

## CHAPTER-VII: NON-TAX RECEIPTS

### 7.1 Tax administration

At the Government level, the Principal Secretary, Mines and Petroleum, Jaipur and at the Department level the Director, Mines and Geology (DMG), Udaipur are responsible for administration and implementation of the related Acts and Rules in the Department. The DMG is assisted by five Additional Directors, Mines (ADM) and three Additional Directors, Geology (ADG) in administrative matters and by a Financial Advisor in financial matters. The ADMs exercise control through seven circles headed by Superintending Mining Engineer (SME).

There are 39 Mining Engineers (ME)/Assistant Mining Engineers (AME), who are responsible for assessment and collection of revenue besides prevention of illegal excavation and despatch of minerals from areas under their control. The Department has a separate vigilance wing headed by Deputy Inspector General (Vigilance), Jaipur for prevention of illegal excavation and despatch of minerals.

### 7.2 Internal audit conducted by the Department

Internal audit is an important mechanism to ensure that the Departmental operations are carried out in accordance with the applicable laws, regulations and approved procedures in an economical, efficient and effective manner and that subordinate offices are maintaining various records and registers properly and accurately besides taking adequate safeguards against non-collection, short collection or evasion of revenue.

Scrutiny of records of the DMG, Udaipur disclosed that audit of almost all the mining units was pending since 2004-05. In absence of internal audit, the Departmental authorities were not aware of the areas of the weakness in the system which resulted in evasion or leakage of revenue. The matter was pointed out in the Comptroller and Auditor General's Audit Report 2013-14. However, no action was taken by the Department.

### 7.3 Results of audit

Test check of the records of 43 units of the Department of Mines and Geology and Department of Petroleum conducted during the year 2014-15 revealed non-recovery/short recovery of revenue amounting to ₹ 106.32 crore in 5,766 cases, which broadly fall under the following categories :

(₹ in crore)

Sl. no.	Category	Number of cases	Amount
1.	Unauthorised excavation	1,121	52.45
2.	Non/short recovery of dead rent and royalty	183	28.73
3.	Non/short-recovery of Environment Management Fund (EMF)	409	13.03
4.	Non-levy of penalty/interest	304	5.74
5.	Other irregularities	3,749	6.37
<b>Total</b>		<b>5,766</b>	<b>106.32</b>

During 2014-15, the Department accepted short realisation, *etc.* of ₹ 52.10 crore in 1,966 cases, of which 271 cases involving ₹ 3.08 crore were pointed out in audit during 2014-15 and the rest in earlier years. The Department recovered ₹ 9.97 crore in 888 cases, out of which three cases involving ₹ 0.04 crore were of current year and the rest were of earlier years.

A few illustrative cases involving ₹ 39.49 crore are discussed in the paragraphs from 7.4 to 7.12.

## 7.4 Loss of revenue due to rejection of highest valid offer

Provisions of Excess Royalty Collection Contract (ERCC)/ Royalty Collection Contract (RCC) have been laid down in Rules 32 to 37 of the Rajasthan Minor Mineral Concession Rules (RMMC), 1986. Rule 35(vi)(c) provides that every tender shall be accompanied by an affidavit stating that no dues of the Department are outstanding against the tenderer/all partners of the firm/all members of association of persons/all directors of the company or family members<sup>1</sup> of the tenderer/partners/members of association of persons/directors, as the case may be. Such affidavit should not be older than 15 days from the date of its submission. Further, Rule 35(ix) provides that tender opening committee shall provisionally select the highest valid offer given by the tenderer. Furthermore, Rule 35(xii) provides that competent authority shall take decision for sanction or rejection of the provisionally selected bid.

During audit of records of office of ME, Bikaner, it was noticed (January 2014) that the Mining Department invited tenders for ERCC/RCC for collection of the excess royalty pertaining to mineral *Bajri, etc.* for a period of two years (2012-14). The tender opening committee selected the highest bid amounting to ₹ 13.94 crore per year against the reserve price of ₹ 10.28 crore. The bid was provisionally selected (9 February 2012) and the contractor complied with all provisions of Rule 32 to 35. Accordingly, the ME recommended the name of the contractor to the DMG for award of the contract. However, the DMG rejected (30 March 2012) the proposal under the provisions of Rules 35(xii) on the ground that dues of the department were outstanding against a firm in which the wife of the proprietor of the bidder firm was a partner on the date of submission of the bid and the proprietor of bidder firm submitted false affidavit and concealed facts.

The wife of the proprietor of the bidder firm was once a partner in the above said firm against which dues of the department were outstanding. But subsequently she relinquished all her interest in the said firm through a retirement deed dated 31 December 2011. It was also noticed that the outstanding amount alongwith interest was also deposited (16/17 March 2012) before passing of the rejection order (30 March 2012) by the DMG and no dues certificate was issued to the said firm (19 March 2012). These facts were brought to the notice of the Department but the DMG rejected the proposal. Aggrieved with the orders of DMG, the bidder approached the High Court which decided that the rejection of the tender was incorrect.

Rejection of the highest bid without considering full facts resulted in collection of royalty of ₹ 89.77 lakh only through departmental *nakas* against the recoverable amount of ₹ 2.75 crore during the period from 1 April 2012 to 11 June 2012. Incorrect decision taken by the DMG, therefore, resulted in loss of ₹ 1.85 crore<sup>2</sup>.

The matter was brought to the notice of the Department and reported to the Government (June 2015). The Government replied (August 2015) that the decision for rejection of bid was taken after taking legal and financial opinion. The legal and financial opinion taken by the Department was not produced to

<sup>1</sup> As per rule 3(xiii-b) of RMMC Rules, 1986 family means husband, wife and their dependent children.

<sup>2</sup> Proportionate contract amount ₹ 2.75 crore (₹ 13,93,93,939/365 days x 72 days) - Collection ₹ 0.90 crore through departmental *Nakas* = Loss of ₹ 1.85 crore.

Audit. The fact remains that the rejection of the tender was not a prudent decision and it adversely affected the collection of royalty by the Department. This was also confirmed by the Additional Counsel while giving legal opinion on the scope of further appeal. The counsel opined that there was no error factually as well as legally in the order passed by the High Court and, therefore, it was not a fit case for further appeal in the matter.

## 7.5 Non-recovery of royalty

As per Rule 37A(ix) of the RMMC Rules, 1986, a contractor shall not recover royalty and/or permit fee for the minerals used in construction and renewal of Mega Highways, four or six lane roads and laying and repair of Railway tracks. For such works, separate short term permit shall be issued and if the minerals are obtained from existing leases, separate paid *rawannas*<sup>3</sup> shall be issued to the lessee.

During the audit of the records of ME, Makrana, it was noticed (December 2014) that construction of a Mega Highway<sup>4</sup> was sanctioned in November 2012 by Rajasthan State Road Development and Construction Corporation Limited. The royalty was required to be collected by department through the paid *rawannas*. However, the Excess Royalty Collection Contractor<sup>5</sup> (ERCC) collected royalty amount of ₹ 58.05 lakh on the mineral used in the works of Mega Highway against the above provisions. The ME did not detect the mistake and assessed the minerals used in the work as royalty paid.

The works contractor should have got issued the *rawannas* after paying the advance royalty of ₹ 58.05 lakh to the ME office. The amount was required to be deposited in the Government account. The details of the amount are as under:

Sl. no.	Name of mineral	Quantity of mineral (MT)	Recoverable royalty amount (₹ in lakh)
1.	Gravel	1,58,154	26.89
2.	Sand/Bajri	13,689	2.74
3.	Crusher grit	1,46,888	24.97
4.	Ballast	20,269	3.45
	<b>Total</b>	<b>3,39,000</b>	<b>58.05</b>

The matter was pointed out to the Department and reported to the Government (June 2015). The Government accepted the fact and replied (August 2015) that the action for recovery was being initiated.

<sup>3</sup> *Rawanna* means delivery challan for removal or despatch of mineral from mines.

<sup>4</sup> Jaipur-Nagaur via Jobner-Kuchaman 63/500 Km (Bhatipura) to 101/700 Km (Narayanpur Tiraha).

<sup>5</sup> Excess royalty collection contractor is a contractor authorised to collect the royalty for a certain period on payment of a lump sum amount.

### 7.6 Non-raising of demand for unauthorised excavation and despatch of mineral out of leased area

Rule 48(5) of the RMMC Rules, 1986 provides that whenever any person, without a lawful authority raises mineral, the cost of mineral alongwith royalty shall be recovered. The cost of mineral will be computed as 10 times of the royalty at the prevalent rates.

During audit of the records of office of the ME, Jalore, it was noticed (March 2014) that a complaint of illegal mining was received against the holder of lease No. 448/02 (Shri Narendra Kumar). On an enquiry conducted (18 July 2012) by Senior Foreman of the office of ME Jalore, it was found that the lease holder had illegally excavated 5,040 MT mineral granite out of the lease area, of which 4,873 MT mineral was despatched and the remaining 167 MT mineral was seized by the Department. The ME did not serve notice to the lessee even after lapse of three years to recover the cost of illegally excavated mineral granite, which worked out to ₹ 85.28 lakh. Action for disposal of the seized mineral was also not taken.

The matter was pointed out to the Department and reported to the Government (June 2015). The Government stated (August 2015) that show cause notice (23 July 2015) had been issued to the lessee.

### 7.7 Non-raising of demand of interest and excess royalty

Section 9(2) of the Mines and Minerals Development and Regulation (MMDR) Act, 1957 provides that the holder of a mining lease shall pay royalty in respect of any mineral removed or consumed by him from the leased area at the rate specified in the second Schedule of the MMDR Act in respect of that mineral. Government instructions issued in April 2000 and March 2008 provide that competent authorities should calculate royalty in respect of despatched mineral on monthly basis, raise demand and initiate action for recovery thereof. Further, under Rule 64(A) of MC Rules, 1960, simple interest at the rate of 24 *per cent* per annum on royalty due to Government is chargeable from the sixtieth day of the expiry of the due date fixed for payment.

During the course of audit of ME, Pratapgarh, it was noticed (February 2015) that payment of excess royalty on mineral despatched was delayed by seven lessees. The demand of interest on delayed payment of dues which worked out to ₹ 21.21 lakh was not raised by the ME. Out of these seven cases, in two cases, the demand for excess royalty which worked out to ₹ 4.22 lakh was also not raised.

The matter was pointed out to the Department and reported to the Government (May 2015). The Government stated (September 2015) that in four cases, the amount of excess royalty of ₹ 0.08 lakh and interest of ₹ 12.19 lakh had been deposited/adjusted under 'Amnesty Scheme 2014'. Progress of recovery, in respect of remaining three cases wherein excess royalty of ₹ 4.14 lakh and interest of ₹ 9.02 lakh was involved, is still awaited (November 2015).

## 7.8 Production of mineral without obtaining consent to operate

Under Section 21(1) of the Air (Prevention and Control of Pollution) Act, 1981 and Sections 25 and 26 of the Water (Prevention and Control of Pollution) Act, 1974, a lessee is required to obtain 'consent to operate' from the Rajasthan State Pollution Control Board (RSPCB) determining quantity of minerals that can be excavated during the prescribed period. Further, as per Rule 18(10) of the RMMC Rules, 1986, the lessee shall abide by all existing Acts and Rules enforced by the Government of India or the State Government and all such other Acts or Rules as may be enforced from time to time in respect of working of the mines and other matters affecting safety, health, environment and convenience of the lessee's employees or of the public.

During audit of records of the office of AME, Kotputli and ME, Pratapgarh, it was noticed (December 2014 and February 2015) that two lessees of mineral marble and 27 lessees of mineral masonry stone excavated 3,985 MT mineral marble and 2.29 lakh MT masonry stone without obtaining consent to operate which resulted in illegal excavation of mineral worth ₹ 5.82 crore, as detailed below:

Sl. no.	Name of office	Name of mineral	No. of lessees	Quantity of mineral excavated (MT)	Rate of royalty per MT (in ₹)	Cost of mineral 10 times of royalty (₹ in lakh)
1.	AME, Kotputli	Masonry stone	27	2,29,263	22	504.38
2.	AME, Pratapgarh	Marble block	2	3,985	195	77.71
	<b>Total</b>		<b>29</b>	<b>2,33,248</b>		<b>582.09</b>

The matter was pointed out to the Department and reported to the Government (June 2015). In case of AME, Kotputli the Government stated (August 2015) that mining without consent or even after lapse of earlier consent can be regularised by charging the applicable annual consent fee for the default period of operation at the time of grant or renewal of subsequent consent to operate by Rajasthan State Pollution Control Board Office as per circular dated 18 November 2006. The facts remain that no coordination existed between Mining Department and Pollution Control Board and the excavation was carried out without the approval of Pollution Control Board.

### 7.9 Production of minor mineral without Mining Plan

As per Rule 37(B) of the RMMC Rules, 1986, Mining Plan is a pre-requisite to the grant of mining lease, quarry licence or short term permit. Further, as per Rule 37G(1), existing lessees shall carry out mining operations in accordance with approved mining plan/simplified mining scheme. The lessees have to submit plan/simplified mining scheme for approval within one year from the date of enforcement (19 June 2012) of the Rule.

During audit of the records of the office of AME, Kotputli, ME, Bundi-I and ME, Jhunjhunu, it was noticed (December 2014, January 2015 and March 2015) that 65 lessees were existing as on 19 June 2012. These lessees were required to submit mining plan by 18 June 2013 which were not submitted. Despite this, the lessees were allowed to excavate mineral in violation of the Rule. The Department also incorrectly issued *rawannas* for despatch of 5.88 lakh MT masonry stone and sand stone valued at ₹ 15.56 crore as detailed below:

Sl. no.	Name of office	Name of mineral	No. of lessees	Quantity of mineral excavated (MT)	Rate of royalty per MT (in ₹)	Cost of mineral 10 times of royalty (₹ in lakh)
1.	Bundi division-I	Sand stone	28	35,788	95	339.99
2.	Jhunjhunu	Masonry stone	11	1,73,321	22	381.31
3.	Kotputli	Masonry stone	26	3,79,268	22	834.39
<b>Total</b>			<b>65</b>	<b>5,88,377</b>		<b>1,555.69</b>

The matter was pointed out to the Department and reported to the Government (June 2015). The Government stated (July 2015) that Rule 18(21) of RMMC Rules, 1986 is applicable in cases of AME, Kotputli and ME, Jhunjhunu where penalty of twice the amount of annual dead rent may be imposed. In case of ME, Bundi-I, it was stated that mineral was despatched in a lawful manner after obtaining *rawannas* and therefore such despatch did not fall under the category of illegal mining in any manner.

However, in the above cases the reply was silent about the issue of *rawannas* without approval of the Mining Plan which was pre-requisite for carrying out mining activities. Since it involves environmental issues, the Department may consider issuing of *rawannas* only after approval of the mining plan.

## **7.10 Non-recovery/short recovery of Environment Management Fund (EMF)**

Rule 37T(5) inserted in RMMC Rules, 1986 by Government of Rajasthan through notification dated 19 June 2012 provides that every lessee/licensee of marble, granite and limestone (dimensional stone) of Kota and Jhalawar districts shall deposit a sum of ₹ 10 per ton and lessee/licensee/short permit holder of other minerals shall deposit ₹ five per ton towards Environment Management Fund (EMF). The rate of EMF amount for ordinary earth was reduced to ₹ one per MT from ₹ five per MT with effect from 9 October 2012. The EMF is required to be used for carrying out environment protection work as per Environment Management plan. However, these provisions were declared illegal, without jurisdiction and *ultra vires* with directions that the amended rule shall not be implemented any further as decided on 9 April 2015 by the Rajasthan High Court, Jodhpur. However, if a contractor/lessee had collected EMF amount from consumer or lifter of mining material, he was not entitled to retain the said amount and had to deposit the amount in Government exchequer. A few instances where EMF amount was not collected or collected but not deposited in the Government account are mentioned in the following paragraphs.

### **7.10.1 Non-recovery of the Environment Management Fund from public works contractors**

During audit of records of ME, Bhilwara, it was noticed (November 2014) that 28 public works contractors obtained Short Term Permits (STPs) for 4.54 lakh MT gravel, masonry stone, sand and 2.75 lakh MT ordinary earth on advance payment of royalty. The ME, however, did not recover the EMF amount on the above quantities which worked out to ₹ 25.47 lakh. Similarly, during audit of records of AME, Tonk, it was noticed (January 2015) that construction work of roads<sup>6</sup> was awarded (14 October 2009) to Modern Road Makers Private Limited by National Highway Authority of India. It was further noticed that the contractor was issued STPs for 11.60 lakh MT ordinary earth during the period from 21 June 2012 to 28 June 2012 without realising the EMF amount of ₹ 58 lakh. Furthermore, during the audit of records of AME, Jhalawar, it was noticed (February 2014) that three public works contractors obtained (June and July 2012) STPs for 90,600 MT gravel, masonry stone, etc. and 1,70,000 MT ordinary earth on advance payment of royalty. The ME did not recover the EMF amount which worked out to ₹ 13.03 lakh. Thus, the total recoverable amount worked out to ₹ 96.50 lakh.

The matter was pointed out to the Department and reported to the Government (May and June 2015). The Government stated (July 2015) that in four cases of ME, Bhilwara and in one case of AME, Tonk, ₹ 2.68 lakh and ₹ 11.60 lakh respectively had been recovered. Besides, in case of AME Jhalawar, the Government stated that EMF would be recovered by Works Department as per instructions issued vide letter dated 18 September 2012.

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<sup>6</sup> Construction of four lane work on Jaipur to Deoli section of NH-12 from km 63 to 114 - package II.

### 7.10.2 Short recovery/non-recovery of Environment Management Fund

During scrutiny of the demand registers, assessments files and monthly return files of six MEs/AMEs, it was noticed (September 2013 to March 2015) that the EMF amount of ₹ 1.61 crore was not recovered or short recovered from lessees, brick earth permit holders and royalty collection contractors as detailed below:

Sl. no.	Name of office	Name of Mineral	Period		Quantity of Mineral (in MT)	EMF (₹ in lakh)
			From	To		
1.	ME, Bundi-I	Sandstone	19.6.2012	22.3.2013	6,23,079	31.15
2.	AME, Nimbahera	Marble	19.6.2012	31.3.2013	33,049	3.30
		Granite	19.6.2012	31.3.2013	380	0.04
		Masonry stone	19.6.2012	31.3.2013	2,121	0.11
		Limestone	19.6.2012	31.3.2013	2,91,873	14.59
3.	ME, Jhunjhunu	Brick earth	19.6.2012	31.3.2014	4,09,175	20.46
		Masonry stone	19.6.2012	31.3.2013	3,54,433	17.72
4.	ME, Jalore	Granite	19.6.2012	31.3.2013	1,36,619	13.66
5.	ME, Sikar	Brick Earth	19.6.2012	31.3.2013	8,82,150	44.11
6.	ME, Dholpur	Sandstone	19.6.2012	29.10.2012	2,84,730	14.24
		Masonry stone	19.6.2012	29.10.2012	34,460	1.72
<b>Total</b>						<b>161.10</b>

The matter was pointed out to the Department and reported to the Government (June 2015). The Government accepted (August 2015) the facts and stated that in five cases<sup>7</sup>, ₹ 46.53 lakh had been recovered.

### 7.11 Non-raising of demand for cost of minerals illegally excavated and despatched

Rule 48(5) of RMMC Rules, 1986 provides that whenever any person without a lawful authority raises any mineral from any land and mineral so raised has already been consumed or despatched, the cost of mineral along with royalty shall be recovered. The cost of mineral will be computed as ten times of the royalty payable at the prevalent rates.

During scrutiny of records *viz. panchnamas*<sup>8</sup> of ME, Karauli, it was noticed (October 2014) that ME served the show cause notices to the defaulters in seven cases for the recovery of cost of minerals illegally excavated and despatched during April 2012 to October 2013 but the defaulters did not deposit the cost of mineral. The ME submitted only three cases to the SME for according approval for raising the demand of cost of mineral but no proposal was submitted in the remaining four cases. Thus, demand for ₹ 19.12 lakh in all the seven cases could not be raised against these defaulters even after

<sup>7</sup> ME Bundi-I, Jhunjhunu, Jalore, Sikar and AME Nimbahera.

<sup>8</sup> Verification note made by the inspecting officer on the spot regarding illegal excavation.

passage of one to two years as detailed below:

Sl. no.	Number of cases	Name of Mineral	Quantity illegally excavated (in MT)	Rate of royalty per MT (in ₹)	Cost of mineral (₹ in lakh)
1.	1	Brick Earth	4,769	18	8.58
2.	2	Masonry Stone	280	17	0.48
3.	4	Sandstone	875	115	10.06
<b>Total</b>					<b>19.12</b>

After this was pointed out, the ME, Karauli accepted the fact and stated (November 2014) that the demand would be raised and intimated to audit.

The matter was pointed out to the Department and reported to the Government (February 2015). The Department replied (May 2015) that in one case, the ME, Karauli sent a proposal to SME, Bharatpur seeking approval for raising the demand and other six cases were under departmental enquiry.

### 7.12 Non-raising/short raising of demand of cost of brick earth

As per notification issued on 10 June 1994 issued under Rule 65A of the RMMC Rules, 1986, the kiln owner shall obtain permission for the brick earth to be used in making bricks. The permission shall be at least for one year and maximum for five years. The royalty on brick earth shall be recovered on the basis of annual metric ton quantity of earth used as per a given formula (150 days x 3.5 MT x number of *ghories*). Further, Rule 48 of the *ibid* Rules, 1986 provides that whenever any person raises, without lawful authority, any mineral, he shall be liable to pay cost of the mineral so excavated along with royalty.

During test check of the records of MEs, Jaipur, Ajmer and Bharatpur, it was noticed (between June 2013 and October 2014) that in 52 cases, kiln owners used brick earth illegally without obtaining requisite permits and paying royalty. The Department, however, raised demand of ₹ 1.57 crore on the basis of actual quantity of bricks found on the spot at the time of inspection whereas, the recoverable cost worked out to ₹ 13.48 crore. This resulted in short recovery of ₹ 11.81 crore as detailed below:

(₹ in lakh)

Sl. no.	Name of office	No. of cases	Month of <i>panchnama</i>	Recoverable cost	Demand raised by the Department	Short raised demand
1.	ME, Jaipur	39	May 2012 to July 2012	1,041.39	130.63	910.76
2.	ME, Ajmer	5	April 2012 to November 2012	102.91	14.68	78.88
3.	ME, Bhartpur	8	May 2013 to February 2014	203.18	11.90	191.28
<b>Total</b>		<b>52</b>		<b>1,347.48</b>	<b>157.21</b>	<b>1,180.92</b>

The matter was pointed out to the Department and reported to the Government (June 2015). The Government accepted the fact and stated (July 2015) that in respect of ME, Ajmer and ME, Bharatpur, notices were issued for recovery. However, in case of ME, Jaipur, it was stated that the demand was raised on the basis of mineral found at the time of inspection by the technical staff and it would not be correct to assume that kiln worked for the whole year. The reply is not acceptable as the demand of cost of mineral found on site was raised without taking into consideration the quantity which had already been excavated, used in kiln and despatched from site.

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**JAIPUR,**  
**The 26 FEB. 2016**

**Countersigned**

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

**NEW DELHI,**  
**The 02 MAR. 2016**