

CHAPTER VII
NON TAX RECEIPTS
MINES AND MINERALS

7.1 Results of Audit

Test check of records of departmental offices conducted during the period from April 2003 to March 2004, revealed non/short levy of royalty, dead rent and seignorage fee, etc., amounting to Rs.538.06 crore in 78 cases, which broadly fall under the following categories.

(In crore of rupees)

Sl.No.	Categories	No. of cases	Amount
1	Non/short levy of royalty, dead rent and seignorage fee	43	1.97
2	Others	34	3.20
3	Review on Receipts under Mines and Minerals	1	532.89
Total		78	538.06

During the course of the year 2003-2004, the Department accepted and collected under assessments etc., amounting to Rs.3.59 lakh in 15 cases out of which Rs.0.94 lakh involving two cases were pointed out during the year and the rest in earlier years.

A review **Receipts under Mines and Minerals** involving a financial effect of Rs.532.89 crore is mentioned below:

7.2 Review on Receipts under Mines and Minerals

Highlights:

Due to non-fixing of lease amount by Government in respect of 118 lessees even after four years from the date of proposals sent by the Director, lease amount of Rs.395.17 crore for the years 1996-1997 to 2003-2004 was not realised.

(Paragraph 7.2.7.)

Failure of the Department to evict the lessee and to raise double the rate of lease amount resulted in non-realisation of lease amount of Rs.126.62 crore.

(Paragraph 7.2.7)

Registration of lease deed in respect of two companies were made at nominal rates instead of as per the provisions of the Act resulted in short recovery of Stamp Duty and Registration Fees of Rs.10.50 crore.

(Paragraph 7.2.10)

7.2.1 Introduction

The principal major minerals found in Tamil Nadu are lignite, limestone, magnesite, quartz, feldspar and bauxite, etc. Minor minerals like black and grey granite, river sand and rough stones, etc are also available in the State. Also oil and natural gas have been extracted in the coastal belt of the State.

Extraction of major minerals is governed by the Mines and Minerals (Regulation and Development) Act, (Act) 1957 and Mineral Concession Rules, 1960 (MC Rules) made thereunder. Under the Act, State Government is empowered to make rules to regulate the grant of mining lease in respect of minor minerals. Accordingly, the Tamil Nadu Minor Minerals Concession Rules, 1959 (TNMMC Rules) were framed. Prospecting or mining operations can be undertaken only with a licence or mining lease granted under the TNMMC Rules. The holder of the mining lease shall pay royalty/seigniorage fee at the rates prescribed as the case may be, in respect of minerals removed by him from the leased area. Wherever royalty/seigniorage fee in a year is less than dead rent, the dead rent is payable in lieu of royalty.

Receipts from mines and minerals consist of application fee, licence fee, royalty and dead rent, etc. Stamp duty and registration fee are also leviable on mining lease deeds under the Indian Stamp Act, 1899, and the Indian Registration Act, 1908.

7.2.2 Organisational set up

The Commissioner of Geology and Mining (CGM) is the head of the Department. The District Collectors (DC) are authorised under the Rules to grant mining licences who are assisted by Deputy Directors (DD) and Assistant Directors (AD) in performing their duties. There are 27 District offices, a gem collection centre at Karur and a geo-technical cell at Coonoor. In addition, certain statutory functions such as issue of temporary permits, detection of illicit mining and taking action thereon are exercised by Tahsildars attached to taluk offices.

The CGM has been vested with the powers for the grant of mineral concessions in respect of major minerals occurring in ryotwari (patta) lands. In respect of Government lands, the State Government is vested with the powers for the grant of quarry lease of minerals. In respect of exportable granites, the powers for grant of quarry lease is also vested with the Government irrespective of the classification of lands applied for lease. The DCs are empowered to grant leases for other minor minerals irrespective of the classification of lands.

7.2.3 Scope of audit

To examine the efficiency in the overall administration of the Department particularly with reference to fixation of lease rent and its collection, records of 13²⁶ out of 27 District Offices and the CGM were test checked for period from 1998-99 to 2002-03 from December 2003 to June 2004.

7.2.4 Audit Objectives

A review was conducted to

- examine proper enforcement and administration of various provisions of the Act/Rules for levy and collection of mining dues;
- examine the efficiency of administration of the Act with particular reference to issue of mining lease, fixing of lease amount and its collection, charging of royalty/seigniorage fee, etc under the Act.

²⁶ Coimbatore, Cuddalore, Dharmapuri, Kanyakumari, Nagapattinam, Namakkal, Perambalur, Salem, Thiruvallur, Thoothukudi, Tirunelveli, Trichy and Villupuram.

7.2.5 Trend of revenue

The position of budget estimates vis-à-vis revenue realised from mines and minerals during the period from 1998-99 to 2002-03 were as under:

(In crore of rupees)

Year	Budget Estimates	Actuals	Percentage of variations
1998-1999	104.90	101.04	(-) 3.68
1999-2000	115.68	113.25	(-) 2.10
2000-2001	217.93	395.33	(+) 81.75
2001-2002	232.00	160.40	(-) 30.86
2002-2003	155.43	181.09	(+) 16.51

The reasons for wide variation during 2000-01 and 2001-02 was due to receipt of royalty in advance of Rs.250 crore from Neyveli Lignite Corporation (NLC) and adjustment of the same during the subsequent years.

7.2.6 Position of arrears

Position of arrears and assessment pending under revenue recovery Act/court cases are as detailed below:

(In crore of rupees)

Financial Year	Arrears	Revenue Recovery Act	Court cases
1998-99	985.66	104.63	52.20
1999-00	1,168.15	96.80	263.93
2000-01	1,047.34	188.35	327.13
2001-02	472.19	163.30	261.85
2002-03	462.55	172.39	243.17

The arrears for the years 2000-01 includes cases pertaining to levy of local cess and local cess surcharge. Consequent to the judgement of Supreme Court in August 2001 that local cess and local cess surcharge levied by the State was not correct, the arrears for the year 2001-02 was considerably reduced.

7.2.7 Non-fixation/realisation of lease amount

- Government issued in October 1995 guidelines for fixing lease amount based on the highest lease amount obtained during any of the previous years plus 20 *per cent* of such amount of the previous year, as first year amount and so on. However, consequent to scrapping of erstwhile Rule 39 in June 1996, Government revised the guidelines in October 1996 for fixation of lease amount for 1996-97 based on the highest amount secured in nearby quarries in tender-cum-auction. The High Court on an appeal by the lessees against the revision directed in September 1999 that before fixing lease amount, the DCs should take into account the potential value of the minerals, the estimated reserves and its market value. The Government decided in September 2000 to implement the orders of the High Court.

It was noticed in the office of the Director of Geology and Mining (DGM), that though the Director had fixed the lease amount for 1996-97 in respect of 118 leases granted in 14²⁷ Districts under the above rule according to the terms fixed by the High Court and forwarded to Government for approval in May 2000, the proposals were yet to be approved by the Government (June 2004). While sending proposals to the Government, the DGM fixed the lease amount only for 1996-97, whereas the lease amount was to be fixed for the subsequent years too. Of the cases sent to the Government, the lease period in 60 cases expired in 1999-2000 and in 58 cases it would expire in 2005-06

Failure of the Government to approve the lease amount in time in respect of 118 lessees had resulted in non-realisation of lease amount of Rs.395.17 crore for the period from 1996-97 to 2003-04.

- According to TNMMC Rules, all lessees of granite quarries who were granted leases prior to 1998 and were still in force, were to pay one time lease amount fixed by DC, besides seigniorage fee or dead rent. In the event of lease amount not being paid within the stipulated time of 60 days, the lease would be deemed to have been cancelled. Any person in possession of lease hold area, thereafter shall be deemed to be in unlawful possession of the said land. The DC shall, after giving notice, charge from the person double the rate of lease and evict the lessee from lease hold area.

During audit of the office of AD, Madurai, it was noticed, that M/s.Tamil Nadu Minerals Limited (TAMIN – a public sector undertaking) was granted leases in August 1998 in Katchirayanpatti of Melur Taluk for quarrying colour granite for a period of 20 years from 1996 to 2016 under erstwhile Rule 39. However, the Department fixed the lease amount of Rs.63.31 crore only in October 2000

²⁷ Coimbatore, Cuddalore, Erode, Kancheepuram, Karur, Madurai, Perambur, Pudukottai, Ramanathapuram, Sivaganga, Tiruvallur, Trichy, Villupuram and Virudhunagar.

after a delay of two years though the quarrying permits were issued in the interim period. The lessee failed to remit the amount within the stipulated period and the lease was cancelled in December 2000. However on further verification, it was seen that the leased area had not been taken over till date as stated by the Tahsildar, Melur in September 2004. The Department had neither taken proper effective steps to take over the land by evicting the lessee nor raised the demand for collection of double the rate of lease amount. This had resulted in non-realisation of the lease amount of Rs.126.62 crore.

7.2.8 Non-levy of dead rent

Under the TNMMC Rules, as amended from time to time, the holder of a lease shall pay besides area assessment, seigniorage fee or dead rent whichever is higher at the rates prescribed. The rates of dead rent in respect of Black/Colour granite was Rs.6,000/Rs.5,000 per hectare per annum upto 29 June 1999 and Rs.15,000/Rs.10,000 respectively thereafter. The rate for sand is Rs.2,000 per hectare.

In terms of clause of form of lease for quarrying minor minerals by private persons (Appendix I to TNMMC Rules) if any part of the land assessment, cess or seigniorage fee (or dead rent) payable remains unpaid for 30 days after becoming payable whether formally demanded or not, it shall be lawful for the lessor at any time thereafter to declare the whole or any part of the security deposit to be forfeited and also to re-enter upon the demised premises or any part thereof.

It was noticed in three²⁸ districts, that in respect of 69 cases for the years between 1998-99 and 2002-03, dead rent for the period of inoperation was not collected. Failure of the Department to check whether dead rent wherever payable has been assessed or not had resulted in non-realisation of dead rent of Rs.36.96 lakh as detailed below:

Name of the District	Name of the Mineral	Number of cases	Area (in hectares)	Dead Rent (Rs. in lakh).
Salem	Black Granite	8	23.73.0	3.56
	Colour Granite	7	12.40.4	1.00
Dharmapuri	Black Granite	9	14.47.0	5.61
	Colour Granite	34	57.48.0	19.63
Villupuram	Black Granite	3	7.78.5	4.84
	Sand	8	63.00.0	2.32
Total		69	178.86.9	36.96

²⁸ Dharmapuri, Salem and Villupuram.

7.2.9 Incorrect refund of one time lease amount

The TNMMC Rules provide for refund only where the State Government have made premature termination of a quarrying lease. As per the rules *ibid* if the grantee fails to execute the lease deed, all the amounts paid by him to the State Government shall be forfeited. Further the Collector, Nagapattinam by a notification issued in October 2000 calling for tender application for quarrying sand in Nagapattinam district had stipulated that even if the lessee has not utilised the land for quarrying, the lease amount cannot be refunded and the lessee has to make pathway to the quarry.

It was noticed in the office of the AD, Nagapattinam that in two cases, leases were granted for quarrying of sand for three years from December 2000 through tender-cum-auction system after collecting one time lease amount of Rs.11.50 lakh from each of them but the lease deeds were not executed. Based on the request of the lessees after a period of seven and 27 months respectively, the leases were cancelled since there was no pathway and a refund of Rs.23 lakh was made without sanction of the Government. The incorrect refund resulted in loss amounting to Rs.23 lakh.

After this was pointed out by audit, the Department replied that it would address the jurisdictional Assistant Director in this regard. Further reply was awaited (August 2004).

7.2.10 Short recovery of stamp duty and registration fees on lease deeds

As per Rule 31 of MC Rules, 1960 a lease deed shall be executed within six months of the order for grant of mining lease or within such further period as the State Government may allow in this behalf. If no such lease deed is executed, the State Government may revoke the order granting the lease and in that event the application fee shall be forfeited to the State Government.

As per Indian Registration Act, lease of immovable property for any term exceeding one year shall be registered compulsorily. The Indian Stamp Act, provides that on instruments of immovable property for period exceeding 10 years but not exceeding 20 years, stamp duty is to be levied as on a deed of conveyance for a consideration equal to twice the amount of royalty on minerals extracted or value of the average annual rent reserved.

Government clarified in 30 March 1998 that in cases of mining lease for periods exceeding five years stamp duty at seven *per cent* shall be leviable on the average annual value of such royalty payable.

- In Nagapattinam and Thiruvarur districts, lease for mining of oil was granted between 1986 and 1988 in respect of 15 oil wells to M/s Oil and Natural Gas Corporation (ONGC) for 20 years. However, it was noticed that in respect

of two oil wells, lease deeds were executed on stamp paper of nominal value of Rs.7. In 13 cases no lease deeds were executed till date. Resultantly, stamp duty and registration fees amounting to Rs.6.02 crore on the above wells based on the guidelines issued by the Government remains unrealised.

Mention was made in Para 9.2.18 of the Report of the Comptroller and Auditor General of India for the year 1988-89, about non execution of deed with the same assessee. The Committee on Public Accounts (45th Report/XIth Assembly) while discussing the report in December 1992 recommended that the matter should be settled as early as possible in consultation with Central Government. However even after a decade, the position remain the same and the lease deeds in respect of 13 new oil wells were not executed.

- In Cuddalore district, renewal of lease for mining lignite was granted to NLC for a further period of 20 years from December 1996. However, lease deed was executed on stamp papers worth Rs.2 lakh instead of as per the average annual value of royalty payable. The short-levy of stamp duty and registration fees amounted to Rs.4.48 crore.

After this was pointed out, the Department stated in August 2004 that the AD, Nagapattinam would be called upon to issue notice to ONGC demanding them to get the lease deed executed by paying stamp duty. It further stated that registration of lease deed was not compulsory at the time of execution of lease deed in December 1996 and compulsory registration of mining lease deed could be insisted only from November 2000. The reply is not tenable since the date of execution of the formal instrument of lease will be the date of commencement of the lease and not the date of the Government Order sanctioning the lease. Further prior to the amendment in 2000, execution was mandatory and thereafter not only the execution but also registration was mandatory. In view of this the mining lease should have atleast been executed by paying proper stamp duty.

The cases were reported to the Government in June 2004 and followed up with reminder in August 2004; their reply had not been received (September 2004).

7.2.11 Conclusion

There was inordinate delay by the Government in fixing and recovering lease amount, royalty, compensation and dead rent and there was no proper mechanism to ensure that the mining leases were registered after payment of proper stamp duty.

7.2.12. Recommendations

The Government may consider the following

- the proposals to grant leases sent to Government are finalised without delay;
- the Act and Rules are implemented properly while recovering lease rent; and
- the lease deeds are executed only after payment of proper stamp duty.

The matter was reported to Government in June 2004 and followed by reminder in August 2004; the reply had not been received (September 2004).

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