

CHAPTER-VII : MINING RECEIPTS

EXECUTIVE SUMMARY

Steady increase in tax collection	<p>In 2011-12 the collection from mining receipts increased by 20.16 <i>per cent</i> as compared to the Budget Estimate and 37.32 <i>per cent</i> over the previous year 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>
Low recovery by the Department against the observations pointed out by audit in earlier years	<p>During the period 2006-11 audit pointed out non / short-levy, non / short-realisation of royalty, dead rent, surface rent etc., with revenue implication of ₹ 1,685.72 crore in 1,297 cases. Of these, the Department accepted audit observations in 759 cases involving ₹ 918.08 crore; but recovered only ₹ 9.72 crore in 164 cases. The average recovery position, being 1.06 <i>per cent</i>, as compared to acceptance of objections was very low and it ranged between 0.01 <i>per cent</i> and 28.34 <i>per cent</i>.</p>
Results of audit in 2010-11	<p>In 2011-12, Records of 19 units relating to mining receipts were test checked and found non / short-demand of royalty, dead rent / surface rent, non / short-recovery of interest and irregularities of miscellaneous nature involving ₹ 1,299.33 crore in 306 cases.</p> <p>The Department accepted underassessment and other deficiencies involving mining receipts of ₹ 1,114.24 crore in 159 cases, pointed out by audit during the year 2011-12. An amount of ₹ 2.57 crore was recovered in 62 cases during the year 2011-12 which included ₹ 0.71 lakh in a single case for the year 2011-12 and the remaining pertained to the earlier years.</p>
Highlights	<p>In this Chapter, illustrative cases of ₹ 215.83 crore selected from the audit observations noticed during the 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) are presented, where audit observed that the provisions of the Acts / Rules were not adequately adhered to.</p>

It is a matter of concern that similar omissions have been pointed out by audit repeatedly in the Audit Reports for the past several years, but the Department has not taken adequate corrective action. It is also matter of concern that though these omissions were apparent from the records, which were made available to audit, the MOs / DDMs were unable to detect these mistakes.

Conclusions

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

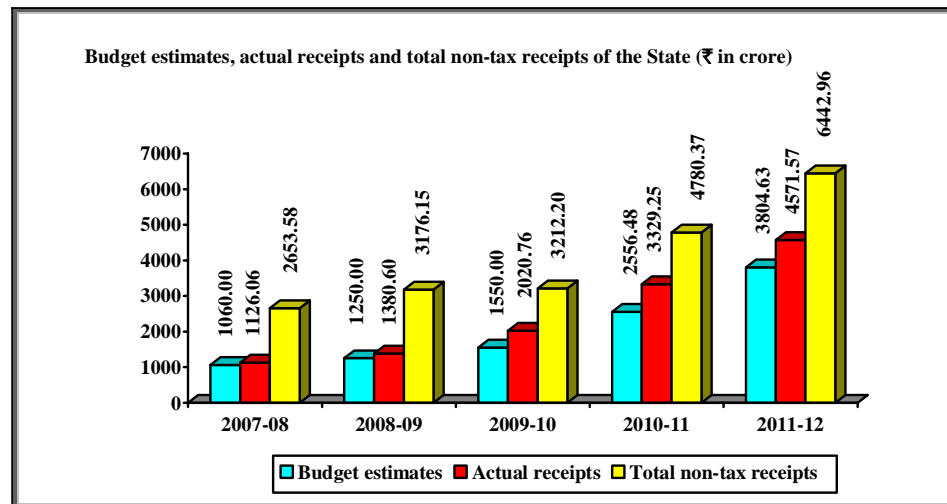
7.1.1 Non-tax revenue administration

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 and Orissa Minerals, Prevention of Theft, Smuggling and Illegal Mining and Regulation of Possession, Storage, Trading and Transportation (OM, PTS and IMRPSTT) Rules 2007 framed thereunder. The above Act / Rules are administered by the Director of Mines (DM), Orissa under the overall supervision of the Principal Secretary to the Government in the Department of Steel and Mines. He is assisted by the headquarters staff and the Deputy Directors of Mines (DDMs) and Mining Officers (MOs) at the Circle levels who are the AAs of mining receipts like royalty, fees and fines etc. on raising and removal of minerals.

7.1.2 Trend of receipts

Actual receipts from mining during the years 2007-08 to 2010-11 along with the total non-tax receipts during the same period are exhibited in the following table and graph.

(₹ 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
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
2011-12	3,804.63	4,571.57	766.94	20.16	6,442.96	70.95



The receipts from mining have been steadily increasing over the years and accounted for a major source (70.95 *per cent*) of the total non-tax revenue of the State in 2011-12. The Department attributed the increase to enhancement of the rate of royalty of iron ore, chromite etc. by the Indian Bureau of Mines (IBM). However, it was noticed by audit that the increase was 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 Analysis of arrears of revenue

Arrears of mining receipts was ₹ 1,844.92 crore as on 31 March 2012, which included ₹ 9.31 crore outstanding for more than five years. Of this, ₹ 1,334.68 crore was under dispute, ₹ 1.46 crore under certificate proceedings, ₹ 1.62 crore locked up in litigation in the High Court/ other judicial fora, ₹ 2.34 crore under write off proposals and the remaining ₹ 504.82 crore only was recoverable.

Department may take special efforts to resolve the cases under dispute at different stages and recover the arrears accordingly.

7.1.4 Impact of Audit

Revenue impact

During the last five years 2006-07 to 2010-11 we pointed out non / short-levy, non / short-realisation of royalty, dead rent, surface rent, interest etc., with revenue implication of ₹ 1,685.72 crore in 1,297 cases. Of these, the Department accepted audit observations in 759 cases involving ₹ 918.08 crore and recovered ₹ 9.72 crore in 164 cases. The details are shown in the following table.

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	
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	114	7.52	58	1.06	14.10
2009-10	20	356	269.95	346	37.42	42	2.88	7.70
2010-11	15	226	932.32	166	849.73	3	0.06	0.01
Total	80	1,297	1,685.72	759	918.08	164	9.72	1.06

The Department recovered only 1.06 per cent of the amount accepted by it.

The Department should revamp its revenue recovery mechanism to ensure that they can recover at least the amounts, involved in the accepted cases immediately.

7.1.5 Results of Audit

During the year 2011-12, we test checked the records of 19 units dealing with mining receipts and found non / short-demand of royalty / dead rent / surface rent, non / short-recovery of interest and other irregularities involving ₹ 1,299.33 crore in 306 cases.

During the year, the Department accepted underassessment and other deficiencies of ₹ 1,114.24 crore in 159 cases pointed out in 2011-12. An amount of ₹ 2.57 crore was recovered in 62 cases during the year 2011-12 which included ₹ 0.71 lakh in a single case for the year 2011-12 and the remaining cases related to the earlier years.

7.2 Audit observations

We scrutinised the records maintained in the office of the Director of Mines (DM), Deputy Directors Mines (DDMs) and Mining Officers (MOs) where we noticed cases of non/short-levy of royalty, unlawful raising of minerals, shortage of minerals and loss of revenue 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 an effective internal control mechanism to be in place to prevent recurrence of such omissions.

7.3 Non-observance of the provision of Acts/Rules

The MMDR Act, 1957, MC Rules, 1960, MCD Rules, 1988 and OM, PTS and IMRPSTT Rules 2007, 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 leaseholders of mines;*
- *the cost of minerals unlawfully raised over and above the production level of 1993-94 as well as in excess of the permissible limit when it is already disposed of;*
- *the cost of minerals illegally extracted and transported by seizure and disposal of same;*
- *interest for delayed payment of mining dues; and*
- *penalty prescribed for offences committed.*

Non-observance of some of the above provisions as mentioned in the succeeding paragraphs resulted in underassessment, short/ non-demand and realisation of ₹ 215.83 crore.

7.3.1 Extraction of minerals without Environment Clearance

7.3.1.1 Extraction of coal in excess of the approved limit without prior Environment Clearance (EC)

Under Section 21(5) of the Mines and Mineral Development and Regulation (MMDR) Act, 1957, no person shall undertake any mining operation in any area except 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. 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, prior Environment Clearance (EC) from the Central Government is to be obtained by the lease holder. As per paragraph III (C) of GoI, MoEF notification dated 28 October 2004, if the annual production of any year from 1994-95 onwards exceeds the annual production levels of 1993-94 and earlier years it would also constitute an expansion and hence EC was necessary for such expansion and production of minerals.

During test check of the lease deeds and records relating to the production and the despatch of coal, monthly returns in the office of the Mining Officer (MO), Sambalpur, we noticed (November 2011) that a lessee¹ was engaged in extraction of coal over 828.764 ha of land. As per the approved mining plan dated 5 August 1992 and EC dated 24 January 1992, the approved production was 30 lakh tonne per annum. The Company extracted 103.01 lakh MT of coal during 2004-05 and 2005-06 as against the approved extraction of 60 MT. Thus, there was excess extraction of 43.01 lakh MT of coal.

We further noticed that the lessee obtained (July 2006) EC for extraction of 50 lakh tonne per annum during 2006-07 to 2010-11; but extracted 497.98 lakh MT of coal against approved extraction of 250 lakh MT. Hence, there was excess extraction of 247.98 lakh MT of coal .

After we pointed this out, the Director of Mines, Odisha intimated that demand notice of ₹ 1,295.85 crore was issued to the Project Officer, Samaleswar OCP by DDM, Sambalpur on 6 September 2012. Further reply is awaited (January 2013).

We also reported the matter to the Government in July 2012. The reply is yet to be received (January 2013).

¹ Samaleswari Open Cast Project (SOCP) presently under M/s. Mahanadi Coalfields Limited (MCL).

7.3.1.2 Unlawful extraction of iron/manganese ore

During a test check of the records in office of the Deputy Director of Mines (DDM), Joda Mining Circle, we noticed (August 2010) that two² lessees exceeded their production levels of 1993-94 and continued mining operations without obtaining ECs from the GoI MoEF. They extracted 17.73 lakh MT of iron ore and 0.07 lakh MT of manganese ore valued at ₹ 145 crore during the years 2004-05 to 2009-10 which was unlawful and hence the cost of minerals was to be recovered. Though the mining operations for one lessee was suspended since 06 February 2010 and the other since October 2009, no action was taken by the DDM, Joda to realise the cost price of the minerals unlawfully raised.

After we pointed out the above cases, the Director of Mines (DM), Odisha stated (December 2011) that the EC was not necessary in cases other than renewal of mining lease. The reply is not acceptable as the excess production over and above the production levels of 1993-94 is treated as expansion in view of the clarification of GoI, MoEF in their notification of October 2004 and EC from GoI MoEF was necessary for such expansion.

We reported the matter to the Government in August 2012. The reply is awaited (January 2013).

7.3.2 Non-levy of cost price and penalty

Under Section 21(4) of the MMDR Act, 1957 read with Rule 12 of the OM, PTS and IMRPSTT Rules 2007, whenever any person raises, transports or causes to be raised or transported without any lawful authority any mineral from any land, such mineral shall be liable to be seized by the authority specially empowered and disposed off after due investigation and prosecution of the case in the Court of Law. The cost of minerals raised may also be recovered from that person. The GoI, MoEF in their notifications of January 1994 and October 2004 clarified that if the annual production of any lessee from 1994-95 onwards exceeds the production level of 1993-94, it would constitute an expansion and directed that even for existing mining projects, in case of increase in production, the prior Environment Clearance (EC) from the GoI, MoEF is to be obtained by the lease holder.

(a) During check of lease file, inspection notes and monthly returns of two mines³ under the jurisdiction of the Mining Officer, Baripada in September 2011, we noticed that Mining Officer, Baripada in course of physical verifications of the closing stock of mineral conducted on 17 June 2009 and 23 March 2011 for Maharajpur Iron Ore Mines and Bhitarmunda Iron Ore

² i) Joruri Iron and Manganese Mines of M/s Tarini Mineral (P) Ltd over 66.368 hectares of land and

ii) BPJ Iron Ore Mines of M/s Orissa Mining Corporation Ltd. over 861.521 hectare of land were granted lease valid from 06 February 1990 to 05 February 2010 and from 27 February 1970 to 26 February 2000 respectively.

³ Bhitarmunda Iron Ore Mines of M/s B.C. Dagra and Maharajpur Iron Ore Mines of M/s D.C. Das.

Mines respectively through his Inspectors of Mines detected a shortage of 3,544.913 MT of iron ore (Maharajpur 1.26 MT and Bhitarmunda 3,543.653 MT) with reference to book balance of the mines concerned. The value of the ore found short-calculated at IBM the rate is ₹ 15.79 crore and it was required to be recovered from the lessees of the mines who despatched the minerals unlawfully without any transit pass of the Department.

We noticed that, though show cause notices were issued to both the lessees during September 2009 to August 2011 to realise the cost price of the mineral found short; no follow up action was taken by the Department either to realise the cost price and or to institute prosecution cases against them.

(b) We further noticed that the above lessees extracted 4.88 lakh MT⁴ in excess of the production levels of 1993-94 and earlier years during 2004-05 to 2008-09 without obtaining Environment Clearance in contravention of GoI (MoEF) notifications of October 2004. Though both the lessees continued with excess productions each year during the above period unlawfully, the Department did not take any action for realisation of the cost price of mineral valued at ₹ 46.24 crore (at IBM rate).

After we pointed this out, the Government stated (October 2012), that the MO, Baripada had raised demand of ₹ 40 lakh against M/s B.C. Dagara and ₹ 15.40 crore against M/s D.C Das in December 2011 and added raising of further demand of ₹ 46.24 crore against the above lessees would not be appropriate since one⁵ of them had approached the High Court of the State. The contention of the Government is not acceptable since no stay order of the High Court could be furnished to us for non-raising of further demand.

7.3.3 Underassessment of royalty on steam coal

The GoI, 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 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 which attracts a higher rate of royalty than ROM coal.

During test check of the monthly returns, wagon loading statements and assessment orders of a lessee⁶ in the office of the DDM, Talcher, we noticed (August 2011) that the lessee despatched 45.35 lakh MT of 'F' grade coal of size in excess of 100 mm, between April 2010 and March 2011, from its Lingaraj Open Colliery Project (LOCP) in addition to despatch of 'F' grade coal below 100 mm size

of the above coal. As the coal despatched was of two sizes, more than 100 mm and less than 100 mm, the fraction that was above 100 mm size was to be

⁴ (1) Maharajpur Iron Ore Mines – Production 2004-09 – 4.46 lakh MT, Excess production with reference to 1993-94 production – 4.46 lakh MT.

(2) Bhitarmunda Iron Ore Mines - Production 2004-08 – 0.47 lakh MT, Excess production with reference to 1993-94 production level – 0.42 lakh MT.

⁵ M/s. D.C. Das

⁶ M/s Mahanadi Coal Limited (MCL).

categorised as steam coal as per the notification⁷, since this size is obviously segregated through a screening process. Thus, the lessee was liable to pay royalty of ₹ 40.11 crore at the rate applicable to steam coal as per the royalty charts of CIL issued from time to time. However, we noticed that while assessing the lessee, the Assessing Authority (AA) had not taken this into account and ₹ 36.03 crore only was paid by MCL towards royalty at the rates applicable to ROM coal. This resulted in underassessment and resultant short-levy of royalty of ₹ 4.08 crore.

After we pointed out the case, the DDM, Talcher stated (August 2011) that action will be taken after verification of records.

We reported the matter to the DM, Odisha in February 2012 and the Government (April 2012). The reply is yet to be received (January 2013).

7.3.4 Loss of revenue due to non-seizure of mineral procured without lawful authority

Under Rule 3 of OM, PTS & IMRPSTT Rules, 2007, no person can carry on the business of buying, possessing, storing, selling, supplying, transporting or delivering for sale or processing of minerals at any place or other-wise deal with any mineral except under and in accordance with the terms and condition of a trading license issued under the Rules. Rule 12 of the above Rules further provides that the Competent Authority (CA) or any officer specially authorised in this behalf by the Government shall seize under Section 21(4) of MMDR Act, 1957, any mineral raised, transported or caused to be raised or transported, stored without any lawful authority along with vehicle, equipment used for the said purpose and dispose of the mineral seized.

From a test check of the records of the MO, Bhawanipatna we noticed (February 2011) that a license issued on 15 February 2008 to M/s Vedanta Aluminum Ltd. (VAL) under the Rule 3 of OM, PTS and MRPSTT Rules, 2007 for two years expired on 14 February 2010 and the subsequent licence issued on 24 February 2010 was effective from that date up to 23 February 2012. However, M/s VAL procured 70.04 thousand MT of Bauxite during 15 February 2010 to 23 February 2010 without any valid license for that period. The MO, being the Competent Authority, did not seize the above minerals costing ₹ 1.83 crore⁸ unlawfully procured for disposal and

realisation of revenue.

After we pointed the case out, the MO, Bhawanipatna raised a demand of ₹ 2.70 crore against M/s VAL for such unlawful procurement and transportation of bauxite. However, the Government stated (20 July 2012) that the Competent Authority fixed ₹ 35,000 only towards penalty in his order dated 22 February 2012 as per the direction of the Appellate Authority dated 18 February 2012. Hence Section 21(4) of MMDR, 1957 might not be

⁷ Ministry of Energy (Department of Coal) Notification No.28012/8/79-CA dated 16.7.1979.

⁸ Calculated by us at the rate approved by IBM for the month of February 2010.

applicable and implementation of Rule 3 of OM, PTS and IMRPSTT Rules, 2007 is proper for imposition of penalty under Rule 18 *ibid*.

The reply is not acceptable since cost of minerals illegally transported should have been seized under Rule 12 of OM, PTS and IMRPSTT Rules, 2007.

7.3.5 Non-levy of interest on delayed payment of mining dues

Under Rule 64A of the Mineral Concession (MC) Rules, 1960, for belated payment of rent/royalty, simple interest at the rate of 24 *per cent* on the unpaid amount is chargeable from the sixtieth day of the expiry of the due date of payment of such rent/royalty.

During check of the records like assessment files, monthly returns of royalty/ dead rent/ surface rent and treasury challans of seven mining Circles⁹ we noticed (between September 2010 and November 2011) that mining dues like royalty/dead rent/surface rent etc. of ₹ 27.09 crore¹⁰, payable by 34 licensees during the period from 15 January 2005 to 15 January 2011, were paid belatedly between May 2009 and August 2011. The interest liability of ₹ 1.51 crore¹¹ on such delays, ranging from 13 days to 2,191 days, was not levied and realised from the concerned lessees.

After we pointed out these cases, all the DDMs/MOs agreed to raise the demands.

We reported the matter to the Director of Mines, Odisha in March 2012 and to the Government in July 2012. Government stated (October 2012) that ₹.2.20 lakh only was realised.

⁹ Baripada, Joda, Koira, Koraput, Phulbani, Sambalpur and Talcher.

¹⁰ Royalty of ₹ 26.86 crore and DR/SR of ₹ 0.23 crore.

¹¹ Interest on royalty of ₹. 1.46 crore and interest on DR/SR of ₹ 0.05 crore

7.3.6 Short-levy of royalty on 'F' grade coal

Under Section 9 of the MMDR Act, 1957, the holder of a mining lease shall pay royalty in respect of any mineral removed or consumed by him or his agent, manager, employee, contractor or sub-lessee from leased area at the rate specified in the second Schedule to the Act. The GOI, Ministry of Coal in their notification dated 1 August 2007 amended the rate of royalty, which shall be a combination of a specific amount and a certain percentage of ad-valorem rate of the basic pit head price of coal excluding taxes, levies and other charges. The price of 'F' grade Run-of-Mine (ROM) coal has been fixed at ₹ 480 per tonne by the Coal India Limited (CIL) on 15 October 2009 and it was increased to ₹ 570 per tonne on 27 February 2011. Accordingly, the rate of royalty on ROM coal was revised by CIL from ₹ 77 to ₹ 79 per MT with effect from 16 October 2009 and from ₹ 79 to ₹ 83.50 per MT from 27 February 2011 onwards.

From a test check of the assessment files, monthly returns and daily collection registers of a lessee, Samaleswari Open Cast Project (SOCP) under MCL, we noticed (December 2010) that royalty on despatch of 33.80 lakh MT of 'F' grade ROM Coal during 16 October 2009 to 31 March 2010 was levied at the rate of ₹ 77 per MT instead of ₹ 79 per MT which resulted in short-levy/realisation of royalty of ₹ 67.60 lakh.

Similarly from a test check of the records in respect of two other lessees¹² of the same office, we noticed (October/November 2011) that royalty on despatch of 6.78 lakh MT of

'F' grade ROM Coal during 16 October 2009 to 31 July 2010 was levied at the rate of ₹ 77 per MT instead of ₹ 79 per MT and royalty on despatch of 3.59 lakh MT 'F' grade ROM coal during 27 February 2011 to 31 March 2011 was levied at ₹ 79 per MT instead of ₹ 83.50 per MT. This resulted in short-realisation of royalty of ₹ 29.74 lakh from the two lessees.

Thus, total short-levy /realisation of royalty in respect of three lessess stood at ₹ 97.34 lakh. In correct application of the rates of royalty indicated the lack of internal control.

After we pointed out the above cases, the Government stated (October 2012) that demand notices were issued (November 2011 and September 2012) to the three lessees for realisation of the amounts and one¹³ of the lessees denied the liability, whose case is subjudice in Hon'ble High Court of Orissa. However, recovery of royalty in all the three cases is pending (January 2013).

¹² Lajkura OCP of M/s MCL, Talbira –I Coal Mine of M/s Hindalco Industries Ltd.

¹³ M/s Hindalco Ind. Ltd.

7.3.7 Non-realisation of cost price of minerals raised without valid licence

Under Rule 24A of the Mineral Concession Rules, 1960, an application for renewal of a mining lease should be made by the lessee to the State Government at least 12 months before the expiry of lease. If the renewal of the mining lease is not disposed off by the Government before the date on which the lease would have expired, the period of that lease shall be deemed to have been extended till the State Government passes an order thereon. However, the State Government may condone the delay in an application for renewal, not made within the above stated time limit, if the application has been made before the expiry date of the lease.

During test check of the records of the MO, Baripada, we noticed (September 2010) that the original lease granted to M/s Kuldiha Quartzite Mines for 20 years with effect from 26 June 1983 expired on 25 June 2003, since the lessee did not apply for the Renewal of Mining Lease (RML) within the prescribed period i.e. at least 12 months before the expiry of the lease. Moreover, the RML application belatedly filed on 17 June 2003 i.e. nine days before the expiry date of lease was not condoned by the State Government. Though the mine was not covered under any lease to

mine beyond 25 June 2003 under the deemed provision, the above lessees extracted 11.99 thousand MT of Quartzite (mineral) between 26 June 2003 and 31 August 2009. The Mining Officer, being the Competent Authority, despite declaring the above mines as non-working, did not seize the minerals produced/despached unlawfully during the above mentioned period or realise the cost thereof amounting to ₹ 40.75 lakh¹⁴.

After we pointed out the case, the Government stated (August 2012) that for realisation of cost price ₹ 40.75 lakh, the Tahasildar, Bahalda and Rairangpur were requested on 30 May 2012 for submission of property list of Sri D.C. Das for filing of certificate proceedings against him. Further reply is awaited (January 2013).

¹⁴ Calculated by us at the available statistics on the average sale price of ₹ 321/MT prescribed by the Indian Bureau of Mines (IBM) for September 2009 in the absence of rates for earlier periods.