CHAPTER - III

CHAPTER - III

3. Transaction Audit Observations

Important audit findings arising out of test check of transactions of the State Government companies are included in this Chapter.

Government companies

Madhya Pradesh Audhyogik Kendra Vikas Nigam (Indore) Limited and Madhya Pradesh State Agro Industries Development Corporation Limited

3.1 Avoidable payment of Interest

Non-filing of annual Income Tax Return within due dates and shortfall in remittance of advance tax resulted in avoidable payment of interest of ₹ 2.25 crore (MPAKVN) and ₹ 77.90 lakh (MPAI).

As per Section 208 of the Income Tax Act, 1961 (Act), advance tax (AT) is payable during a financial year, in every case, where the amount of such tax payable by the assessee during the year is rupees ten thousand or more. Section 234B of the Act stipulates that where in any financial year, an assessee who is liable to pay AT under Section 208 failed to pay such tax or where the AT paid by such assessee is less than 90 *per cent* of the assessed tax, the assessee shall be liable to pay simple interest at the rate of one *per cent* for every month from the first day of April on the amount by which the AT paid fell short of the assessed tax.

Further, Section 234C of the Act provides that if an assessee fails to pay AT or the AT paid is less than 15 per cent, 45 per cent, 75 per cent and 100 per cent of the tax due till 15 June, 15 September, 15 December and 31 March respectively, the assessee shall be liable to pay simple interest at the rate of one per cent per month on the amount of the shortfall. In terms of the provision of section 234A, in case the return of income for any assessment year is furnished after the due date, simple interest at the rate of one per cent for every month or part of a month is chargeable on the amount of tax on the assessed income less AT paid and tax deducted/collected at source.

We observed that two Companies, Madhya Pradesh Audyogik Kendra Vikas Nigam (Indore) Limited (A) and Madhya Pradesh Agro Industries Development Corporation Limited (B), had not paid the AT within the prescribed time and had also not filed their annual income tax returns (ITR) within the due dates as discussed in the following paragraphs:-

¹ Substituted for five thousand by the Finance Act, 2009 w.e.f 1.4.2009.

(A) Scrutiny of records (February 2012) of Madhya Pradesh Audyogik Kendra Vikas Nigam (Indore) Limited (MPAKVN) indicated that MPAKVN was irregular in filing ITRs and payment of AT at the stipulated percentages on the due dates. Due to delay in finalisation of Annual Accounts for the years 2006-07 to 2010-11, MPAKVN filed the ITRs for the Assessment Years (AYs) 2007-08 and 2008-09 in 2010-11 and for AY 2009-10 in 2011-12. In respect of AYs 2010-11 and 2011-12, MPAKVN is yet to file ITRs (August 2012) but had paid AT. MPAKVN paid ₹ 2.25 crore² towards interest for AYs 2007-08 to 2011-12 which could have been avoided had MPAKVN correctly assessed and paid the quarterly installments of AT on the prescribed due dates. Further, the assessment of tax by MPAKVN was erratic as it paid excess self-assessment tax of ₹ 1.31 crore, ₹0.21 crore and ₹ 1.46 crore for the AYs 2009-10, 2010-11 and 2011-12.

The Management stated (September 2012) that delay in finalisation of the accounts and absence of accurate estimates of AT were the main reasons for delay in payment of AT. The reply is not acceptable in view of the provisions of Section 210 of the Companies Act, 1956 which states that it is the duty of MPAKVN to place the accounts in the Annual General Meeting of the shareholders within six months of the close of the financial year. Further, MPAKVN could have estimated the tax liability for the respective years on the basis of the margins available on its sales.

(B) Scrutiny of records (December 2011) of Madhya Pradesh Agro Industries Development Corporation Limited (MPAI) revealed that MPAI assessed the actual tax liability for the AY 2011-12 at ₹ 6.84 crore, but paid ₹ 5.27 crore as AT by March 2011 and ₹ 1.72 crore as self assessment tax at the time of filing of the ITR (September 2011). Therefore MPAI was required to pay interest of ₹66.59 lakh³. Further, for the AY 2010-11, MPAI failed to pay AT as per the requirement of Section 208 of the Act, which resulted in payment of ₹ 11.31 lakh⁴ towards interest.

The Management stated (March 2012) that during the AY 2011-12, the total turnover was ₹ 1017.59 erore as against the target of ₹ 780 erore and in March 2011 alone the turnover was ₹ 165 erore and hence they could not estimate the income in advance. The fact remains that there was an absence of a system for periodical monitoring of the budgeted income to take care of any significant changes during the year end so as to estimate AT payable more accurately.

The matter was reported (June 2012) to the Government and its reply is awaited (January 2013).

² Under Section 234A - ₹ 93.14 lakh, under Section 234B - ₹ 109.05 lakh and under Section 234C -₹ 22.56 lakh.

³ Under Section 234B - ₹ 40.93 lakh and under Section 234C - ₹ 25.66 lakh.

⁴ Under Section 234B - ₹ 5.34 lakh and under Section 234C - ₹ 5.97 lakh.

Madhya Pradesh Power Generating Company Limited

3.2 Avoidable expenditure on excise duty

Failure to finalise the tender on procurement of electrical equipment through international competitive bidding (ICB) has resulted in avoidable expenditure of ₹ 30.70 lakh on excise duty.

Madhya Pradesh Power Generating Company Limited (Company) is engaged in generation of electricity in the State of Madhya Pradesh. In January 2007, the Government of India (GOI) approved the setting up of Malwa Thermal Power Project⁵ of 1200 MW⁶ (two units of 600 MW each) at Khandwa District.

In terms of serial number 91 of Central Excise notification 6/2006-CE dated 1 March 2006, all goods supplied against International Competitive Bidding (ICB) are exempted from payment of excise duty. Accordingly, for availing excise duty exemption, the Company invited tenders through ICB (February 2007) and finalised the bidders for the main plant package, balance of plant package and general civil works package, namely, Bharat Heavy Electricals Limited, Larsen & Toubro Limited and Prasad & Company respectively. The Company however, invited open tender (June 2008) for supply and construction of 33/11 KV outdoor substation for permanent construction power for this project and finalised (September 2009) the same with Agrawal Agencies on lowest tender basis at a lump sum price of ₹ 4.90 crore inclusive of excise duty.

We observed that the Company could have finalised this tender through ICB and availed excise duty exemption. By not doing so, it not only lost the benefit of excise duty exemption but also failed to protect its financial interest by minimising the cost of the project. Incidentally, the Company invited (February 2012) tender through ICB for the same project for a smaller work of supply and erection of prefabricated accommodation buildings and after finalisation of the tender placed the order on M/s Vidya Cylinders Private Limited in April 2012 for a value of ₹ 1.55 crore.

Thus, failure to finalise the order on Agrawal Agencies through ICB has resulted in avoidable expenditure of ₹ 30.70 lakh on excise duty.

The Management stated (October 2012) that as ICB is a time consuming process and since permanent construction power was required urgently, ICB was not done. The reply is not acceptable since the Management should have planned the execution of the work well in advance so that it could have availed the benefit of duty exemption allowed to ICB.

The matter was reported (June 2012) to the Government and the reply is still awaited (January 2013).

-

⁵ Renamed as Shree Singhaji Thermal Power Project in August 2009.

⁶ Initially approved (January 2007) for 1000 MW (two units of 500 MW each).

3.3 Avoidable loss of interest

Abnormal delay in filing final tariff petition for newly commissioned units has resulted in postponement of realisation of revenue of \mathbb{T} 58.53 crore with resultant loss of interest of \mathbb{T} 3.14 crore.

Madhya Pradesh Power Generating Company Limited (Company) was incorporated with the objective of generation of power. In order to determine the tariff for its generating stations, the Company is required to file tariff petition with Madhya Pradesh Electricity Regulatory Commission (MPERC). Accordingly, the Company filed two provisional tariff petitions on 11 October 2006⁷ and 20 August 2009⁸ for the five units, which commenced commercial operations between 20 August 2006 and 18 August 2007. MPERC issued provisional tariff orders on 18 January 2008 and 5 January 2010 against the two provisional tariff petitions allowing 95 *per cent* of fixed charges and directed the Company to file the final tariff petition for these units based on audited accounts. The date of filing provisional tariff petition and dates of provisional tariff orders are detailed in *Annexure 15* and the project wise fixed charges approved and allowed by MPERC are given in *Annexure 16*.

We observed (January 2012) that the Company failed to file the final tariff petition for claiming the balance five per cent fixed charges amounting to ₹ 58.53 crore for the period from 2006-07 to 2010-11 in respect of these five units, though the Company had finalised its accounts up to the year 2011-12. Incidentally, it was noticed that the Company filed (December 2011) the final tariff petition in respect of Amarkantak Thermal Power Station Unit 5 within two years and three months from the date of its commissioning (commissioned in September 2009) and obtained the final tariff order in May 2012. MPERC while issuing the generation tariff order for the period 2007-08 to 2008-09 and 2009-10 to 2011-12 directed (January and March 2010⁹) the Company to file the petition for determination of final tariff of these units based on audited accounts. In its Compliance Reports to MPERC, the Company periodically intimated between June 2010 and March 2011 that the audited capital cost details of the projects were being worked out, after which the final tariff petition would be filed. However, the Company belatedly filed (July 2012) the final tariff petitions for these five units after five years of commencement of commercial operation. The tariff petitions filed by the Company were under consideration of MPERC in respect of Madhikeda Hydel Power Station unit 1, 2 and 3. The petition in respect of Bansagar unit IV and Jhinna unit I has been dismissed (October 2012) by MPERC with a direction to file fresh petition with appropriate details. As the Company had borrowed funds from Power Finance Corporation (PFC) for the projects and incurred interest thereon, it should have speeded up the finalisation of the project cost in order to claim the admissible fixed charges through MPERC.

_

Bansagar Thermal Power Station unit-IV, Madhikheda Hydel Power Station (HPS) unit-I, Madhikheda HPS unit-II, Jhinna unit-I.

⁸ Madhikheda HPS unit-III.

⁹ Madhikheda unit tariff order for the period 2007-08 to 2008-09 and Multiyear tariff for the period 2009-10 to 2011-12 issued on 5 January 2010 and 3 March 2010 respectively.

Thus delay in filing the final tariff petition resulted in postponement of the realisation of revenue of \mathbb{Z} 58.53 crore with resultant loss of interest of \mathbb{Z} 3.14 to crore.

The Management stated (September 2012) that after unbundling of Madhya Pradesh State Electricity Board (MPSEB), the successor entities were operating under cash flow mechanism wherein the entire funds were pooled and disbursed by MPSEB and loan for capital work and working capital requirements were obtained from PFC by MPSEB and repayment was done by them. Further, it stated that the entire fixed cost is recovered through retail tariff fixed by MPERC.

The reply of the Company is not acceptable as the terms and conditions for determination of tariff for distribution and retail supply of electricity is different from the one that is applicable for determination of generation tariff. Further, the repayments made by MPSEB on the loans received for the projects from PFC will have to be ultimately accounted for against the Company. The Company needs to evolve a mechanism to monitor the filing of final tariff petition on time so as to ensure timely realisation of its revenue.

The matter was reported (June 2012) to the Government and its reply is awaited (January 2013).

3.4 Non recovery of interest

The Company failed to levy interest amounting to ₹ 43.92 lakh on unadjusted interest free advance.

Madhya Pradesh Power Generating Company Limited (Company) entrusted (June 2007) the work of renovation, modernisation and overhauling of turbine generator and auxiliaries of its Amarkantak Thermal Power Station, Chachai of 2 units of 120 MW each to NTPC Alstom Power Services Private Limited (firm) at a cost of ₹ 59.80 crore 11, with the scheduled date of completion for supplies in 18 months (December 2008) and services portion in 28 months (October 2009) respectively. The work was completed in March 2012, but due to certain problems/ shortcomings observed after synchronisation of one of the units, the rectification work was planned in next annual overhauling schedule which is yet to be done (February 2013). The Company paid (June 2007) interest free advance of ₹ 6.55 crore being fifteen per cent of cost of supplies. As per clause 9.4 of condition of the contract agreement, in case contractual completion date was not achieved due to reasons attributable to the contractor, the contractor was liable to pay interest at the rate of 14 *per cent* per annum on the unadjusted advance from the contractual date of completion to the actual completion date.

We observed (February 2012) that the Company did not levy interest at the rate of 14 *per cent* on the unadjusted advances on supplies as per the provisions of the clause 9.4 of the contract despite non-completion of work by the firm within the scheduled time. The Company had borrowed funds from Power Finance

_

¹⁰ Based on average rate of interest paid on PFC loans during the period 2006-07 to 2010-11.

¹¹ Supply of materials of ₹ 43.67 crore and services of ₹ 16.13 crore.

Corporation for execution of this project on which they are paying interest at the rate of nine *per cent*.

Thus failure of the Company to levy interest as per the contractual provisions beyond the scheduled date of completion resulted in non recovery of ₹ 43.92 lakh on the unadjusted advance.

The Management stated (August 2012) that after completion of the repairs and maintenance work, interest on unadjusted interest free advance would be recovered from the firm after ascertaining the delay attributable to the firm. The reply is not acceptable since the Company has already levied ₹ 36.33 lakh (till August 2012) towards liquidated damages for delay in completion of work which was attributable to the contractor. Further, though the contractor had completed the work in March 2012, the final bills have not been submitted so far (February 2013). Accordingly, the interest on the unadjusted advance should have been recovered from the scheduled completion date.

The matter was reported (July 2012) to the Government and their reply is awaited (January 2013).

Madhya Pradesh Madhya Kshetra Vidyut Vitaran Company Limited

3.5 Avoidable liability of Service Tax

Non-collection of service tax on supervision charges for the period 2007-08 to 2011-12 resulted in avoidable liability of \mathbb{T} 1.04 crore and consequential interest and penalty thereon.

Madhya Pradesh Madhya Kshetra Vidyut Vitaran Company Limited (Company) carries out the business of distribution of power to consumers. As per the Madhya Pradesh Electricity Supply Code, 2004, the consumer can also draw service lines from the Companys distribution mains up to his premises for which he shall be required to pay supervision charges as approved by the Madhya Pradesh Electricity Regulatory Commission (MPERC) on the estimates approved by the Company.

According to Central Board of Excise and Customs notification dated 2 July 1997 (No.23/97) effective from 7 July 1997, every consulting engineering service provider is liable to collect and remit service tax on supervision charges. Thus the Company was liable to pay service tax on the supervision charges collected by it.

We noticed that the Department of Central Excise, Customs and Service Tax (Department) served (May 2004) a show cause notice to Madhya Pradesh State Electricity Board (MPSEB) to pay an amount of ₹ 0.19 lakh towards service tax, along with interest and penalty. We called for the details of service tax, if any, collected by the Company on supervision charges and remittance thereof for the period from July 1997 to January 2005. However, this information was not made available to audit.

We further observed that the Company, after learning about the notice served by the Department on MPSEB, instructed (January 2005) its field offices to collect service tax on supervision charges and remit the same to the service tax authorities as per rules. Accordingly, service tax was collected and remitted up to May 2007. Subsequently, in May 2007, on the basis of a legal opinion obtained by MPSEB, the Company discontinued the collection and remittance of supervision charges. MPSEB, however, advised (May 2007) the Company that if service tax was to be paid, it could be paid under protest.

The service tax authorities again confirmed (July 2011) the demand issued by the Department in 2004. Aggrieved by the impugned order, MPSEB filed an appeal with the Commissioner (Appeals) Customs, Central Excise & Service Tax, Bhopal (MP). The Commissioner (Appeals) also confirmed (November 2011) the demand of service tax on supervision charges. Accordingly, with effect from April 2012 onwards, the Company started collecting and depositing service tax on supervision charges.

Our scrutiny (May 2012) in 28 divisions of the Company indicated that while invoicing supervision charges, the Company did not collect service tax of ₹1.04 crore during the period 2007-08 to 2011-12. We further observed that based on the show cause notice (May 2004) of the Department, the Company collected service tax from January 2005 to May 2007 and thereafter discontinued collection of the same. It could have continued to collect service tax from the consumers and remitted the same under protest, as advised by MPSEB, and thereby protected its financial interest. Thus, the decision (May 2007) of the Company not to collect service tax from consumers was injudicious and resulted in avoidable burden on service tax of ₹ 1.04 crore besides interest thereupon and penalty of ₹ 1000, which the Company will have to meet from its earnings.

The Management stated (August 2012) that as per the legal opinion service tax was not collected. However, the Company started collecting tax after the Order-in-Appeal was passed by Commissioner (Appeals) Customs, Central Excise and Service Tax in November 2011. It was further stated that though the Company did not collect tax for the past period it cannot be said that they acted in an injudicious manner. The fact remains that the Company failed to protect its interest by not collecting service tax from the consumers and depositing the same under protest, pending decision of the Commissioner (Appeals) Customs, Central Excise and Service Tax. Further, it is pertinent to mention that two other power distribution companies viz. Madhya Pradesh Poorv Kshetra Vidyut Vitaran Company Limited and Madhya Pradesh Paschim Kshetra Vidyut Vitaran Company Limited were regular in collection and payment of service tax during the period 2007-08 to 2011-12.

The matter was reported (June 2012) to the Government and its reply is awaited (January 2013).

٠

¹² 13 per cent up to March 2011 and 18 per cent from April 2011.

3.6 Avoidable loss of revenue

The Company had written off loss on account of bad debts of an amount lower than the admissible limit of one *per cent* of its yearly revenue as laid down by Madhya Pradesh Electricity Regulatory Commission Regulations, 2009 which resulted in avoidable loss of revenue of ₹ 6.99 crore.

Madhya Pradesh Madhya Kshetra Vidyut Vitaran Company Limited (Company) carries out the business of distribution of power to consumers at the tariff stipulated by Madhya Pradesh Electricity Regulatory Commission (MPERC) from time to time. According to clause 33 of the MPERC (Terms and Conditions for Determination of Tariff) Regulations 2009, the amount of bad and doubtful debts written off in the books of accounts of the Company, subject to a maximum limit of one *per cent* of the yearly revenue, would be allowed as expense for computation of tariff.

We observed (August 2012) that in 2010-11 the Company had written off an amount of ₹ 26.13 crore towards bad and doubtful debts as against the admissible amount of ₹ 33.12 crore being one *per cent* of its total revenue of ₹ 3311.55 crore. As the Company did not write off the debts to the extent of one per cent of revenue to avail the available benefit, the additional revenue of ₹ 6.99 crore which could have been realised was foregone. We further noticed that the Company had made provisions for bad and doubtful debts of ₹ 1043.45 crore as on 31 March 2011. Incidentally, we noticed that during 2009-10, the Company had written off ₹ 41.41 crore towards bad and doubtful debts as against ₹ 28.86 crore being one per cent of yearly revenue allowable by MPERC and the excess loss written off amounting to ₹ 12.55 crore was absorbed from its earnings as it was beyond one per cent of its yearly revenue. It would be prudent for the Company to safeguard its financial interest to fully avail the benefit of claiming the bad debts no longer recoverable to the extent allowable by MPERC by limiting the write off of the debts that are due for write off. By not doing so, the Company had lost the opportunity to generate additional revenue of ₹ 6.99 crore through its tariff.

The Management stated (September 2012) that it had introduced the Samadhan Yojna Scheme in 2010-11 for the Below P overty Line consumers under which an amount of ₹ 26.13 crore was written off in the financial year 2010-11. It was further stated that in any financial year amount receivables against supply of power includes subsidy due from State Government and Government Department or agencies, which are not considered for the purpose of write-off. As far as dues from High Tension consumers whose power connections are permanently disconnected are concerned, the provisions for doubtful debts are made and amount is written off as bad debts only after exhausting all avenues available to the Company and following proper procedures for write off. The reply is not acceptable since during the years 2009-10 and 2011-12, the Company had written off ₹ 41.41 crore and ₹ 49.01 crore which was more than one per cent of its revenue. Further, the reply appears to be an afterthought as the Company has not maintained details of age wise debtors to identify specific debts to be written off. This aspect has been repeatedly pointed out by the Statutory Auditors in their Reports on the accounts of the Company.

The matter was reported (August 2012) to the Government and their reply is awaited (January 2013).

Madhya Pradesh State Mining Corporation Limited

3.7 Loss of revenue

Failure to effect price revision in line with the prices of RSMML has resulted in loss of revenue of ₹ 77.68 lakh.

Madhya Pradesh State Mining Corporation Limited (Company) excavates rock phosphate from its mines at Hirapur and Meghnagar which is sold through its sub offices at Sagar and Meghnagar. The selling price of rock phosphate was fixed by the Company with reference to the rock phosphate rates fixed by Rajasthan State Mines and Minerals Limited (RSMML).

We observed (October 2011) that while the Company effected ten *per cent* increase in selling price of rock phosphate from 1 April 2009 as done by RSMML, it failed to revise its price in line with the price fixed by RSMML on 20 July 2009 till 16 July 2010. The Company revised its price only from 17 July 2010 after another revision was made by RSMML on 1 July 2010. Failure to effect price revision in line with the prices of RSMML from 20 July 2009 till 16 July 2010 resulted in loss of revenue of ₹ 77.68 lakh. The Managing Director of the Company also directed (July 2010) to fix the responsibility of the concerned official, for the delay in timely revision of prices in line with increase in the price of RSMML.

The Management stated (October 2012) that it was not obligatory on its part to increase the rates in line with that of RSMML and further stated that after calling for explanation of the concerned official, he was directed to be vigilant and careful in future. The fact remains that the concerned official was warned by the Company, which proves that there was failure in effecting revision on par with the price of RSSML. Further the Company has consistently determined the selling price of rock phosphate by adopting the price of RSMML as a reference point.

Thus the delay by the Company to revise the price of rock phosphate in accordance with the prices fixed by RSMML had resulted in loss of revenue of ₹77.68 lakh to the Company.

The matter was reported (July 2012) to the Government and its reply is awaited (January 2013).

GENERAL

3.8 Follow-up action on Audit Reports

Explanatory notes outstanding

3.8.1 Report of the Comptroller and Auditor General of India represent the culmination of the process of scrutiny starting with initial inspection of accounts and records maintained in the various offices of Public Sector Undertakings and Departments of Government. It is, therefore, necessary that they elicit appropriate and timely response from the Executive. Chief Secretary, Government of Madhya Pradesh had issued instructions (November 1994) to all Administrative Departments to submit explanatory notes indicating corrective/remedial action taken or proposed to be taken on the paragraphs and reviews included in the Audit Reports within three months of their presentation to the Legislature, without waiting for any notice or call from the Committee on Public Undertaking (COPU). The Audit Report for the year 2010-11 was presented to the State Legislature on 12 December 2012.

Compliance with the Reports of Committee on Public Undertakings

3.8.2 The replies to recommendations of the COPU, as contained in its Reports, are required to be furnished in the form of Action Taken Notes (ATNs) within six months from the date of presentation of the Report by the COPU to the State Legislature. On the basis of recommendations of the COPU, four Action Taken Notes (ATNs) were received during 2011-12.

Response to Inspection Reports, Draft Paragraphs and Performance Audits

3.8.3 Audit observations noticed during audit and not settled on the spot are communicated to the heads of the PSUs and the administrative departments concerned of the State Government through Inspection Reports (IRs). The heads of PSUs are required to furnish replies to the inspection reports through the respective heads of administrative departments within a period of four weeks.

Inspection reports issued up to March 2012 pertaining to 30 PSUs showed that 1438 paragraphs relating to 488 IRs remained outstanding at the end of September 2012 which had not been replied for one to six years. Department-wise breakup of IRs and audit observations outstanding as on 30 September 2012 is given in *Annexure-17*.

Similarly, Draft Paragraphs and Performance Audits on the working of PSUs are forwarded to the Principal Secretary/Secretary of the administrative department concerned demi-officially seeking confirmation of facts and figures and their comments thereon within a period of four weeks. Two Performance Audits and seven Draft Paragraphs were forwarded to various departments between June 2012 to August 2012 but no reply to any of the Draft paragraphs and one Performance Audit have been received (January 2013) as detailed in *Annexure-18*.

We recommend that the Government should ensure that (a) procedure exists for action against the officials who fail to send replies to Inspection Reports/ Draft Paragraphs/ Performance Audits as per the prescribed time schedule; (b) action is taken to recover loss/outstanding advances/overpayments in a time bound schedule; and (c) the system of responding to audit observations is revamped.

Bhopal The (D. K. Sekar)
Accountant General
(Economic and Revenue Sector Audit)
Madhya Pradesh

Countersigned

New Delhi The (Vinod Rai) Comptroller and Auditor General of India