Weights and Measures (Enforcement) Act, 1985 (SOWM) read with rule 14 and 15 of the U.P. Standard of Weights and Measures (Rules) 1990, (UPSWM), every person in possession, custody or control of any weight and measure (including capacity measurement like storage tank, lorries dispensing measurement, etc.) which he intends to use or is likely to use in any transaction or for industrial production shall present such weight and measure for verification or re-verification and get it stamped at least once in five years, as the case may be, on payment of the prescribed fees. Contravention of the provisions of the Act attracts penalty under section 47 with fine which may extend to ₹ 500. Further, under Rule 17(3) of the UPSWM Rules, additional fee at half the rates specified in schedule XII of the UPSWM Rules is also payable after expiry of the validity of stamping for every quarter of the year or part thereof for re-verification.

From the records<sup>26</sup> of one sugar mill<sup>27</sup> and two distilleries<sup>28</sup> we observed between September 2012 and December 2012 that storage vats/tanks were in use in these sugar mills and distilleries without verification by the Weights and Measures Department since inception in two cases and after lapse of period of five years in one case<sup>29</sup>. The Department did not conduct inspections for verification as laid down in rule 15 (7) *ibid* and users also did not get the

vats/storage tanks verified as laid down in Rule 15(1) *ibid*. This resulted in

---

<sup>26</sup> Verification register of Vats/Tanks

<sup>27</sup> Kisan Sahkaari Chini Mills Ltd., Satha, Aligarh.

<sup>28</sup> Nanauta Distillery, Nanauta, Saharanpur and Nanapara Aswani, Nanpara Bahraich

<sup>29</sup> 1. since 29 January 1990 for September 2012 (Nanauta Distillery, Nanauta, Saharanpur) ₹ 2.83 lakh.

2. since inception 1976-77 for March 2012. (Kisan Sahkaari Chini Mills Ltd., Satha, Aligarh.) ₹ 3.65 lakh

3. since inception June 1992 for March 2012. (Nanapara Aswani, Nanpara Bahraich ) ₹ 2.03 lakh

non-realisation of fee and additional fee amounting to ₹ 8.50 lakh besides penalties leviable for contravention of the Act. The officials of the Excise Department posted in the sugar mills and distilleries agreed with our observation that the inspection and verification of vats/storage tanks was not done. Non-calibration of the vats/storage tanks carried the risk of incorrect determination of the volume of liquor stored in them resulting in incorrect assessment of excise duty.

We reported to the matter to the Department and Government between October 2012 and January 2013. The Department has accepted (August 2013) our observation and stated that the process of recovery has been started and ₹ 3.56 lakh has so far been deposited in Saharanpur.

Lucknow,  
The

**(Dr. Smita S. Chaudhri)**  
**Accountant General (E&RSA)**  
**Uttar Pradesh**

**Countersigned**

New Delhi,  
The

**(SHASHI KANT SHARMA)**  
**Comptroller and Auditor General of India**