

CHAPTER-7
Mining Receipts
(Revenue Sector)

CHAPTER-7: MINING RECEIPTS

7.1 Tax administration

The levy and collection of receipts from mining activities in the State is governed by the Mines and Minerals (Development and Regulation) (MMDR) Act, 1957, the Mineral Concession Rules, 1960, and the Uttar Pradesh Minor Mineral Concession (UPMMC) Rules, 1963. The Principal Secretary, Geology and Mining, Uttar Pradesh, is the administrative head of the Department at the Government level. The overall control and direction of the Geology and Mining Department (Department) is vested with the Director, Geology and Mining, Uttar Pradesh, Lucknow. At district level, the District Mines Officer is responsible for determining royalty, dead rent, permit fee, etc. due and payable.

7.2 Results of audit

During 2016-17, Audit test checked the records of 20¹ out of 75 auditable (27 *per cent*) units of the Geology and Mining Department in the State. Revenue collected by the Department during the year 2015-16 aggregated to ₹ 1,222.17 crore of which, the units covered in audit collected ₹ 605.50 crore (50 *per cent*). Audit noticed irregularities amounting to ₹ 496.11 crore in 108 paragraphs on account of various deficiencies as detailed in **Table - 7.1**.

Table - 7.1

(₹ in crore)				
Sl. No.	Categories	Number of paragraphs	Amount	Share in <i>per cent</i> to the total objected amount
1.	Royalty not/ short realised	17	7.40	1.49
2.	Interest/ penalty not imposed	17	20.75	4.18
3.	Cost of minerals not recovered	39	444.65	89.63
4.	Other irregularities	35	23.31	4.70
Total		108	496.11	

(Source: Information available in the Audit office)

Irregularities involving 2,671 cases worth ₹ 307.95 crore have illustrated in this chapter. Out of these, some irregularities have been repeatedly reported during the last five years as detailed in **Table - 7.2**. Most of the observations are of a nature that may reflect similar errors/omissions in other units, but not covered in test audit. Department may therefore like to internally examine all the other units to ensure that they comply with the requirement and rules.

Table - 7.2

(₹ in crore)												
Name of observation	2011-12		2012-13		2013-14		2014-15		2015-16		Total	
	Cases	Amount	Cases	Amount								
Cost of minerals not realised	-	-	15	0.37	221	13.92	311	13.98	3,491	476.06	4,038	504.33
Excavation of minerals without Environment Clearance (EC)	-	-	-	-	-	-	-	-	4	66.90	4	66.90
Excavation of brick earth without environment clearance	-	-	-	-	-	-	-	-	2,909	66.80	2,909	66.80

¹ Director, Geology and Mining, Uttar Pradesh, Lucknow and DMO:Allahabad, Badaun, Bagpat, Banda, G.B Nagar, Jhansi, Hathras, Kaushambi, Lalitpur, Lucknow, Mahoba, Mathura, Meerut, Mirzapur, Moradabad, Muzaffarnagar, Rampur, Sonbhadra and Unnao.

Name of observation	(₹ in crore)											
	2011-12		2012-13		2013-14		2014-15		2015-16		Total	
	Cases	Amount	Cases	Amount	Cases	Amount	Cases	Amount	Cases	Amount	Cases	Amount
Royalty and permit fees not realised from brick kiln owners	3,684	15.15	1,655	10.22	412	3.87	1,430	6.84	39	0.25	7,220	36.33
Excavation of mineral without mining plan	2	0.13	9	18.82	123	198.93	7	3.08	73	252.95	214	473.91
Excess excavation	22	77.87	4	7.08	18	46.81	-	-	12	29.27	56	161.03

Recommendations:

- 1. The Department should initiate systemic measures to ensure that the shortcomings repeatedly reported by Audit do not recur.**
- 2. The Department should introduce more effective measures to monitor and ensure recoveries of the large amounts of non/ short realisations pointed out in Audit Reports.**

7.3 Cost of minerals not realised

The Department did not recover cost of minerals amounting to ₹ 191.02 crore and a penalty of ₹ 2.95 crore due from 1,181 contractors undertaking civil works, who had not submitted MM-11 forms.

The UPMMC Rules, 1963 and the Uttar Pradesh Minerals (Prevention of Illegal Mining Transportation and Storage) Rules, 2002 stipulates that no person shall transport any mineral without a valid transit pass (Form MM-11²). The MMDR Act stipulates that the price of mineral along with royalty may be recovered for raising minerals without lawful authority. The Government, in its order dated 15 October 2015, also reiterated that apart from royalty, the cost of minerals (ordinarily five times of royalty) be deducted from the contractor's bill and deposited into the treasury, if contractors do not produce royalty receipt in form MM-11. Further, the UPMMC Rules prescribes initiation of criminal proceedings attracting punishment of imprisonment that may extend up to six months or with fine which may extend to ₹ 25,000 or with both.

Previous Audit Reports of 2012-13 to 2015-16 had highlighted persistent loss of Government revenue amounting to ₹ 504.33 crore due to non-realisation of cost of minerals from 4,038 contractors.

To evaluate the corrective measures adopted by the Department in this regard, Audit test checked the records of 15³ District Mines Offices (DMOs) during 2016-17. It was noticed that executing agencies got 1,181 civil works executed through the contractors during April 2014 to February 2017. In all these cases, the contractors did not submit the MM-11 forms along with the bills. The executing agencies deducted royalty of ₹ 38.20 crore from the bills and deposited the amount into the treasury. The concerned DMOs however failed

² Transit pass issued by the holder of the mining lease or crusher plant for transportation of minor mineral (*Rawanna*). It includes name and address of the lease holders, nature and quantity of mineral and vehicle number through which it is transported.

³ DMO:Allahabad, Badaun, Bagpat, Banda, G.B. Nagar, Hathras, Kaushambi, Mahoba, Mathura, Meerut, Moradabad, Muzaffarnagar, Rampur, Sonbhadra and Unnao.

to initiate any action in the matter and recover the cost of minerals valued at ₹ 191.02 crore and impose penalty of ₹ 2.95 crore.

In the exit conference (November 2017), the Department accepted the audit observation and stated that the recovery from the contractors is to be effected by the executing agencies through the concerned District Magistrates.

Recommendation:

The Mining Department should coordinate with the executing agencies undertaking civil works to ensure submission of form MM-11 by the contractors.

7.4 Implementation of Environment Clearance

The MMDR Act stipulates that mining operations shall be undertaken in accordance with the terms and conditions of a mining lease granted under the Act and the rules made there under. It further stipulates that if any person raises without lawful authority, any mineral from any land, the State Government may recover from such person, the mineral so raised or where such mineral has already been disposed off, the price thereof along with royalty. Under UPMDC Rules, the total royalty has been fixed at the rate of not more than 20 *per cent* of the pit's mouth value⁴ of minerals.

The Environment Protection Act (EPA), 1986 stipulates that whoever fails to comply with or contravenes any of the provisions of this Act, shall be punishable for each failure with imprisonment, which may extend to five years, or with fine which may extend to one lakh rupees, or both.

7.4.1 Excavation of minerals without Environment Clearance (EC)

Cost of excavated minerals amounting to ₹ 33.75 crore was not recovered from four lessees for excavating 4.31 lakh cubic meters of minor minerals without EC.

The State Government ordered (May 2011 and March 2012) that mining lease holders shall get EC from the Ministry of Environment and Forest (MoEF). If any lease holder⁵ excavates minerals without EC, the same is to be treated as illegal mining and is therefore liable to pay royalty, cost of minerals and fine under the Acts.

The Audit Report of 2015-16 had highlighted loss of Government revenue amounting to ₹ 66.90 crore due to Excavation of minerals without Environment Clearance in four cases.

To evaluate the corrective measures adopted by the Department in this regard, Audit test checked the records of two⁶ DMOs during 2016-17 and noticed that in four out of 61 cases test checked, lessees had excavated 4.31 lakh cubic meters of minerals (*moram* and *gitti*) between January 2016 and March 2017 without obtaining EC and paid a royalty of ₹ 6.75 crore. The excavation of minerals without EC was not only illegal but could also affect the environment

⁴ "Pit's mouth value" means "the sale price of the minor minerals at the pit head or at the point of production."

⁵ Persons authorised to undertake mining operations in areas specified in lease under and in accordance with the terms and conditions of a mining lease granted under MMDR Act and the rules made there under.

⁶ DMO: Banda and Sonebhadra.

adversely. The concerned DMOs neither took any action to stop the business nor recovered cost of mineral amounting to ₹ 33.75 crore (five times of the applicable royalty). Further, a fine of ₹ one lakh was also not imposed upon each of the lessees for violation of Environment Rules.

In the exit conference (November 2017), the Department stated that Section 21(5) is applicable on the violation of Section 4 of the Act. There is no provision for recovery of cost of minerals in the MMDR Act 1957 for excavation of mineral without EC. The reply of the Department is not tenable because getting an EC is a necessary condition imposed by the EPA for granting any mining lease. Further, Section 4 of the MMDR Act provides that mining operations shall be undertaken in accordance with the terms and conditions of a mining lease granted under this Act and the rules made there under. Hence excavation without the EC amounts to illegal and unauthorised excavation which is in violation of the MMDR Act. Unauthorised excavation attracts recovery of cost of minerals under the MMDR Act.

Recommendation:

The Department should ensure that minerals are not excavated without requisite environment clearance to curb illegal mining.

7.4.2 Excavation of brick earth without environment clearance

Penalty equating to cost of mineral amounting to ₹ 62.27 crore was not recovered from 1,131 brick kilns operating without EC.

MoEF in OM dated 24 June 2013 had categorised mining of brick earth into B-2 category⁷ wherein obtaining the EC from State Environment Impact Assessment Authority (SEIAA) is mandatory.

The Audit Report of 2015-16 had highlighted loss of Government revenue amounting to ₹ 66.80 crore due to excavation of brick earth without EC from 2,909 brick kilns.

To evaluate the assurances (July 2016) by the Department in this regard, Audit test checked the records of six⁸ DMOs during 2016-17. It was noticed that 1,131 out of 1,207 brick kilns test checked had operated during the period 2014-15 to 2015-16 without obtaining EC and paid a royalty of ₹ 12.45 crore. The excavation of brick earth without EC was not only illegal but could also affect the environment adversely. The concerned DMOs neither took any action to stop the business nor recovered penalty equating to cost of mineral amounting to ₹ 62.27 crore. Further, a fine of ₹ one lakh was also not imposed upon each of the kiln owners for violation of Environment Rules.

In the exit conference (November 2017), the Department stated that at present, EC has been obtained by most of brick kilns in the State. There is no provision for recovery of cost of minerals for excavation of brick earth without EC in MMDR Act, 1957. The reply of the Department is not tenable as EC is an essential condition for operating brick kilns. Any excavation without EC amounts to illegal and unauthorised excavation and is in violation of Section 4

⁷ The activities of excavation of 'brick earth' and 'ordinary earth' up to an area less than five hectares, have been categorised under B-2 category on the basis of spatial extent of potential impacts and potential impacts on human health.

⁸ DMO: Badaun, Hathras, Mathura, Meerut, Moradabad and Muzaffarnagar.

of the MMDR Act. Unauthorised excavation attracts recovery of cost of minerals under MMDR Act.

Recommendation:

The Department should enforce the provisions of the MMDR Act and recover penalty for excavation of brick earth without environment clearance.

7.5 Royalty and permit application fees not realised from the brick kiln owners

Royalty and permit application fees was not paid by 353 brick kiln owners to the state exchequer, though the same was specified in the OTS scheme. As a result, royalty of ₹ 6.28 crore, interest of ₹ 31.08 lakh and permit application fees of ₹ 7.06 lakh could not be realised.

One Time Settlement Scheme (OTSS) for brick kilns announced by the Government from time to time, provides for payment of consolidated amount of royalty at the prescribed rates along with permit application fees. Besides, OTSS also provided for charging of interest at the rate of 24 *per cent* on belated payment of royalty, fee or other sum due to the Government. In OTSS of 2015-16, an additional 20 *per cent* of royalty was to be levied for *palothan*⁹ soil used in brick making.

Previous Audit Reports of 2011-12 to 2015-16 had highlighted persistent loss of Government revenue amounting to ₹ 36.33 crore due to non-realisation of royalty and permit application fees from 7,220 brick kilns.

To evaluate the assurances (July 2016) by the Department in this regard, Audit test checked the records of five¹⁰ DMOs during 2016-17. It was noticed that 353 out of 1,140 brick kilns test checked did not pay any royalty and permit application fees for the brick years¹¹ 2013-14 to 2015-16. The delay worked out as on 31 March 2017, ranged between 912 to 1,277 days. The concerned DMOs neither initiated any action to stop the business nor made any efforts to realise the due royalty of ₹ 6.28 crore, interest of ₹ 31.08 lakh and permit application fees of ₹ 7.06 lakh.

In the exit conference (November 2017), the Department accepted the audit observation and stated that instructions had been issued to the concerned District Magistrates for effecting recovery from the respective brick kiln owners.

Recommendation:

The Department should ensure that all brick kiln owners in the State abide with the provisions of the OTSS as applicable in the given year. Efforts should also be made to recover outstanding royalty from brick kiln owners.

7.6 Unauthorised extraction

The UPMMC Rules 1963 stipulates that the mining operations shall be undertaken in accordance with the mining plan, which is approved by the Director, Geology and Mining Department.

⁹ Sandy soil.

¹⁰ DMO:Bagpat, Lucknow, Muzaffar Nagar, Rampur and Unnao.

¹¹ October to September.

The MMDR Act stipulates that if any person raises without lawful authority, any mineral from any land, the State Government may recover from such person, the mineral so raised or where such mineral has already been disposed off, the price thereof along with royalty. Under UPMMC Rules, the total royalty has been fixed at the rate of not more than 20 *per cent* of the pit's mouth value of minerals.

7.6.1 Excavation of minerals without mining plan

The lessee had excavated 2.06 lakh cubic meters of sand/ *morrum* without approved mining plan for which ₹ 7.71 crore was recoverable from him.

Previous Audit Reports of 2011-12 to 2015-16 had highlighted persistent loss of Government revenue amounting to ₹ 473.91 crore due to non-realisation of cost of minerals from 214 lessees for excavating minerals without approved mining plan¹².

To evaluate the corrective measures adopted by the Department in this regard, Audit test checked the records of DMO Banda during 2016-17. It was noticed that in one out of five cases examined, the lessee had excavated 2.06 lakh cubic meters of sand/ *morrum* during the period December 2013 to June 2014, without an approved mining plan. The lessee paid ₹ 1.54 crore as royalty during this period. The mineral excavated by the lessee was unauthorized, and hence the cost of the excavated mineral, equal to five times of value of royalty amounting to ₹ 7.71 crore, was recoverable from him. In spite of having progressive mining data, the DMO allowed unauthorised excavation of minor mineral in contravention of the provisions of the UPMMC Rules by supplying MM-11 forms to lease holder.

In the exit conference (November 2017), the Department stated that this is not the matter of illegal mining as the lessee was a legal permit holder and excavating the minerals with lawful authority. The reply of the Department is not tenable because an approved mining plan is a necessary condition in any lease. Any excavation without an approved mining plan amounts to illegal and unauthorised excavation and is in violation of Section 4 of the MMDR Act. Unauthorised excavation attracts recovery of cost of minerals under Section 21(5) of MMDR Act.

7.6.2 Excess excavation

The lessee had excavated 44,928 cubic meters of stone ballast/ boulder in excess of the approved mining plan for which ₹ 3.59 crore was recoverable from him.

Previous Audit Reports of 2011-12 to 2013-14 and of 2015-16 had highlighted persistent loss of Government revenue amounting to ₹ 161.03 crore due to non-realisation of cost of minerals from 56 lessees for excavating mineral in excess of the quantity specified in the approved mining plan.

To evaluate the corrective measures adopted by the Department in this regard, Audit test checked the records of DMO Mahoba during 2016-17. It was noticed that in one out of 25 cases test checked, the lessee had excavated

¹² A plan duly approved by the Director, Geology and Mining under Rule 34 (2) of UPMMC Rules to undertake mining operations detailing yearly development schemes.

44,928 cubic meters of stone ballast/ boulder during the period August 2016 to February 2017 in excess of the quantity permitted in the approved mining plan and paid a royalty of ₹ 71.88 lakh on the excavated material. The mineral excavated by the lessee was unauthorised, and therefore the cost of the excavated mineral, which was equal to five times of value of royalty amounting to ₹ 3.59 crore, was recoverable from the lessee. In spite of having progressive mining data, the DMO allowed unauthorised excavation of minor mineral in contravention of the provisions of the UPMMC Rules by supplying MM-11 forms to lease holder.

In the exit conference (November 2017), the Department stated that this instance was not a matter of illegal mining as the lessee was a legal lease holder and was excavating the minerals with lawful authority. The reply of the Department is not tenable because mining operation beyond the quantity mentioned in the approved mining plan amounts to illegal and unauthorized excavation and is in violation of Section 4 of the MMDR Act. Unauthorised excavation attracts recovery of cost of minerals under Section 21(5) of MMDR Act.

Recommendation:

The Department should ensure that no mineral is excavated in excess of the quantity permitted in the approved mining plan.

Lucknow

The

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