

CHAPTER-VII : MINING RECEIPTS

EXECUTIVE SUMMARY

Steady increase in tax collection	<p>In 2010-11 the collection from mining receipts increased by 30.23 <i>per cent</i> as compared to the Budget Estimate which was attributed by the Department to the enhancement of the rate of royalty of iron ore, chromite etc. by the Indian Bureau of Mines (IBM). The increase was, however, due to adoption of the royalty on <i>ad valorem</i> basis fixed by the Central Government in August 2009 in lieu of the per tonne basis fixed and adopted earlier.</p>
Very low recovery by the Department against the observations pointed out by us in earlier years	<p>During the period 2005-06 to 2009-10 we had pointed out non / short levy, non / short realisation of tax, fee etc., with revenue implication of ₹ 870.24 crore in 1,158 cases. Of these, the Department / Government accepted audit observations in 605 cases involving ₹ 70.76 crore; but recovered only ₹ 10.43 crore in 114 cases. The average recovery position, being 14.74 <i>per cent</i>, as compared to acceptance of objections was very low and it ranged between 3.55 <i>per cent</i> and 64.35 <i>per cent</i>.</p>
Results of audit conducted by us in 2010-11	<p>In 2010-11 we test checked the records of 15 units involving levy and collection of mining receipts and found non / short demand of royalty, dead rent / surface rent, non / short recovery of interest and irregularities of miscellaneous nature involving ₹ 932.32 crore in 226 cases.</p> <p>The Department accepted underassessment and other deficiencies involving mining receipts of ₹ 849.67 crore in 163 cases, pointed out by us during the year 2010-11. An amount of ₹ 11.94 crore was recovered in 91 cases during the year 2010-11 relating to earlier years.</p>
What we have highlighted in this Chapter	<p>In this Chapter we present illustrative cases of ₹ 238.71 crore selected from the observations noticed during our test check of records relating to assessment and collection of mining receipts in the offices of the Director of Mines (DM), Deputy Directors of Mines (DDMs) and Mining Officers (MOs) where we found that the provisions of the Acts / Rules were not adequately adhered to.</p> <p>It is a matter of concern that similar omissions have been pointed out by us repeatedly in the Reports of the CAG for the past several years, but the Department has not taken adequate corrective action. We are also concerned that though these omissions were apparent from the records which were made available to us, the MOs / DDMs were unable to detect these mistakes.</p>

Our conclusion The Department needs to revamp its revenue recovery machineries to ensure recovery of the non-realisation, undercharge of royalty / fees etc. pointed out by us, more so in those cases where it has accepted our contention.

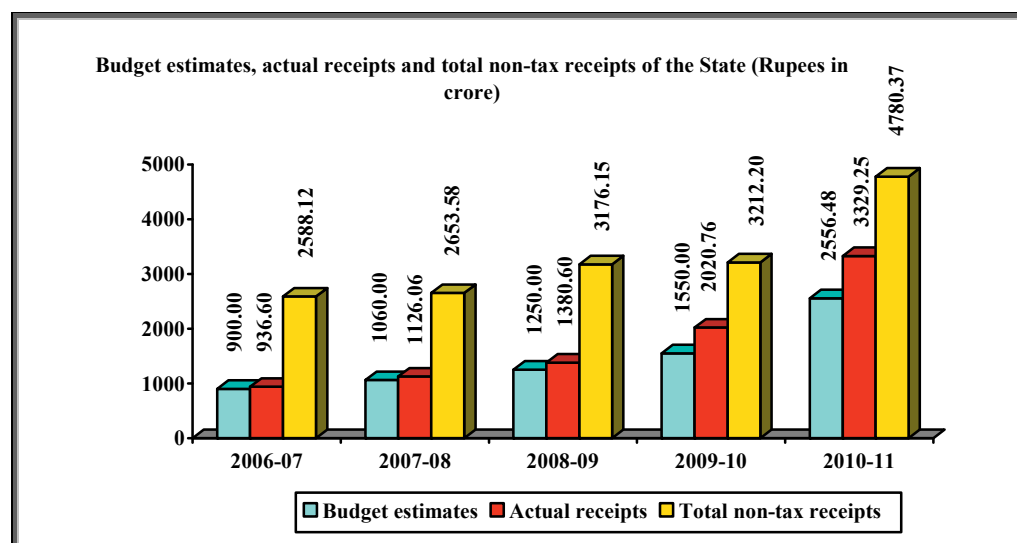
7.1.1 Non-tax revenue administration

Assessment and collection of mining receipts are regulated by the Mines and Minerals (Development and Regulation) (MMDR) Act, 1957, the Mineral Concession (MC) Rules, 1960 and Mineral Conservation and Development (MCD) Rules, 1988 framed thereunder. The above Act / Rules are administered by the Director of Mines (DM), Orissa under the overall control of the Commissioner-cum-Secretary to the Government in the Department of Steel and Mines. He is assisted by the Joint Director of Mines (JDMs) at the headquarters and the Deputy Directors of Mines (DDMs) and Mining Officers (MOs) at the circle levels. The mining receipts mainly comprise of royalty, fees and fines etc. on raising and removal of minerals.

7.1.2 Trend of receipts

Actual receipts from mining during the years 2006-07 to 2010-11 along with the total non-tax receipts during the same period are exhibited in the following table and graph.

(Rupees in crore)						
Year	Budget estimates	Actual receipts	Variation excess (+)	Percentage of variation	Total non-tax receipts of the State	Percentage of actual receipts vis-à-vis total non-tax receipts
2006-07	900.00	936.60	(+) 36.60	(+) 4.07	2,588.12	36.19
2007-08	1,060.00	1,126.06	(+) 66.06	(+) 6.23	2,653.58	42.44
2008-09	1,250.00	1,380.60	(+) 130.60	(+) 10.45	3,176.15	43.47
2009-10	1,550.00	2,020.76	(+) 470.76	(+) 30.37	3,212.20	62.91
2010-11	2,556.48	3,329.25	(+) 772.77	(+) 30.23	4,780.37	69.64



The receipts from mining have been steadily increasing over the years and accounted for a major source (nearly 70 *per cent*) of the total non-tax revenue of the State in 2010-11. The reason for increase was stated (August 2011) to be due to enhancement of the rate of royalty in iron ore, chromite etc. by the Indian Bureau of Mines (IBM). The increase was, however, due to adoption of the royalty on *ad valorem* basis fixed by the Central Government in August 2009 in lieu of the per tonne basis fixed and adopted earlier.

7.1.3 Impact of audit

Revenue impact

During the last five years i.e. 2005-06 to 2009-10 we pointed out non / short levy, non / short realisation of royalty, dead rent, surface rent, interest etc., with revenue implication of ₹ 870.24 crore in 1,158 cases. Of these, the Department accepted audit observations in 605 cases involving ₹ 70.76 crore and recovered ₹ 10.43 crore in 114 cases. The details are shown in the following table.

(Rupees in crore)								
Year	No. of units audited	Amount objected		Amount accepted		Amount recovered		Percentage of recovery to amount accepted
		No. of cases	Amount	No. of cases	Amount	No. of cases	Amount	
2005-06	15	87	116.84	68	4.60	9	2.96	64.35
2006-07	15	423	55.08	53	14.27	16	3.13	21.93
2007-08	15	104	225.85	80	9.14	45	2.59	28.34
2008-09	15	188	202.52	69	6.94	13	0.48	6.92
2009-10	20	356	269.95	335	35.81	31	1.27	3.55
Total	80	1158	870.24	605	70.76	114	10.43	14.74

The Department recovered only 14.74 *per cent* of the amount accepted by it.

We recommend that the Department revamp its revenue recovery mechanism to ensure that they could recover at least the amount involved in the accepted cases immediately.

7.1.4 Results of audit

During the year 2010-11 we test checked the records of 15 units relating to mining receipts and found non / short demand of royalty / dead rent / surface rent, non / short recovery of interest and other irregularities involving ₹ 932.32 crore in 226 cases which fall under the following categories.

(Rupees in crore)			
Sl. No	Categories	No. of cases	Amount
1.	Non / short demand of royalty / dead rent / surface rent	129	57.91
2.	Non / short recovery of interest	21	0.66
3.	Irregularities of miscellaneous nature	76	873.75
Total		226	932.32

During the year, the Department accepted underassessment and other deficiencies of ₹ 849.67 crore in 163 cases pointed out in 2010-11. An amount of ₹ 11.94 crore was recovered in 91 cases during the year 2010-11 relating to the earlier years.

A few illustrative cases involving ₹ 238.71 crore are mentioned in the following paragraphs.

7.2 Audit observations

We scrutinised the records maintained in the office of the DM, DDMs and MOs and noticed cases of short levy of royalty and unlawful raising of minerals as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on a test check carried out by us. The Government may consider issuing instructions for effective internal control mechanisms to prevent recurrence of such omissions.

7.3 Non-observance of the provisions of Act / Rules read with the notifications and instructions of the Government

The MMDR Act, 1957, MC Rules, 1960, MCD Rules, 1988 and the notifications and instructions of the Government issued from time to time provide for assessment, demand and realisation of:-

- *royalty at prescribed rates against different grades of minerals from the leasehold areas;*
- *royalty on unprocessed mineral in case of processing of mineral other than run-of-mine¹ (ROM) mineral; and*
- *the cost of minerals unlawfully raised in excess of the permissible limit when it is already disposed of.*

Non-observance of some of the above provisions as mentioned in paragraphs 7.3.1 to 7.3.3 resulted in underassessment, short / non-demand and realisation of ₹ 238.71 crore.

1 The blasted material containing ore with other foreign material brought to the crushing plant.

7.3.1 Underassessment of royalty on steam coal

The Government of India, Ministry of Energy (Department of Coal), in their notification of 16 July 1979, prescribed the classes and grades into which coal shall be classified and fixed the pit head prices at which coal or coke may be sold by the colliery owners. As per the said notification, Run-of-Mines (ROM) coal is coal comprising of all sizes as it comes out of the mines, without crushing or screening. The fraction of ROM coal as is retained on a screen when subjected to screening is called steam coal. Steam coal attracts a higher rate of royalty than ROM coal.

While checking the prescribed monthly returns, wagon loading statements and assessment orders of the lessees in the office of the DDM, Talcher, we noticed (November 2010) that M/s Mahanadi Coalfields Limited (MCL) despatched 54.23 lakh MT of 'F' grade coal of size in excess of 100 mm

between April 2009 and March 2010 from their Lingaraj Open Colliery Project in addition to despatch of 'F' grade coal below 100 mm size. As per the classification of the notification², the fraction of ROM coal as is retained on the screen after screening is called steam coal. As the 'F' Grade coal despatched was of two sizes one more than 100 mm and another less than 100 mm the fraction that was above 100 mm size was steam coal as these sizes were obviously segregated through a screening process. MCL was thus liable to pay royalty of ₹ 46.95 crore at the rate applicable to steam coal as per the royalty chart of MCL with effect from 13 December 2007 up to 15 October 2009 and the revised rate from 16 October 2009 onwards. However, we noticed that, while assessing the lessee the Assessing Authority (AA) had not taken this into account and a sum of ₹ 42.28 crore only paid by MCL towards royalty at the rates applicable to ROM coal was accepted. This resulted in underassessment and resultant short demand / realisation of royalty of ₹ 4.67 crore.

After we pointed out the case, the Government stated (August 2011) that the DDM, Talcher has issued demand notice (July 2011) against the lessee for payment of ₹ 10.85 crore towards short levy of steam coal for the period October 2007 to March 2010 which was followed by a reminder in September 2011. The final compliance would be furnished, soon after realisation of the above amount.

2 Ministry of Energy, Department of Coal Notification No.28012/8/79-CA dated 16 July 1979.

7.3.2 Underassessment of royalty on iron ore

As per the MC Rules 1960, as amended from time to time processing of Run-of-Mines (ROM) minerals within the leasehold area is chargeable to royalty on the output after processing of the minerals. However, in case of processing of mineral other than ROM, royalty is chargeable on unprocessed mineral i.e. mineral extracted from the seam.

7.3.2.1 During test check (December 2010) of assessment file, assessment orders and monthly returns of TRB Iron Ore Mines of M/s. Jindal Steel and Power Ltd. under the Jurisdiction of DDM, Koira, we noticed that during the year 2009-10, the

lessee fed 27.16 lakh MT of unprocessed iron ore to its processing plant within the leasehold area and obtained 12.34 lakh MT of sized ore and 14.82 lakh MT of fines. Thus the quantity of ore fed as input into the processing plant was equal to the output. This indicated that the ore so processed was iron ore lumps as it did not contain any foreign material as would be in the case of ROM. Thus, royalty was to be assessed at the rate applicable for iron ore lumps and for 27.16 lakh MT fed to the processing unit royalty was to be assessed at ₹ 37.76 crore. However, royalty of ₹ 26.75 crore only was assessed, based on the returns, by the DDM. This resulted in underassessment of royalty of ₹ 11.01 crore.

After we pointed out the case, the DDM, Koira contended (December 2010) that the Controller of Mines (Central Zone), Indian Bureau of Mines (IBM) had approved to produce ROM in mines and in the case of processing of ROM carried out within leasehold area, royalty is chargeable on the processed minerals. The contention is not acceptable as high grade iron ore not containing slime or any foreign material is not covered under the ROM and hence chargeable as unprocessed iron ore lumps at higher rate of royalty. It may be mentioned that in respect of a similar observation made in para 7.3.2 of the Report of the CAG 2007-08, the Department has recovered the entire amount of royalty which was underassessed.

The matter was reported to the DM, Odisha and the Government (May 2011); their replies are yet to be received (January 2012).

7.3.2.2 Similarly, during test check (August 2010) of monthly returns, production and removal register and assessment files of M/s ESSEL Mining and Industries Ltd. (Kasia Iron Mines) under the jurisdiction of DDM, Joda we noticed that during 2009-10, 31.95 lakh MT of unprocessed iron ore was fed by the lessee to the processing plant in the leasehold area and the output (31.95 lakh MT) was equal to the input quantity of the mineral. This indicated that the mineral fed was not ROM and hence royalty of ₹ 19.04 crore was to be assessed at the rate applicable for iron ore lumps. However, royalty of ₹ 12.70 crore only was paid as seen from the monthly return of the lessee which was accepted by the DDM. The DDM could not notice this although he is required to accept, scrutinise the monthly returns and assess the lessee quarterly. This resulted in underassessment of royalty of ₹ 6.34 crore.

After we pointed out the case, the DDM, Joda stated (August 2010) that demand will be raised after verification of records.

The matter was reported to the DM, Odisha and the Government (May 2011); their replies are yet to be received (January 2012).

7.3.3 Non-demand / realisation of the cost of unlawfully raised iron ore

Under the MMDR Act, 1957, no person shall undertake any mining operation in any area except under and in accordance with the terms and conditions of the mining lease granted. Whenever any person raises without any lawful authority, any mineral from any land, the Government may recover from such person the mineral so raised or where such mineral has already been disposed of, the price thereof along with rent, royalty or tax for the period during which the land was occupied by such person without any lawful authority. It was judicially opined³ that a mining lease holder is also required to comply with the other statutory provisions such as Environment (Protection) Act, 1986 and Air (Prevention and Control of Pollution) Act, 1981, the Water (Prevention and Control of Pollution) Act, 1974 and Forest (Conservation) Act, 1980. Mere approval of Mining Plan by Government of India (GoI) would not absolve the lease holder from complying with other provisions. GoI, Ministry of Environment and Forest (MoEF) in their notifications of January 1994, October 2004 and September 2006 directed that for existing mining projects, in case of increase in production, Environment Clearance (EC) from the Central Government is to be obtained. Moreover, under the MCD Rules, every holder of a mining lease shall carry out mining operation as per the terms and condition of the approved mining plan scheme. The owner of every mine shall review the mining plan and submit a scheme of mining for the next five years of the lease to the Regional Controller, IBM at least one hundred twenty days before the expiry of the five year's period for which it was approved on the last occasion. Rule 58 of the above Rules prescribes the penalty for contravention of any of the provisions thereof.

During test check (July 2010) of lease deeds, mining plan, production and removal register and monthly returns in the office of the MO, Keonjhar, we noticed that Putulipani Iron Ore Mines was operated over an area of 100.1632 hectares by M/s Gandhamardan Sponge Iron³ (P) Limited with effect from 5 April 1993 by virtue of transfer of a mining lease deed executed with the original lessee (Manilal Brothers). Although the original lease of the mine expired on 7 April 1994, the company continued mining operations under the deemed provisions of MC Rules, 1960 with a production capacity of 1.20 lakh Metric Tonne (MT) per annum up to 1998-99. In October 2004 the MoEF clarified that a project can not increase its production even if it has the IBM / Ministry's approval for the enhanced production until EC is obtained for the enhanced rated capacity. However, we observed that the lessee

3 The judgment No. AIR-2004 SC-4016-2004(4) JT-2004(4) Supreme 685 in the case of M/s M.C. Mehta Vrs. Union of India.

produced 15.38 lakh MT of iron ore during the period 2004-05 to 2006-07 against its total permitted production capacity of 3.60 lakh MT during that period at the rate of 1.20 lakh MT per annum without EC from the above Ministry. This resulted in raising of 11.78 lakh MT of iron ore valued at ₹ 70.02 crore in excess of the permitted production capacity in violation of the instruction of GoI, MoEF issued in January 1994 and further clarification made in October 2004. Further, we noticed that the lessee applied (September 2006) for environment clearance for enhancement of its production capacity from 1.20 lakh MT to 3.60 lakh MT per annum which was allowed by the GoI, MoEF in August 2007; but in fact, the lessee raised 22.05 lakh MT of iron ore during April 2007 to August 2009 as against the permitted EC for production of 8.70 lakh MT only from the GoI, MoEF for that period which resulted in excess raising of 13.35 lakh MT of iron ore valued at ₹ 146.67 crore.

The above excess production of 25.13 lakh MT of iron ore was not noticed by the AA while granting removal permission from time to time against the production figures reflected in the monthly returns of the lessee. As the excess raising was a violation of the provisions of the Environmental Impact Assessment (EIA) notification (January 1994) of the GoI, MoEF as clarified in October 2004 and also the EC granted by them in August 2007, it was unlawful raising and hence, the lessee is liable to pay ₹ 216.69 crore as detailed below towards the price thereof.

Year	Production (in lakh MT)	Permitted production (in lakh MT)	Excess production (in lakh MT)	Average price (Per MT)	Amount (Rupees in crore)
2004-05	2.21	1.20	1.01	507	5.15
2005-06	4.14	1.20	2.94	562	16.50
2006-07	9.03	1.20	7.83	618	48.37
Total	15.38	3.60	11.78		70.02
2007-08	10.59	3.60	6.99	907	63.40
2008-09	9.44	3.60	5.84	1317	76.90
2009-10 (August 2009)	2.02	1.50*	0.52	1219	6.37
Total	22.05	8.70	13.35		146.67
Grand total	37.43	12.30	25.13		216.69

* E.C. obtained – 150000 – Proportionately computed for five months.

However, no demands to that effect had been raised by the MO for realisation of the above Government revenue of ₹ 216.69 crore. In the absence of the details of the statutory clearances made available to us for scrutiny for the period prior to 2004-05, the Department may review the lawfulness of raising and despatch of minerals by the lessee during that period for recovery of the cost thereof, if necessary.

Further, we noticed from the information collected (August 2011) from the Regional Controller, IBM, Bhubaneswar that the mining plan in respect of the above mines was approved for the period from 1993-98 and thereafter the 1st scheme of mining was only submitted and approved in 2004 for the period from 2004-05 to 2008-09. Thus, it is evident that the above mines was in operation without any approved scheme of mining for the period from 1998-99 to 2003-04. However, a court case for violation of MCD Rules, 1988 was filed (September 2002) in the Court of the SDJM, Bhubaneswar as stated by the Regional Controller, IBM, Bhubaneswar.

After we brought the case to the notice of the DM, Odisha and the Government (June and August 2011), the Government requested the DM, Odisha to direct all concerned to act in strict conformity with the provisions of section 21 (5) of the MMDR Act, 1957 so as to ensure recovery of Government revenue relating to illegal extraction of iron ore as pointed out by us in respect of all the defaulting lessees with a copy thereof endorsed to us in October 2011, wherein the recovery as pointed out by us in the draft note / paragraph was assured to be intimated after receiving proper information from the DM, Odisha. Further reply is yet to be received (January 2012).