

# CHAPTER - VII

## Mines and Minerals

<b>EXECUTIVE SUMMARY</b>	
<b>Tax administration</b>	Assessment and collection of mining receipts are governed by the Mines and Minerals (Development and Regulation) [MMDR] Act, 1957, the West Bengal Minor Minerals (WBMM) Rules, 2002, the Public Demands Recovery (PDR) Act, 1913, the Cess Act, 1880, the West Bengal Primary Education Act, 1973 and the West Bengal Rural Employment and Production Act, 1976.
<b>Very low recovery by the Department against observations pointed out by Audit</b>	During 2007-08 to 2011-12, Audit pointed out non/short levy, non/short realisation, underassessment/loss of revenue etc., with revenue implication of ₹ 557.74 crore in 19 paragraphs. Of these, the department/Government had accepted audit observations in 14 paragraphs involving ₹ 139.21 crore and had since recovered ₹ 61 lakh which was only 0.44 <i>per cent.</i>
<b>Results of audit conducted in 2011-12</b>	In 2011-12, test check of the records of 11 units relating to mining receipts indicated underassessment of tax and other irregularities involving ₹ 378.88 crore in 139 cases. The department accepted underassessment and other deficiencies in 114 cases of ₹ 11.97 crore, of which 102 cases involving ₹ 11.78 crore were pointed out during the year 2011-12 and the rest in earlier years. An amount of ₹ 8.06 lakh was realised in 12 cases at the instance of audit during the year.
<b>What has been highlighted in this Chapter</b>	In this Chapter a Performance Audit on “Receipts from Major Minerals” with financial effect of ₹ 363.95 crore has been presented. The following points have been highlighted in the Performance Audit: <ul style="list-style-type: none"> <li>• Involvement of four departments in assessment and collection of receipts from major minerals and operation of two major heads of accounts led to mismanagement, delay and resultant evasion of receipts.</li> <li>• Incorrect gradation of coal resulted in short assessment of Rural Employment and Primary Education cess of ₹ 50.15 crore.</li> <li>• Absence of timely disposal of appeal cases have rendered 13 cases with money value of ₹ 2,201.16 crore still under litigation.</li> <li>• Failure to initiate certificate proceeding by the Cess Deputy Collector, Asansol even after a delay of 18 to 139 months of its assessment resulted in non-realisation of revenue of ₹ 31.36 crore.</li> </ul>

- Non-revision of royalty has deprived the State of substantial revenue.
- Due to short payment of Rural Employment and Primary Education cess, Eastern Coalfields Ltd is required to pay ₹ 31.20 crore.
- Surface rent and cess thereto of ₹ 1.18 crore remained unrealised.
- Absence of checkpost, weighbridge, transit pass, inspection and internal audit led to ineffective internal control.

Besides these, some illustrative cases of ₹ 1.41 crore noticed during the test check of records in Compliance Audit have also been included.

### **Conclusion**

**The Performance Audit indicated a number of system deficiencies like complex system of assessment and collection, absence of provisions in the Acts and rules for early disposal of PL applications, absence of provision for timely assessment of RE and PE cess, and compliances deficiencies like blockage of revenue due to non-assessment or delay in assessment, non/short levy and realisation of royalty, surface rent, dead rent, different kinds of cess and interest and defunct internal control.**

#### **Government may:**

- **take steps for early implementation of the recommendation of the Public Accounts Committee made in 2004 for bringing the entire matter of mines and minerals under one umbrella.**
- **prescribe a time limit for granting of Prospecting Licence in the rules.**
- **specify a time frame for timely assessment of RE and PE cess for early realisation of the revenue and introduce a time limit in the line of the department of Commercial Taxes for speedy disposal of appeal cases.**
- **include penal provision in the rules for non/short extraction of minimum quantity of minerals.**
- **develop a mechanism to monitor the prospecting and mining operations in the authorised areas.**
- **introduce system for inspection, monitoring returns, establishing checkposts and weighbridges, introducing transit pass and strengthening internal audit to ensure effective internal control.**

## CHAPTER VII : MINES AND MINERALS

### 7.1 Tax administration

The mining receipts comprise mainly the application fees for lease/permits for reconnaissance, prospecting and reserve licences, royalty for extraction of major and minor minerals, dead rent, surface rent, fines and penalties for offences and interest for delayed payment of dues etc. Primary Education cess, Rural Employment cess, Public Works cess and Road cess are also realised from the holders of quarry permits and mining leases.

Assessment and collection of mining receipts are governed by the Mines and Minerals (Development and Regulation) (MMDR) Act, 1957, the West Bengal Minor Minerals (WBMM) Rules, 2002, the Public Demands Recovery (PDR) Act, 1913, the Cess Act, 1880, the West Bengal Primary Education Act, 1973 and the West Bengal Rural Employment and Production Act, 1976.

Four departments viz. Commerce and Industries (C&I) Department, Finance Department, Land and Land Reforms (L&LR) Department and the General Administration Department are associated with the assessment, levy and collection of mining receipts. All departments are headed either by an Additional Chief Secretary or Principal Secretary/Secretary level officer and assisted by Director and district level officers.

### 7.2 Revenue impact of audit reports

During the last five years (including the current year's report), we pointed out through our audit reports non/short levy, non/short realisation, underassessment/loss of revenue etc., with revenue implication of ₹ 557.74 crore in 19 paragraphs. Of these, the department/Government had accepted audit observations in 14 paragraphs involving ₹ 139.21 crore and had since recovered ₹ 61 lakh. The details are shown in the following table:

**Table 7.1 – Revenue impact of audit reports**

(₹ in crore)

Year of audit report	Paragraphs included		Paragraphs accepted by the department		Amount recovered	
	Number	Amount	Number	Amount	Number	Amount
2007-08	02	183.51	01*	0.66	Nil	Nil
2008-09	05	1.59	04*	1.43	03*	0.10
2009-10	03	4.30	02*	4.22	02*	0.17
2010-11	04	2.98	04	2.98	04*	0.27
2011-12	05	365.36	03*	129.92	02*	0.07
<b>Total</b>	<b>19</b>	<b>557.74</b>	<b>14</b>	<b>139.21</b>	<b>11</b>	<b>0.61</b>

\* partly recovered/accepted.

The amount recovered was only 0.44 *per cent* in the accepted paragraphs which was very low.

**The Government may revamp the recovery mechanism to ensure that the amount involved in accepted cases is promptly recovered.**

### 7.3 Working of internal audit wing

The internal audit wing of an organisation is a vital component of its internal control mechanism and is generally defined as the control of all controls to enable the organisation to assure itself that the prescribed system is functioning reasonably well.

The internal audit wing of the L&LR Department was re-introduced in the year 2007-08 with the objective of fulfilling accountability, obligations, complying with applicable rules and regulations, executing orderly, ethical, economic, efficient and effective operations and safeguarding resources against loss. The wing is headed by the Audit Officer cum Ex-officio Deputy Secretary who is assisted by Internal Audit Officers and Assistant Auditors. No Internal Audit Officer was posted in the IAW against sanctioned strength of 16 whereas the existing strength of Assistant Auditor was 12 against the sanctioned strength of 14. Though the manual of the wing has been drafted, it has not yet been published. The wing planned to audit 18 DL&LROs, 19 Land Acquisition (LA) Collectors, one First Land Acquisition (FLA) Collector, two Rent Controllers and two Controllers of Thika Tenancy during the year 2011-12, whereas audit was conducted in respect of 17 DL&LROs, eight LA Collectors, one Rent Controller and one Controller of Thika Tenancy during the period which was 64 per cent of the units planned for audit.

### 7.4 Results of audit

In 2011-12, we test checked the records of 11 units<sup>1</sup> relating to mining receipts and found underassessment of tax and other irregularities involving ₹ 378.88 crore in 139 cases which fall under the following categories:

**Table 7.2 – Results of audit**

(₹ in crore)			
Sl. no.	Categories	No. of cases	Amount
1	<b>Receipts from Major Minerals (A Performance Audit)</b>	01	363.95
2	Non/short assessment/realisation of price of minor/major minerals extracted unauthorisedly.	54	3.15
3	Non/short assessment/levy/realisation of royalty and cess.	21	0.51
4	Penalty for underperformance.	19	3.19
5	Non/short raising of demand.	35	7.49
6	Other cases.	09	0.59
<b>Total</b>		<b>139</b>	<b>378.88</b>

During the year, the department accepted underassessment and other deficiencies in 114 cases of ₹ 11.97 crore, of which 102 cases involving

<sup>1</sup> 10 units of the L&LR Department and one unit of the C&I Department.

₹ 11.78 crore were pointed out during the year 2011-12 and the rest in earlier years. An amount of ₹ 8.06 lakh was realised in 12 cases during the year.

Audit findings of the Performance Audit on **'Receipts from Major Minerals'** with financial effect of ₹ 363.95 crore and a few illustrative cases involving ₹ 1.41 crore are mentioned in the following paragraphs.

## 7.5 Performance Audit on “Receipts from Major Minerals”

Minerals are broadly classified into two categories viz. major and minor minerals. Bauxite, chromite, iron ore, coal, chinaclay/fireclay, moulding sand etc. are major minerals whereas stone, gravel, ordinary clay, ordinary sand etc. are minor minerals. **Coal is the most important major mineral available in West Bengal.** Apart from coal other major minerals available in West Bengal are **chinaclay/fireclay, quartz/feldspar, rock phosphate, moulding sand and silica sand.**

We conducted Performance Audit of “Receipts from Major Minerals” covering the period from 2006-07 to 2010-11 which revealed:

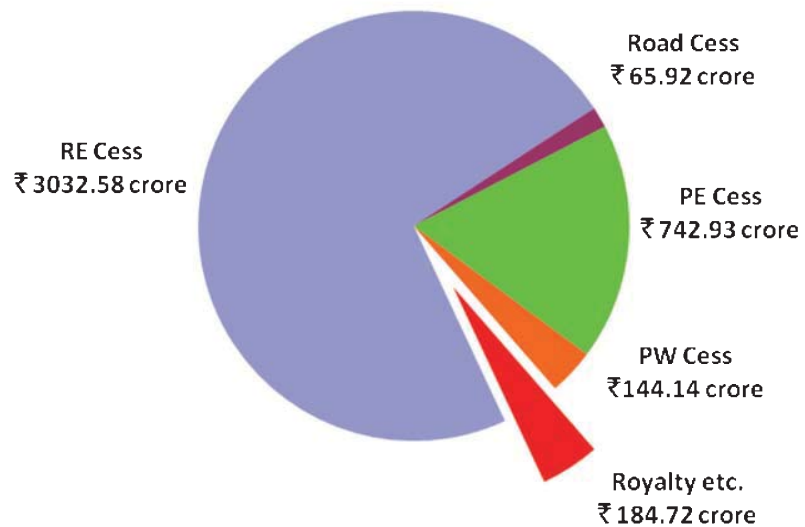
### Highlights

- Involvement of four departments in assessment and collection of receipts from major minerals and operation of two major heads of accounts led to mismanagement, delay and resultant evasion of receipts.  
(Paragraph 7.5.8)
- Incorrect gradation of coal resulted in short assessment of Rural Employment and Primary Education cess of ₹ 50.15 crore.  
(Paragraph 7.5.8.1)
- Absence of timely disposal of appeal cases have rendered 13 cases with money value of ₹ 2,201.16 crore still under litigation.  
(Paragraph 7.5.10)
- Failure to initiate certificate proceeding by the Cess Deputy Collector, Asansol even after a delay of 18 to 139 months of its assessment resulted in non-realisation of revenue of ₹ 31.36 crore.  
(Paragraph 7.5.12)
- Due to non-revision of royalty in coal, which is a major revenue generating mineral for the state, revenue realisation has been adversely affected.  
(Paragraph 7.5.13)
- Due to short payment of Rural Employment and Primary Education cess, Eastern Coalfields Ltd is required to pay ₹ 31.20 crore.  
(Paragraph 7.5.16)
- Surface rent and cess thereto of ₹ 1.18 crore remained unrealised.  
(Paragraph 7.5.20)
- Absence of checkpost, weighbridge, transit pass, inspection and internal audit led to ineffective internal control.  
(Paragraph 7.5.23)

### 7.5.1 Introduction

The receipts from major mineral comprise royalty, dead rent, surface rent, price of minerals, Public Works (PW) Cess, Road Cess and interest on delayed payments. Apart from these, the Government of West Bengal also collects Rural Employment (RE) Cess and Primary Education (PE) Cess at the rate of 20 per cent and five per cent respectively on annual value of coal. **In West Bengal, out of the total receipts from major minerals, 95.5 per cent comes from cesses on coal and the rest comes from the royalty etc.** Under the Mines and Minerals (Development and Regulation), Act 1957, the Central Government is authorised to fix the rate of royalty and dead rent while under the various cess Acts the State Government is empowered to fix the rate of different kinds of cesses and also fix the rate of surface rent, fees etc. Receipts for the period from 2006-07 to 2010-11, from RE cess, PE cess, PW cess, road cess and royalty amounting to ₹ 4,170.29 crore and its components are depicted below:

**Receipts from Major Minerals  
in West Bengal from  
2006-07 to 2010-11**

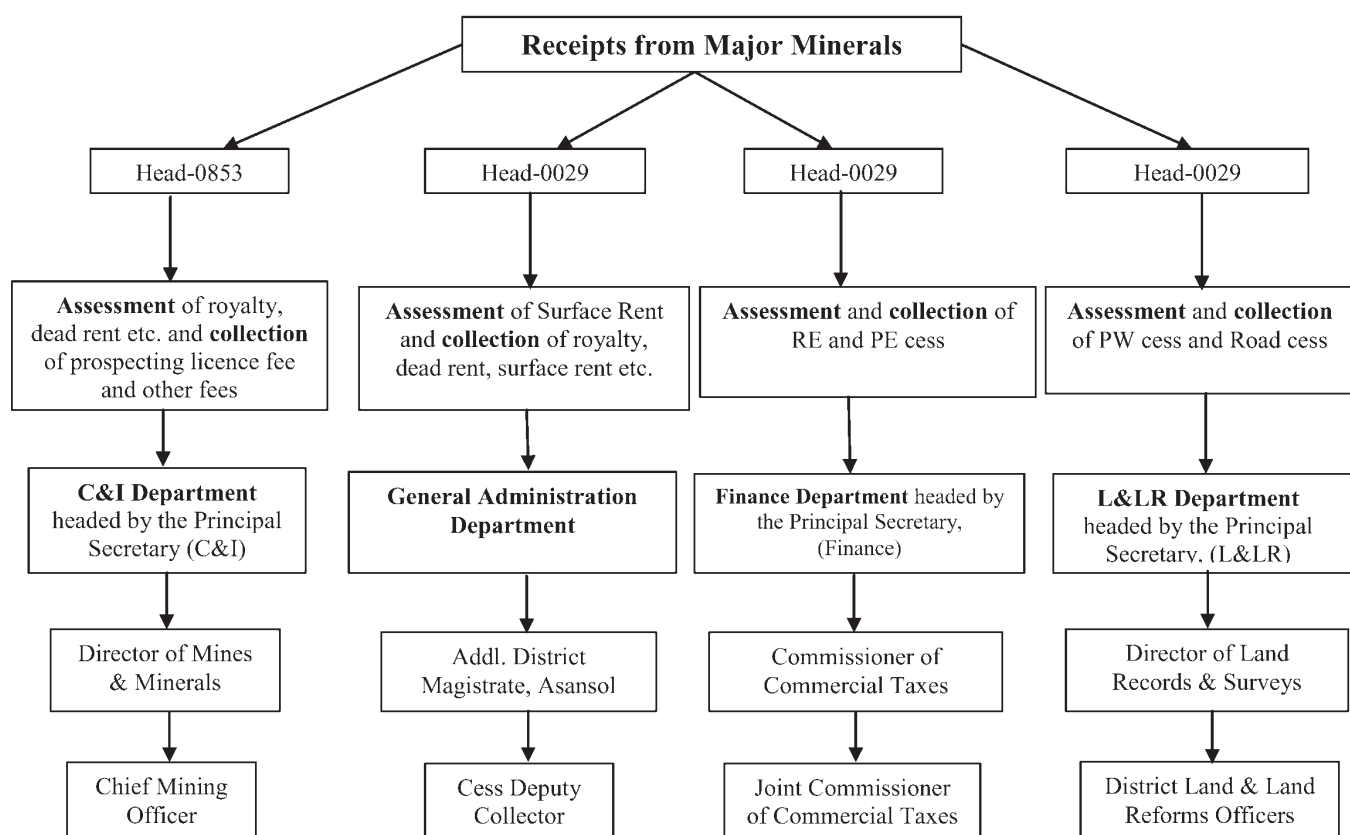


### 7.5.2 Organisational set up

In West Bengal, four departments viz 'Commerce and Industries'(C&I), 'Finance', 'Land and Land Reforms' (L&LR) and 'General Administration' are associated with the assessment, levy and collection of receipts from major minerals. All these departments are headed by the Additional Chief Secretary/ Principal Secretary level officer and assisted by Directors and district level officers.



The organisational set up of all the four departments is shown in the following chart:



### 7.5.3 Audit objectives

We conducted the Performance Audit to ascertain whether:

- the provisions of Acts/Rules and departmental instructions were adequate and enforced to safeguard the revenue of the state;
- royalty and cess were properly assessed and collected in time; and
- there exists an effective internal control mechanism.

### 7.5.4 Scope and Methodology

We conducted the Performance Audit during December 2011 to March 2012 covering nine<sup>2</sup> out of eleven<sup>3</sup> units associated with assessment and collection of receipts from major minerals. In addition to scrutiny of records, we cross verified the information/data from different departments and other sources.

<sup>2</sup> CMO Asansol, MOs (Suri and Purulia), CDC Asansol, JCCT Asansol, DL&LROs (Purulia, Birbhum, Burdwan and Bankura).

<sup>3</sup> CMO Asansol, MOs (Suri, Chinsurah, Siliguri and Purulia), CDC Asansol, JCCT Asansol, DL&LROs (Purulia, Birbhum, Burdwan and Bankura). Two units were left out from the purview of Performance Audit due to non-existence of any mining lessee in those units and hence, there was no collection of revenue.

### 7.5.5 Audit criteria

The provisions of the following Acts and Rules were used as audit criteria for conducting the Performance Audit:

- The Mines and Minerals (Development and Regulation) Act, 1957 (MMDR Act);
- The Mineral Concession Rules, 1960 (MC Rules);
- The Mineral Conservation and Development Rules, 1988;
- The Cess Act, 1880;
- The West Bengal Primary Education Act, 1973 (WBPE Act); and
- The West Bengal Rural Employment and Production Act, 1976 (WBREP Act).

### 7.5.6 Acknowledgement

An Entry Conference to discuss and explain the objectives and scope of the Performance Audit was held in December 2011 which was attended by the senior management of the above four departments. The findings of the Performance Audit forwarded to the Government in June 2012 were discussed with the Pr. Secretary (C&I), Addl. Secretary (L&LR), Sr. JCCT, Directorate of Commercial Taxes, Jt. Secretary (Finance) and other senior officials in the Exit Conference held in September 2012. The replies received from the departments have been suitably incorporated in the respective paragraphs. We acknowledge the co-operation of the C&I Department, L&LR Department, Finance (Revenue) Department and General Administration Department in providing necessary information and records to audit.

### 7.5.7 Trend of revenue

The budget estimates (BEs) and the actual receipts from major minerals during 2006-07 to 2010-11 alongwith the percentage of variation are mentioned below:

**Table 7.3 - Trend of revenue**

(₹ in crore)

Year	Budget estimate	Actual receipts*	Variation Excess (+)/Shortfall (-)	% of variation Excess (+)/Shortfall (-)
2006-07	773.10	715.23	(-)57.87	(-)7.49
2007-08	878.44	821.42	(-)57.02	(-)6.49
2008-09	1,117.54	811.74	(-)305.80	(-)27.36
2009-10	1,285.17	753.37	(-)531.80	(-)41.38
2010-11	603.73	1,068.54	(+)464.81	(+)76.99

Source: Finance Accounts and Budget Publication No. 4

There was a wide variation from (-) 41.38 *per cent* to (+) 76.99 *per cent* between budget estimates and actual receipts during the period under review which indicates unrealistic budgeting.

In reply to an audit query the Finance (Budget) Department stated in January 2012 that the reason for downward variation in 2008-09 was mainly due to less collection in RE cess over the anticipated receipts. It was further noted by audit that excess revenue realised during 2010-11 was due to increase in production of coal.

### **Audit findings**

The Performance Audit revealed various system and compliance deficiencies which are mentioned in the succeeding paragraphs.

### **System issues**

#### **7.5.8 Complex system of assessment and collection**

The system of assessment and collection of receipts on major minerals is quite complex as it involves four departments. The royalty and dead rent are assessed by the Chief Mining Officer (CMO), whereas, these are collected by the Cess Deputy Collector (CDC). These receipts are deposited under the head 0029 (a tax revenue head under Land Revenue) instead of the head 0853 (a non-tax revenue head meant for Mineral Concession Fees, Rent and Royalties). Primary Education (PE) cess and Rural Employment (RE) cess are assessed and collected by the JCCT under Finance Department, whereas, Public Works (PW) cess and Road cess are assessed and collected by the District Land and Land Reforms Officers (DL&LROs) under L&LR Department. All the cess collections made by these departments are credited to the major head 0029 (a tax revenue head under Land Revenue).

The involvement of four different departments of the State Government and two heads of accounts led to mismanagement, delay and resultant evasion of receipts.

In 2004, the Public Accounts Committee made observations on the complex system of assessment and collection of mining receipts in the state, and recommended **to formulate a concrete system to bring the entire matter of mines and minerals under one umbrella**. But the Government has not taken any decision so far.

After we reported the matter, the L&LR Department stated (September 2012) that they had taken up the matter with the C&I Department, so that the issue might be sorted out at the earliest.

Under Section 4(2) (b) of the WBREP Act and Section 78(2) (b) of the WBPE Act, every lessee of coal mine shall pay RE and PE cess at the rate of 20 per cent and five per cent respectively of annual value of coal bearing land for any financial year (on the basis of half of the annual value of the entire coal produced during the two years immediately preceding that financial year). Further Section 4A(b) of the WBREP Act and Section 78A(b) of the WBPE Act, provides that every owner of a coal bearing land is required to submit a declaration relating to a year showing the amount of RE cess and PE cess respectively payable for that year to such authority as may be notified by the State Government.

**7.5.8.1** In West Bengal five companies (three<sup>4</sup> Public Sector Undertakings and two<sup>5</sup> Private) are associated with coal mining. During audit of the office of the CMO, Asansol (C&I department) we found that out of 25 cases, in five cases M/s Bengal Emta Coal Mines Ltd (BECML) extracted only 'C' grade coal during 2003-04 to 2007-08 and submitted returns to the CMO for assessment of royalty. We also verified the records of Coal Controller under the Ministry of Coal (Government of India) which confirmed the fact that BECML extracted only 'C' grade coal during the same period.

However, during cross verification with the annual declaration submitted to the JCCT, Asansol (Finance Department) for assessment of RE and PE cess for the said period the lessee showed extraction of coal of different grades varying between 'B' and 'G'. JCCT made his assessment and subsequent collection on the basis of that **gradation** (in the annual declaration submitted by the lessee) without cross verifying it with the C&I Department (CMO)/Coal Controller. Absence of any system of cross verification among these departments, resulted in short assessment of RE and PE cess of ₹ 50.15 crore as detailed below:

**Table 7.4 – Assessment of cess**

(₹ in crore)

Period of assessment	Date of assessment	Annual value of coal assessable *	Annual value of coal assessed**	RE & PE cess assessable	RE & PE cess assessed	Short assessment of RE & PE cess
2003-04	12.11.2009	209.98	169.65	52.49	42.41	10.08
2004-05	19.11.2009	239.99	202.45	60.00	50.61	9.39
2005-06	19.11.2009	318.70	281.79	79.68	70.45	9.23
2006-07	15.12.2010	327.88	290.26	81.97	72.57	9.40
2007-08	19.05.2011	367.78	319.69	91.94	79.90	12.05
<b>Total</b>				<b>366.08</b>	<b>315.94</b>	<b>50.15</b>

\* As per returns submitted to the CMO, Asansol.

\*\* As per annual declaration statement submitted to JCCT, Asansol.

After we reported the cases, the Finance Department admitted the audit observations (October 2012) and stated that out of the above five assessment

<sup>4</sup> Eastern Coal Field Limited, Bharat Cooking Coal Limited and Steel Authority of India Limited.

<sup>5</sup> Bengal EMTA Coal Mines Limited and Integrated Coal Mining Pvt. Limited.

periods, in one case assessment had been reviewed, in three cases proposals were sent to the Appellate Authority, Asansol circle to consider the fact during disposal of the appeal cases and in the remaining one case proposal for *suo motu* revision in view of the audit findings had been sent to the Revisional Authority.

**7.5.8.2** Out of five lessees we found that two lessees had submitted their “returns of production and dispatch” for the period 2001-02 to 2005-06 to the CMO Asansol (C&I Department) for assessment of royalty and were assessed on the basis of those returns. However, while cross checking “the annual declaration of production”<sup>6</sup> of the same two lessees for the same period submitted to the JCCT Asansol (Finance Department), who assesses and collects RE and PE cess, we found that they had shown short production of coal.

Thus absence of any system of cross verification between the two departments resulted in underassessment of RE and PE cess of ₹ 5.03 crore as detailed below:

**Table 7.5 - Assessment of cess**

(₹ in crore)						
Name of the lessee	Period of assessment	Annual value of coal assessable *	Annual value of coal assessed **	RE & PE cess assessable	RE & PE cess assessed	Short assessment of RE & PE cess
BECML	2006-07	298.52	290.26	74.63	72.57	2.06
ECL	2003-04 to 2006-07	18,412.18	18,388.46	2,301.50	2,298.53	2.97
<b>Total</b>		<b>18,710.70</b>	<b>18,678.72</b>	<b>2,376.13</b>	<b>2,371.10</b>	<b>5.03</b>

\* As per returns submitted to the CMO, Asansol.

\*\* As per annual declaration statement submitted to JCCT, Asansol

After we reported the cases, the Finance Department stated (October 2012) in respect of BECML that the lessee had appealed against the assessment order and the matter was sent to the Appellate Authority for taking the audit observation into consideration. While in case of ECL the authority accepted the audit observation and stated that assessment for the year 2003-2004 had been reviewed *suo motu* and assessment for the years 2004-05, 2005-06 and 2006-07 proposals had been forwarded to the Appellate Authority for taking the audit observation into consideration.

**7.5.8.3** During cross verification of assessment sheets submitted by the Bharat Cooking Coal Ltd (BCCL), in the year 2004-05 and 2005-06 to the CMO Asansol (C&I Department) with the records of JCCT, Asansol (Finance Department) revealed that the BCCL had shown short production of coal to the JCCT by suppressing production of jhama<sup>7</sup> during the assessment year 2006-07. This resulted in short assessment of RE and PE cess of ₹ 97 lakh as detailed in the following table:

<sup>6</sup> Annual value of coal bearing land calculated on the average production of coal during the preceding two years.

<sup>7</sup> Jhama is one kind of coal.

Table 7.6- Assessment of cess

(₹ in crore)

Period of Assessment	Date of Assessment	Rate of Cess		Annual value of coal Assessable* (in ₹)	Annual value of coal Assessed** (in ₹)	Cess Assessable	Cess Assessed	Short Assessment
		RE	20%					
2006-07	14.07.10	RE	20%	46.97	43.06	9.39	8.61	0.78
		PE	5%	46.97	43.06	2.34	2.15	0.19
<b>Total</b>						<b>11.73</b>	<b>10.76</b>	<b>0.97</b>

\* As per returns submitted to the CMO, Asansol.

\*\* As per annual declaration statement submitted to JCCT, Asansol.

After we reported the cases, the Finance Department stated (October 2012) in respect of BCCL that the lessee had appealed against the assessment order and the matter has been informed to the Appellate Authority for taking the audit observation into consideration.

**7.5.8.4** Actual collection of receipts from major minerals as per Finance Accounts/Budget Publication and the C&I Department for the period from 2006-07 to 2010-11 is shown in the following table:

Table 7.7- Receipts from major minerals

(₹ in crore)

Year	Actual collection as per Finance Accounts/Budget Publication	Actual collection as per C&I Department
2006-07	715.23	NA
2007-08	821.42	731.81
2008-09	811.74	802.15
2009-10	753.37	785.79
2010-11	1,068.54	1,072.09

The above differences between the Finance Accounts data and the data provided by the C&I Department indicated lack of co-ordination between different assessing and collecting authorities.

After we reported the cases the C&I Department stated in September 2012 that they had collected data from various agencies, hence there was a chance of difference of data.

### 7.5.9 Absence of provisions for timely grant of Prospecting Licence (PL) applications

Section 10(3) of the MMDR Act 1957 provides that on receipt of an application under this section, the State Government may, having regard to the provisions of this Act and any rules made thereunder, grant or refuse to grant the prospecting licence.

We found from the records of Director of Mines & Minerals (DM&M) that 24 applications were sent to the C&I Department between December 2004 and May 2010 for grant of

PL of various<sup>8</sup> minerals. These applications were neither refused nor granted by the C&I Department till the date of audit (January 2012). There is also no time limit for grant of PL in the rules. Therefore, delay in granting PL subsequently delayed the entire process of prospecting and realisation of royalty and cess.

After we reported the cases, the C&I Department stated (September 2012), that they could not grant PL, as the approval of the central Government was required. Hence the C&I Department was not in a position to dispose of the application in a time bound manner.

#### 7.5.10 Non-disposal of appeal cases

Under the provisions of West Bengal Rural Employment and Production (WBREP) Act, 1976 and West Bengal Primary Education (WBPE) Act, 1973, the Assessing Officer may assess the Rural Employment (RE) and Primary Education (PE) cess on annual value of coal bearing land. However, no specific time limit has been prescribed for assessment of RE and PE cess and disposal of subsequent appeals.

We found from the records of the JCCT, Asansol that the assessments of RE and PE cess in 13 cases out of 25 cases as shown in the table below, for the year 2002-03 to 2007-08 were assessed between October 2009 and August 2011 and noticed that an amount of ₹ 2,201.16 crore (RE and PE cess of ₹ 940.93 crore + interest of ₹ 1,260.23 crore) was outstanding from three lessees for the period 2002-08, as assessed by the Assessing Authority (AA) between 2009-11. Thereafter, the lessees appealed against the assessment orders and the appeal cases involving ₹ 2,201.16 crore were locked with the Appellate Authority<sup>9</sup> since October 2009. Long delay in assessment as well as non-disposal of appeal cases, not only affected timely realisation of Government revenues but also defeated the purpose for which RE and PE cess were created.

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<sup>8</sup> Copper, Dolomite, Feldspar, Gold, Iron Ore, Lead, Limestone, Magnetite, Manganese, Mica, Quartz, Rare metals, Tin, Tungsten, Zinc etc.

<sup>9</sup> Assistant Commissioner of Commercial taxes.



Table 7.8- Assessment of RE and PE cess with interest

(₹ in lakh)

SI No	Name of the lessee	Period of assessment	Date of assessment	Additional RE cess due	Interest due on RE cess	Additional PE cess due	Interest due on PE cess	Total
1	ECL	2002-03	29.04.2010	41,403.98	55,881.87	10,358.49	13,970.47	1,21,614.81
		2003-04	29.04.2010	17,428.38	28,037.99	4,357.09	7,009.50	56,832.96
		2005-06	29.03.2010	8,882.04	8,625.91	2,220.51	2,156.48	21,884.94
		2006-07	03.12.2010	349.30	679.08	87.33	169.77	1,285.48
		2007-08	09.08.2011	5,843.54	5,490.19	1,460.89	1,255.75	14,050.37
2	BECML	2005-06	19.11.2009	-	597.72	-	177.97	775.69
		2006-07	15.12.2010	-	1,153.67	-	266.19	1,419.86
3	BCCL	2002-03	17.10.2009	214.51	228.74	57.38	57.18	557.81
		2003-04	17.10.2009	275.59	9.50	68.90	2.37	356.36
		2004-05	17.10.2009	320.23	7.66	80.06	1.91	409.86
		2005-06	17.10.2009	438.37	99.06	109.59	24.77	671.79
		2006-07	14.07.2010	76.22	67.84	19.05	16.96	180.07
		2007-08	19.05.2011	32.89	27.96	8.22	6.99	76.06
<b>Total</b>				<b>75,265.05</b>	<b>1,00,907.19</b>	<b>18,827.51</b>	<b>25,116.31</b>	<b>2,20,116.06</b>

After we reported the cases, the Finance Department stated (October 2012) that proposal was being moved through the appropriate authority to the State Legislature for amendment of the Acts to introduce the provision of time limit for assessments as well as for disposal of appeal cases.

In the department of Commercial Taxes under the WBVAT Act, 2003 there is a provision<sup>10</sup> of time limit for disposal/settlement of appeal cases. However, there is no such time limit for disposal/settlement of appeal cases here. The Government may consider to introduce a time limit for speedy disposal of appeal cases.

### 7.5.11 Loss of revenue due to non/short extraction of minimum quantity of minerals

Rule 31 of the MC Rules provides that the lease deed in Form K shall be executed. The model lease deed (Form K) provides that holder of mining lease shall extract the minimum quantity of minerals from the leasehold area every year and satisfy the Government about compliance specified in Form K.

We found from the “statements of raising” submitted by two out of five lessees during the period between 2006-07 and 2010-11 to the CMO, Asansol that they raised lesser quantity of coal than agreed upon in their lease deeds. As

there was no provision in the rules to levy penalty for non/short extraction of

<sup>10</sup> Under section 84 of WBVAT Act, 2003.



minimum quantity of mineral accepted in the lease deeds, the department was deprived of revenue in shape of royalty of ₹ 1.40 crore as detailed below:

**Table 7.9- Shortfall of Production**

Name of the lessee	Period	Annual Target (in MT)	Actual Production (in MT)	Grade of coal	Shortfall of Production (in MT)	Rate of royalty (₹ /MT)	Loss of revenue in the shape of royalty (₹ in lakh)
M/S Bengal EMTA Coal mines Limited (BECML)	19.12.07 to 31.03.08	1,00,000	NIL	B	1,00,000.00	6.50	6.50
	01.04.08 to 31.03.09	5,00,000	NIL	B	5,00,000.00	6.50	32.50
	01.04.09 to 31.03.10	5,00,000	1,14,698.00	B	3,85,302.00	6.50	25.04
	01.04.10 to 31.03.11	5,00,000	2,57,194.56	B	2,42,805.44	6.50	15.78
M/S Integrated Coal Mining Pvt. Limited (ICML)	01.04.06 to 31.03.07	35,00,000	25,70,587.06	F	9,29,412.94	2.50	23.24
	01.04.07 to 31.03.08	35,00,000	27,53,996.11	F	7,46,003.89	2.50	18.65
	01.04.08 to 31.03.09	35,00,000	29,84,163.81	F	5,15,836.19	2.50	12.90
	01.04.09 to 31.03.10	35,00,000	32,78,111.42	F	2,21,888.58	2.50	5.55
<b>Total</b>							<b>140.16</b>

Further, we found in the Mining offices, Purulia and Suri that out of 41 mining leases granted for excavation of minerals other than coal, 15 mining lessees raised lesser quantity of minerals than agreed upon in their lease deeds for the periods between 2006-07 and 2010-11. This also resulted in loss of government revenue in the shape of royalty of ₹ 29.56 lakh.

After we reported the cases, the C&I Department stated (September 2012) that they would take up the issue with the Central Government for necessary amendment.

#### **7.5.12 Absence of time limit for initiation of certificate proceedings**

Rule 25 of the MMDR Act provides that any rent, royalty, tax, fee or other sum due to the Government under this Act or the rules made thereunder are under the terms and conditions of any reconnaissance permit or mining lease may, on a certificate of such officer as may be specified by the State Government in this behalf by general or special order, be recovered in the same manner as an arrear of land revenue.

We found from the demand and collection register maintained in the office of the CDC, Asansol and C&I Department that mining receipts of ₹ 31.36 crore was outstanding from ECL upto September 2010. No action for certificate proceeding was initiated either by the

CDC or C&I Department even after the lapse of 18 to 139 months from the

date of issue of demand notice. This resulted in non-realisation of revenue of ₹ 31.36 crore. Audit scrutiny further revealed that the Government did neither prescribe any time limit for initiation of the certificate proceedings nor had it instituted a periodic review and monitoring mechanism to ensure that the certificate proceedings were initiated in time.

After we reported the cases, the C&I Department stated (September 2012) that this department is taking up the matter with the concerned district administration for initiation of certificate proceedings, if not already done and recovery of the outstanding receipts.

### 7.5.13 Non-revision of rates of royalty and reduction in rates of cess

Section 9(3) of the MMDR Act provides that the Central Government may enhance or reduce the rate of royalty once during any period of three years in respect of any mineral by a notification in the official Gazette with effect from such date as may be specified in the notification. Royalty accrues to the State Exchequer.

Under section 4(2)(b) of the WBREP Act and section 78(2)(b) of the WBPE Act, every lessee of coal mine shall pay RE and PE cess for any financial year on the basis of half of the annual value of the entire coal produced during the two years immediately preceding that financial year.

We found that the royalty rates on coal for West Bengal was last revised in May 1987 and thereafter it was revised several times in other states but not in West Bengal. Comparative rates of royalty applicable to West Bengal and other States during the period between 2006-07 and 2010-11

were as under:-

**Table 7.10 - Royalty Rates**

(₹ Per Tonne)

Grade	West Bengal		Other States	
	From 1987 to till date (Fixed)	From 1-4-06 to 31-7-07 (Fixed)	From 1-8-07 to 15-10-09	From 16-10-09 (due to price escalation)
			(on ad valorem basis)	
S/C-I	6.50	165.00	224.00	237.50
A	6.50	165.00	226.00	240.00
B	6.50	165.00	220.00	233.50
C	5.50	115.00	169.00	181.00
D	4.30	85.00	138.00	148.00
E	4.30	85.00	113.00	119.00
F	2.50	65.00	87.00	91.50
G	2.50	65.00	76.00	79.00

Analysis of the table shows that the rates of royalty have been revised thrice in other States during last five years whereas in West Bengal it remained unrevised since 1987. Due to non-revision of royalty of coal, which is the major revenue generating mineral in the state, revenue realisation has been adversely affected.

Further we observed that the State Government has decreased the rate of cess from 45 per cent to 25 per cent in the year 1998. This reduction of cess had caused the state exchequer to lose a sum of ₹ 230.40 crore in each year.

After we reported the matter, the CMO in respect of royalty confirmed the facts and figures and stated (November 2011) that the matter would be referred to the competent authority while in case of cess the Finance Department did not furnish any reply.

State Government should take a holistic view of revenue generated from coal by way of royalty/cess etc. vis-à-vis revenue generated by other states and take up the matter with the Central Government to revise the rate of royalty to tap the potential from the sector.

#### 7.5.14 Non-assessment of water rate

MC Rules 27(1)(d), provides that the lessee shall pay for the surface area used by him for the purposes of mining operations, water rate at such rate not exceeding the land revenue, water and cesses assessable on the land, as may be specified by the State Government in the lease. Water rate has been fixed at ₹ 54 per acre per annum under the West Bengal Irrigation (Imposition of Water Rate) Act, 1974.

During test check of records of the CDC, Asansol and four<sup>11</sup> DL&LROs, we noticed that the water rate for various periods between 2006-07 and 2010-11 was not assessed and realised on 1,67,133.17 acres of land occupied or used by five lessees for extraction of coal. Further scrutiny revealed that there is no provision that which department would collect the same. This resulted in non-assessment and consequent non-realisation of water rate of ₹ 4.52 crore.

After we reported the case, the L&LR Department stated (September 2012) that the non-assessment and non-realisation of water rate was due to absence of any authority. However, they had pursued the matter with the Finance Department.

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<sup>11</sup> Bankura, Burdwan, Purulia and Suri.

## Compliance Issues

### 7.5.15 Failure of the department to revoke prospecting license

Rule 15 of the MC Rules provides that where, on any application for a PL, an order has been made for the grant of such licence, a deed granting such licence shall be executed within 90 days of the date of communication of order and if no such deed is executed within the said period the State Government may revoke the order, granting the license. Further, under rule 15(3) of the MC Rules, the date of commencement of the period for which a PL is granted shall be the date, on which the deed is executed.

During scrutiny of records of the office of the DM&M we noticed that seven applicants were granted PL between December 2006 and June 2010. All the PL holders executed the lease deeds after a delay ranging between four and 20 months but in none of the cases the department revoked the PL of the licensees.

After we reported the cases, no specific reply about revocation of PL licences was given by the department (September 2012).

### 7.5.16 Short realisation of RE and PE Cess

We found in two assessment orders in respect of RE and PE Cess assessed between April and May 2010, the AA allowed ECL to deposit RE cess of ₹ 256.00 crore and PE Cess of ₹ 64 crore. However, scrutiny of challans for payments revealed that the assessee actually deposited ₹ 240.00 crore and ₹ 60 crore towards RE cess and PE cess respectively. This resulted in short payment of ₹ 20 crore and consequent short realisation of ₹ 31.20 crore towards RE cess, PE cess and interest thereto.

After we reported the cases, the Finance Department stated (October 2012) that observation of the audit had been duly considered and demand notices had been issued.

### 7.5.17 Evasion of royalty, PW cess and Road cess

We found from the returns of production and dispatch submitted by Bharat cooking coal limited (BCCL) to the CMO, Asansol for the period from 1 April to 30 June 2008, that the opening balance was shown as Nil though the closing balance as on 31 March 2008 was shown as 8,96,070 MT. This indicated evasion of royalty of ₹ 38.53 lakh (8,96,070 x ₹ 4.30) and PW cess and Road cess of ₹ 8.96 lakh (8,96,070 x ₹ 0.5 each cess).

After we reported the case, the CMO admitted the audit observation and stated (April 2012) that the case would be taken up with the BCCL authority.

### 7.5.18 Non-levy of dead rent and cess

In terms of rule 27(1)(c) of the MC Rules, the holder of mining lease shall pay to the State Government every year, except the first year of the lease, dead rent at such rate as may be specified in the Third Schedule of the Act. Provided that where the holder of such mining lease becomes liable to pay royalty for any mineral, he shall be liable to pay either such royalty or the dead rent whichever is higher in amount. Further in terms of Cess Acts read with clarification issued in May 2000, cess on dead rent is realisable at the rate of 86 paise per rupee.

7.5.18.1 We found in the office of the CMO, Asansol that dead rent for the period from April 2010 to March 2011 in respect of 19 collieries belonging to two lessees were not assessed. Accordingly, CDC also did not assess cess on dead rent. This resulted in non-levy/non-realisation of dead rent and cess amounting to ₹ 31.22 lakh

as detailed below:

Table 7.11- Dead rent and cess

(₹ in lakh)

Name of the lessee	No of collieries	Period	Amount of dead rent	Amount of cess on dead rent (@86 paise per rupee)	Total amount
ECL	14	2010-11	15.63	13.44	29.07
BCCL	5	2010-11	1.15	1.00	2.15
<b>Total</b>	<b>19</b>		<b>16.78</b>	<b>14.44</b>	<b>31.22</b>

After we reported the cases, the C&I Department stated (September 2012) that assessment of dead rent was made by the CMO and sent to the realising authority (CDC). But report on realisation is still awaited (December 2012).

7.5.18.2 We found in the office of the CMO, Asansol that in six<sup>12</sup> collieries covering an area of 13,837.79 hectare under ECL, the assessee paid royalty of ₹ 24.72 lakh for the period from 2006-07 to 2010-11 calculated on the basis of actual dispatch. However, the dead rent for the said period worked out to ₹ 75.48 lakh (₹ 150 per hectare per annum) which was higher than the royalty paid. As per provision of the rule, the lessee was to pay royalty or dead rent, whichever is higher. The CMO, Asansol did not comply with the provision and allowed the lessee to pay at the lower rate. This resulted in non-levy/ non-realisation of dead rent and cess amounting to ₹ 94.41 lakh (₹ 50.76 lakh dead rent and ₹ 43.65 lakh cess on dead rent).

After we reported the cases, the C&I Department stated (September 2012) that they had taken note of the audit observation and accordingly action had been initiated by the CMO, Asansol.

<sup>12</sup> Barmondiha, Begunia & Gourangdih , Bhanora & Bhanora, Girmint (Kushadanga), Jemehari and Madhujora.

### 7.5.19 Non-levy of interest

Under Rule 64(A) of the MC Rules the State Government may without prejudice to the provisions contained in the Act or any other Rule in these Rules, charge simple interest at the rate of twenty four per cent per annum on any rent, royalty or fee (other than the fee payable under sub-rule (1) of Rule 54) or other sum due to that Government under the Act or these rules or under the terms and conditions of any prospecting licence or mining lease from the sixtieth day of the expiry of the date fixed by that Government for payment of such royalty, rent, fee or other sum and until payment of such royalty, rent, fee or other sum is made.

We found from the demand and collection register of the CDC, Asansol that two<sup>13</sup> lessees in two cases paid mining dues (royalty and dead rent) of ₹ 8.64 crore between March 2007 and June 2011 for the periods from 2004-05 to 2010-11. Though there was delay in payments ranging from 18 to 677 days after the expiry of the sixtieth day, the CDC Asansol, however, did not levy and realise interest of ₹ 45.94 lakh on the lessee.

After we reported the cases, the CDC, Asansol admitted the audit observations and stated (April 2012) that demand notices would be issued shortly. The ADM, Asansol stated (October 2012) that an amount of ₹ 2.13 lakh was realised.

### 7.5.20 Non-realisation of surface rent and cess

Under Rule 27(1)(d) of the Mineral Concession Rules, 1960, the holder of mining lease shall pay to the State Government annual surface rent at the prescribed rate in respect of the area used for the purpose of mining operation. In addition, all kinds of cess are also leviable at the rate 86 paise per rupee of rent under the different cess Act read with clarification issued in May 2000.

**7.5.20.1** We found from the records of the CDC, Asansol that 26,608.62 acres of land was granted in favour of three lessees for their mining operations. Though the demand was raised regularly, the lessees did not pay the surface rent of ₹ 59.86

lakh and cess of ₹ 51.48 lakh on surface rent for five years from 2006-07 to 2010-11. This resulted in non-realisation of surface rent and cess of ₹ 111.34 lakh as detailed in the following table:-

<sup>13</sup> M/s Bengal EMTA Coal Mines Limited and ECL.

**Table 7.12.1 – Surface rent and cess**

Name of the lessee	Surface area used (in acres)	Rate of surface rent	Period	Total amount of surface rent (₹ in lakh)	Rate of cess	Cess amount being unrealised (₹ in lakh)	Total amount unrealised (₹ in lakh)
M/s ECL	24,675.78	₹ 45 per acre per annum	2006-07 to 2010-11	55.52	86 paisa per rupee of rent	47.75	103.27
M/s BCCL	854.40		2006-07 to 2010-11	1.92		1.65	3.57
M/s ISSCO	1,078.44		2008-09 to 2010-11	2.42		2.08	4.50
<b>Total</b>	<b>26,608.62</b>			<b>59.86</b>		<b>51.48</b>	<b>111.34</b>

After we reported the cases, the CDC, Asansol admitted the audit observation and stated (April 2012) that necessary action would be taken as early as possible.

**7.5.20.2** During scrutiny of records of the C&I Department and four<sup>14</sup> DL&LROs we found that the C&I Department granted 1,694.06 acres of land to ECL for extraction of stowing sand from the riverbeds. But the surface rent of ₹ 3.82 lakh and cess of ₹ 3.27 lakh were neither paid by the ECL nor demanded by the department. This resulted in non-realisation of ₹ 7.09 lakh towards surface rent and cess as detailed below:

**Table 7.12.2 – Surface rent and cess**

Name of District	Total area in acre	Rate of Surface rent	Surface rent assessable for 5 years (₹ in lakh)	Rate of Cess	Amount of Cess assessable for 5 years (₹ in lakh)	Loss of revenue in the shape of Surface rent and Cess (₹ in lakh)
Burdwan	1,261.02	₹ 45 per acre per annum	2.84	86 paisa per rupee of rent	2.44	5.28
Birbhum	291.54		0.66		0.56	1.22
Bankura	136.50		0.31		0.26	0.57
Purulia	5.00		0.01		0.01	0.02
<b>Total</b>	<b>1,694.06</b>		<b>3.82</b>		<b>3.27</b>	<b>7.09</b>

After we reported the cases, the C&I Department stated that the duty of realisation of dues in respect of surface rent and cess was vested with the respective district collectors. As a follow up measure, they were taking up the matter with the concerned district authorities so that the dues could be realised while the L&LR Department stated that the matter had been taken up with the District Authority for immediate action.

### **7.5.21 Short realisation of cess against the demand raised**

C&I Department had fixed a target for extraction of stowing sand at the rate of 5,000 cft per acre per month on an area of 761.30 acres of land and the cess amount due to be realised was ₹ 30.83 lakh irrespective of extraction in every six months.

<sup>14</sup> Bankura, Birbhum, Burdwan and Purulia.



On scrutiny of records in the DL&LRO, Burdwan we noticed that ECL was granted an area of 761.30 acres of land for extraction of stowing sand and was required to pay ₹ 30.83 lakh towards the cess every six month from 1.07.2006 to 31.03.2011. However, we found that against an amount of ₹ 154.16 lakh, ₹ 112.08 lakh was realised. This resulted in short realisation of ₹ 42.08 lakh as shown below:

Table 7.13 – Payment of cess

Periods of Payment	Targeted quantity for extraction in each six month (cft)	Cess amount due to be realised (₹ in lakh)	Cess amount realised (₹ in lakh)	Amount of short-realisation of cess from stowing sand (₹ in lakh)
1.7.2006 to 31.12.2006	2,28,39,000	30.83	28.36	2.47
1.7.2007 to 31.12.2007	2,28,39,000	30.83	30.49	0.34
1.7.2009 to 31.12.2009	2,28,39,000	30.83	25.03	5.80
1.4.2010 to 30.09.2010	2,28,39,000	30.83	0.00	30.83
1.10.2010 to 31.3.2011	2,28,39,000	30.83	28.20	2.64
<b>Total</b>	<b>11,41,95,000</b>	<b>154.16</b>	<b>112.08</b>	<b>42.08</b>

After we reported the case, the L&LR Department stated (October 2012) that a demand notice of ₹ 42.08 lakh was issued to ECL and the ADM, Asansol was instructed to realise the dues from ECL, as early as possible.

## 7.5.22 Unlawful Extraction

### 7.5.22.1 Extraction of mineral other than coal

Rule 22A of the MC Rules prescribes that mining operations shall be undertaken in accordance with the duly approved mining plan and the modification of the approved mining plan during the operation of a mining lease also requires prior approval. As per rule 24A of MC Rules an application for the renewal of a mining lease shall be made to the State Government in Form - J, at least twelve months before the date on which the lease is due to expire. Under Section of 21(5) of MMDR Act, no person shall undertake any mining operation in any area except under the terms and conditions of a lease. In the event of unauthorised extraction of minerals, the State Government is empowered to recover the mineral raised unlawfully or where such minerals have already been disposed of, the price thereof.

We found from the records of the Mining Officer (MO), Purulia that one out of 23 lessees was granted mining lease for chinaclay for 20 years in 1984.

The lease expired in October 2004 and he submitted renewal application in October 2004 in violation of the provision of rule 24A, of the MC rules.

The MO, instead of taking any action against the lessee for delayed application of renewal forwarded the application to the DM&M in August 2006 recommending rejection of the lease application. The DM&M also recommended rejection



and forwarded it to the Government (C&I Department) for approval (November 2006).

The Government, after a lapse of six years had not yet taken any decision on the application and the lessee had continued extraction upto March 2012.

The MO, Purulia had stopped assessment of the lessee after December 2006 and the lessee had not submitted any return to the MO since January 2007. However, he continued to extract minerals and paid PW and road cess to the DL&LRO, Bankura during 2008 to 2010.

Further, we found from the records of MO, Suri that a lessee had extracted 3,00,000 cft. of china clay and fire clay, without having any lease agreement and approved mining plan during 2008-09. Therefore the price of the minerals worth ₹ 27.02 lakh remained unlevied and unrealised. The MO, Suri detected it (June 2008) but no action was taken by the department till the date of audit.

The C&I Department stated (November 2012) that in the case of MO, Purulia they had taken up with the DM&M and in the case of MO, Suri, they had assessed the penalty to the tune of ₹ 27.02 lakh at the instance of audit and forwarded it to the DL&LRO, Birbhum for realisation.

#### 7.5.22.2 Non-imposition of price of unlawful extraction of stowing sand

On scrutiny of the records in the offices of the DL&LRO, Burdwan and the C&I Department we noticed that 12 temporary working permits were granted to M/s ECL between January 2006 and September 2011 for extraction of sand for stowing purposes from the river beds. The quantity of sand permitted for extraction against three permits, was 6.8517 crore cft. The ECL had extracted 7.9589 crore cft of sand. The DL&LRO, while finalising the assessments between September 2006 and July 2011, did not recover the price of extra sand of 1.1072 crore cft extracted unauthorisedly for stowing purpose. This resulted in non-imposition and non-realisation of the receipts of ₹ 24.37 lakh as detailed below:

**Table 7.14- Excess extraction of sand**

Period of permit	Permit no.	Permitted quantity in c.ft	Extracted quantity in c.ft	Excess extraction in c.ft	Excess extraction in M.T	Royalty involved (₹ In lakh)	Penal price payable (₹ In lakh)
1.1.06 to 30.6.06	16 dt. 18.01.06	2,28,39,000	3,01,92,239	73,53,239	4,04,428	1.62	16.18
1.1.07 to 30.6.07	31 dt. 29.01.07	2,28,39,000	2,43,83,134	15,44,134	84,927	0.34	3.40
1.1.08 to 30.6.08	459 dt. 18.12.07	2,28,39,000	2,50,14,059	21,75,059	1,19,628	0.48	4.79
<b>Total</b>		<b>6,85,17,000</b>	<b>7,95,89,432</b>	<b>1,10,72,432</b>	<b>6,08,983</b>	<b>2.44</b>	<b>24.37</b>

After we reported the case, the L&LR Department stated (October 2012) that a demand notice for payment of ₹ 24.37 lakh was issued to ECL and the ADM, Asansol was instructed to realise the dues from ECL as early as possible.

### 7.5.22.3 Illegal Mining

Under Section 23C of the MMDR Act, the Ministry of Mines has formulated a three-pronged strategy for prevention of illegal mining viz. constitution of Task Force by the State Government at State and District level having a representative of Indian Bureau of Mines (IBM), framing of rules under Section 23C of the MMDR Act and furnishing of quarterly returns on illegal mining for review by the Central Government.

We found from the records of DM&M that 1,12,027.24 MT of illegal coal was seized by four<sup>15</sup> District Police Authorities (DPAs) upto December 2007. However, the C&I Department did not initiate any step to recover the price of minerals involving ₹ 4.31 crore.

The C&I Department stated (September 2012)

that the matter was related to the concerned DPAs and the department had no role to play.

The reply is not tenable as the MMDR Act states that the State Government (C&I Department) may recover the mineral so raised, or the price thereof, where such mineral has already been disposed of.

- No check gate for detecting illegal transfer of minerals was identified to prevent illegal mining. We also noticed that the post of Deputy CMO entrusted with all the matters relating to illegal mining of coal was lying vacant for last 20 years. Scrutiny of the minutes on State Level Task Forces (formed in 2006) revealed that illegal mining of coal was quite common in 57 sites under Baraboni, Jamuria, Asansol (South/North), Kulti, Hirapur, Salanpur and Raniganj police stations within the lease hold area of ECL and 15 sites under Jamuria, Baraboni and Asansol north police station not within lease hold area of ECL.

After we reported the case, the C&I Department stated (September 2012) that one amendment was already proposed to the West Bengal Mineral (Prevention of illegal mining for Transportation & Storage) Rules, 2002 including setting up of check post at the strategic points, issuing of transit pass and allotment of registration to the mine owners.

- One “State Level Task Force” under the chairmanship of Chief Secretary and the “District Level Task Force” under the DM of the concerned district were set up in July 2006 which took up an agenda to prevent activities of illegal mining at micro level so that it could be countered through use of satellite imagery. But the same had not been implemented till date. The department also had no record about the illegal mining spots and illegal coal depots.

After we reported the case, C&I Department stated (September 2012) that the matter was being taken up with the Information and Technology Department.

<sup>15</sup> Bankura, Birbhum, Burdwan and Purulia.

### 7.5.23 Internal control

Internal Control is an integral component of an organisation's management which provides reasonable assurance so that the operations are carried out efficiently and effectively. It also ensures the accountability and compliance of rules and regulations and therefore safeguarding resources against loss. An evaluation of internal control in all the four departments associated with assessment and collection of receipts from major minerals revealed some weaknesses which are discussed in the following paragraphs:

#### 7.5.23.1 Non-monitoring of the work done by the Prospecting licensees

Rule 16 of the MC Rules prescribes that prospecting licensees shall submit to the state Government a six monthly report of work done by him. The licensees shall also submit, within three months of the expiry of the license, a full report of work done by him, in the course of prospecting operations in the area covered by the license.

We found from the records of the CMO, Asansol, the DM&M and C&I Department that no "full reports" in cases of three prospecting licensees (whose PL had expired) and no "six monthly reports" in four cases (where the licenses were alive) were available. There was no provision of monitoring the returns as well as inspection to be done by the CMO to oversee the activities of the prospecting licensees. As a result, the CMO could not exercise his effective control to monitor whether the prospecting operations were carried out in the authorised areas or prospecting was done for those minerals for which the licence had been granted.

After we reported the cases, the C&I Department stated (September 2012) that there might be some deviation/departure and efforts were being made by the department to streamline the system.

#### 7.5.23.2 Non-establishment of check posts and weigh bridges

Provisions of the MMDR Act empower the State Government to make rules for prevention of illegal mining, transportation and storage of minerals. Further, the West Bengal Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules, 2002 provides for establishment of check post, barriers and weighment and inspection of minerals in transit.

We found that the CMO did not undertake any surveillance and weighment and the minerals were transported without verification of quality and quantity. In the absence of check posts, weighbridges and frequent checking, the chances of leakage of revenue could not be ruled out.

### 7.5.23.3 Non-issuance of transit pass

Rule 3 of the provisions of West Bengal Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules, 2002 provides that no person shall transport or carry or cause to transport or carry any mineral by any means from the place of raising to another place without being in possession of a valid transit pass issued by the competent authority under the rules.

We found in CMO, Asansol that no system of issue of transit pass was adopted though defined in rules. In the absence of system to issue transit pass, the CMO was wholly depending on the returns submitted by the lessee for calculation of royalty and other receipts. Further, there was no other means of cross verification of issue and dispatch of minerals to ensure the correctness of the returns

submitted by the lessees.

After we reported the cases mentioned at para no. 7.5.23.2 and 7.5.23.3, the C&I Department stated (October 2012) that an amendment of the West Bengal Mineral (Prevention of illegal mining for transportation and storage) Rules, 2002 had already been proposed including setting up of check posts at the strategic points, issuing of transit pass and allotment of registration to the mine owners, stockists, dealers, transportation etc. and also stated that the matter was being taken up with the Information Technology Department.

### 7.5.23.4 Internal Audit

The internal audit wing of an organisation is a vital component of its internal control mechanism and is generally defined as the control of all controls to enable the organisation to assure itself that the prescribed system is functioning reasonably well.

We found that out of the four departments associated with the assessment and collection of the receipts from major minerals, two departments viz. C&I Department and general administration do not have any internal audit wing. Further the department of internal audit of State Government is yet to conduct audit of those offices.

As a result, the department was not in a position to monitor the production/dispatch, assessment, irregularities, non-compliance of rules and therefore safeguarding leakage of revenue.

### 7.5.24 Conclusion

The Performance Audit indicated a number of system deficiencies like complex system of assessment and collection, absence of provisions in the Acts and rules for early disposal of PL applications, absence of provision for timely assessment of RE and PE cess, and compliances deficiencies like blockage of revenue due to non-assessment or delay in assessment, non/short levy and realisation of royalty, surface rent, dead rent, different kinds of cess and interest and defunct internal control.

### **7.5.25 Summary of Recommendations**

In order to improve the effectiveness of the State's enforcement machinery for better management of Receipts from Major Minerals the Government may:

- take steps for early implementation of the recommendation of the Public Accounts Committee made in 2004 for bringing the entire matter of mines and minerals under one umbrella.
- prescribe a time limit for granting of Prospecting Licence in the rules.
- specify a time frame for timely assessment of RE and PE cess for early realisation of the revenue and introduce a time limit in the line of the department of Commercial Taxes for speedy disposal of appeal cases.
- include penal provision in the rules for non/short extraction of minimum quantity of minerals.
- develop a mechanism to monitor the prospecting and mining operations in the authorised areas.
- introduce system for inspection, monitoring returns, establishing checkposts and weighbridges, introducing transit pass and strengthening internal audit to ensure effective internal control.

## 7.6 Audit observations

*Scrutiny of the records in the offices of the District Land and Land Reforms Offices and the Block Land and Land Reforms Offices indicated non/short realisation of royalty and cess on brick earth, non-imposition of penalty on short extraction of sand/black stone, non/short realisation of price of brick earth extracted unauthorisedly and short levy of royalty and cess on sand as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on test check carried out in audit. Such omissions pointed out by us repeatedly not only do persist; but also remain undetected till next audit. There is need for the Government to improve the internal control system including internal audit so that recurrence of such irregularities is avoided.*

## 7.7 Non/short realisation of royalty and cess on brick earth

Section 27 (1) of the West Bengal Minor Minerals (WBMM) Rules, 2002 provides that the district authority or any other officer authorised in this behalf by the State Government may grant quarry permit to any person to extract any minor mineral on pre-payment of royalty at prescribed rates. Further, under the provisions of the Cess Act, 1880 (as amended in 1984), the West Bengal Primary Education Act, 1973 and the West Bengal Rural Employment and Production Act, 1976, the holders of quarry permits are liable to pay different types of cesses at prescribed rates on extraction of minor minerals.

During scrutiny of Brick Field Registers in District Land and Land Reforms Offices (DL&LROs), North 24 Parganas and Purba Medinipur in June 2010 and June 2011 we found that the DL&LROs allowed the brick field owners to extract brick earth and pay royalty and cess latest by 15 January/February during the years 2007-08 to 2010-11. This was in violation of both the conditions for extraction of minor minerals viz. prior permit and pre-payment of

royalty. Further, we found that in 72 cases, although the brick field owners extracted 108.02 lakh cubic feet (cu ft) of brick earth, yet neither did the brick field owners pay the royalty and cess of ₹ 38.87 lakh nor was any action taken by the DL&LROs to realise the dues. In other 13 cases, the brick field owners extracted 24.50 lakh cu ft of brick earth and paid royalty and cess of ₹ 5.04 lakh against the payable amount of ₹ 10.76 lakh. However, the DL&LROs did not initiate any action to realise the differential amount. Thus, in 85 cases royalty and cess of ₹ 5.04 lakh was paid against ₹ 49.63 lakh which resulted in non/short realisation of royalty and cess of ₹ 44.59 lakh.

After we reported the cases, the DL&LRO, North 24 Parganas admitted (June 2010) the audit observations in 70 cases involving ₹ 34.79 lakh and stated that the dues would be realised; but did not furnish any report on realisation. In the remaining 15 cases involving ₹ 9.80 lakh the DL&LRO, Purba Medinipur did not furnish any specific reply (December 2012).

The Government accepted (October 2012) the audit observation and stated that details regarding realisation would be submitted; their report on realisation is awaited (December 2012).

### 7.8 Non-imposition of penalty on short extraction of sand/black stone

Under Rule 21(1) (e) of the WBMM Rules, the holder of a mining lease shall extract and despatch the minimum quantity of mineral/s from the leasehold area annually as prescribed in the lease deed. In case there is any shortfall in the extraction and despatch of the prescribed minimum quantity without any satisfactory reason, penalty to the extent of twice the amount of royalty that should have accrued on such shortfall shall have to be paid by the lessee.

During test check of the records of the DL&LROs, Bankura and Birbhum between August 2010 and September 2011 we found that in 18 cases nine lessees extracted 22.13 lakh cubic feet (cu ft) of sand/ black stone against the minimum prescribed quantity of 54.51 lakh cu ft as per the lease

deeds. However, the DL&LROs did not levy and demand a penalty of ₹ 40.80 lakh for short extraction of 32.38 lakh cu ft of sand/ black stone. This resulted in non-levy of penalty and consequent non-realisation of revenue of ₹ 40.80 lakh.

After we reported the cases, the DL&LRO, Birbhum stated (September 2011) that in 12 cases demand notice would be issued to realise the dues. The DL&LRO, Bankura in the remaining six cases stated (September 2010) that steps would be taken to regularise the matter; but they did not furnish any report on realisation (December 2012).

The Government stated (October 2012) that detailed reply would be submitted; their reply is awaited (December 2012).



## 7.9 Non/short realisation of price of brick earth extracted unauthorisedly

Section 4(1) of the Mines and Minerals (Development and Regulation) (MMDR) Act, 1957 prescribes that no person shall undertake any mining operation in any area except under the authority of a permit/licence of a mining lease granted under the Act. Further, section 21(1) of the Act provides that whoever contravenes the provisions of section 4(1) of the Act shall be punished with imprisonment upto two years or fine upto ₹ 25,000 or with both. In addition, under section 21(5) of the Act in the event of unauthorised extraction of minerals, the Department is empowered to recover either the minerals raised unlawfully or where such minerals have already been disposed of, the price thereof. By an order issued in September 1984, the Board of Revenue, West Bengal fixed the price of brick earth as ₹ 30 per 100 cubic feet (cu ft) for 1981 with an increase of ₹ 1.50 per 100 cu ft each year.

During scrutiny of brick field registers in four<sup>16</sup> DL&LROs between June 2010 and April 2011 we found that in 48 cases brick field owners extracted 48.07 lakh cu ft of brick earth between 2006-07 and 2010-11 without valid permit /licence. Out of these, in 25 cases price of brick earth of ₹ 17.42 lakh though realisable was not realised. While in the remaining 23 cases, ₹ 10.69 lakh was realised against the realisable amount of ₹ 17.16 lakh due to

application of a lower rate than the prescribed rates. This resulted in unauthorised extraction of brick earth of 48.07 lakh cu ft and consequent non/short realisation of revenue of ₹ 23.89 lakh.

After we reported the cases, all the DL&LROs, admitted (between June 2010 and April 2011) the audit observations but did not furnish report on realisation (December 2012).

The Government while accepting (October 2012) the audit observation stated that ₹ 4.54 lakh has been realised in 12 cases and report on further realisation would be submitted. However, their report on further realisation is awaited (December 2012).

<sup>16</sup> Burdwan (West), Malda, North 24 Parganas and South 24 Parganas.



## 7.10 Short levy of royalty and cess on sand

The WBMM Rules provides that the district authority or any other officer authorised in this behalf by the State Government may grant quarry permits to any person to extract any minor mineral on pre-payment of royalty at prescribed rates. Further, under the provisions of the Cess Act, 1880 (as amended in 1984), the West Bengal Primary Education Act, 1973 and the West Bengal Rural Employment and Production Act, 1976, the holders of quarry permits are liable to pay different types of cess at prescribed rates on extraction of minor minerals.

By a notification issued in November 2002, the Commerce and Industries Department, Government of West Bengal fixed the rate of royalty of sand at ₹ 22 per cubic meter. In pursuance of the notification and to operationalise the rates of royalty, the Director of Land Records and Surveys and Joint Land Reforms Commissioner (DLRS and JLRC), West Bengal issued a conversion chart in December 2002 to all the

DL&LROs and instructed them to levy royalty and cess for wet sand at ₹ 63 and ₹ 15 respectively per 100 cubic feet (cu ft).

We found in September 2011 from the Registers of sand regarding mining lease maintained in six<sup>17</sup> Block Land and Land Reforms Offices (BL&LROs) under the DL&LRO, Burdwan that in 864 cases 14,60,73,983 cu ft of wet sand was extracted by the holders of quarry permits between 2009-10 and 2010-11. We noticed that despite specific instruction issued to the DL&LRO, Burdwan by the DLRS and JLRC in May 2007 to levy royalty and cess as per the conversion chart, the concerned BL&LROs levied and realised royalty and cess on wet sand at the rate of ₹ 75.81 (₹ 62.31 royalty + ₹ 13.50 cess) per 100 cu ft instead of ₹ 78.00 (₹ 63 royalty + ₹ 15 cess). Due to injudicious application of lower rate, royalty and cess of ₹ 11.07 crore was levied and realised instead of leviable amount of ₹ 11.39 crore. This resulted in short levy and realisation of royalty and cess of ₹ 32.00 lakh.

After we reported the cases, the DL&LRO, Burdwan stated (September 2011) that the royalty and cess were charged as per the notification issued in November 2002. The reply is not tenable as charging of royalty and cess at a lower rate was in violation of the instructions issued by the DLRS and JLRC, West Bengal and principles of sound tax administration.

The Government stated (October 2012) that the rate chart annexed with the WBMM Rules should be followed in this regard. Though the opinion of the Government is valid, the conversion chart of December 2002 was issued to

<sup>17</sup> Burdwan I, Burdwan II, Galsi II, Jamalpur, Khandaghosh and Memari.

facilitate and operationalise the levy of royalty in accordance with the rate chart.

**Kolkata  
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The**

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