

AUDIT PARAGRAPHS

TAX REVENUE

COMMERCIAL TAX

7.11 Irregular grant of exemption

Under 1986 exemption scheme, exemption to an industrial unit can be granted only if the unit had commenced commercial production before 1 April 1992 or took specified effective steps for production prior to the said date. If the exempted amount is Rs.5 lakh or more, then a certificate of chartered accountant showing particulars of production in the unit during the relevant period must accompany the eligibility certificate.

Test check of records at the Regional Office, Raipur revealed that two industrial units assessed for the period 1999-2000 in July 2002 and November 2002, commenced production from January 1993 and February 1994. However, the assessing officer allowed exemption from payment of tax of Rs.1.02 crore though certificate of chartered accountant showing particulars of production was neither made available to audit nor was the same discussed in the assessment order. Besides, since the production had started after April 1992 whether effective steps were taken for production was also neither on record nor discussed in assessment order. In absence of this exemption allowed was incorrect and resulted in short realisation of Government revenue of Rs.1.02 crore.

After this was pointed out in December 2004, the assessing officer stated in one case that assessment was made as per law. The reply was not tenable as the claim of exemption was not supported by the requisite certificate of chartered accountant. Besides, exemption was allowed on the unaudited accounts; as such, exemption should not have been granted. Reply in other case has not been received.

The cases were reported to the Department and Government between February 2005 to June 2005; their reply had not been received (October 2005).

7.12 Incorrect deduction of sales

As per Section 2(X) of Madhya Pradesh Vanijyik Kar Adhiniyam, 1994 as adapted in Chhattisgarh {Adapted Act} tax paid goods means any goods specified which have been purchased by a dealer from a registered dealer inside the State. For verification of tax paid purchases, the Commissioner

issued a circular on 19 June 1997 according to which bills above Rs.0.20 lakh should be verified by the assessing authority. Bills below Rs.0.20 lakh should be verified only in case of any doubt.

Test check of records of Regional Office, Raipur revealed that a unit 'X' assessed in January 2003 purchased goods valued at Rs.2.10 crore and sold the same for Rs.2.91 crore during 1999-2000. Cross verification of the records of unit 'X' with records of purchasing unit 'Y' revealed that total sales turnover of unit 'Y' assessed in January 2003 was only Rs.0.61 crore during 1999-2000. Thus exhibition of excess tax paid goods valued at Rs.2.30 crore by unit 'X' was incorrect and resulted in short levy of tax of Rs.84.61 lakh including minimum penalty of Rs.63.46 lakh.

After this was pointed out, the assessing officer replied in November 2004 that case was being opened under Section 28(i) of the Act. However final action has not been received.

The matter was reported to the Department and Government (April 2005); their replies had not been received (October 2005).

7.13 Non levy of tax

As per Section 9(1) of Adapted Act, tax payable on sale of "tower" a specified good in Schedule II was eight *per cent* upto 31.12.99 and 12 *per cent* thereafter.

Test check of the records of the Regional Office, Raipur revealed that turnover of a dealer relating to tower for the period 1999-2000 assessed in December 2002 was Rs.3.06 crore out of which goods valued at Rs.0.55 crore were sold in interstate sale. The assessing officer while finalising the assessee exempted the goods for levy of tax treating it incorrectly as tax paid goods. This resulted in non levy of tax of Rs.28.99 lakh.

After this was pointed out in August 2004, the Divisional Deputy Commissioner replied in June 2005 that tower making involved drilling holes and galvanising iron and steel tubes and as such does not amount to manufacture and no tax was payable on it. The reply was not tenable in view of fact that there exists a specific entry "tower" in the Schedule-II, as such, tax should have been levied accordingly.

The matter was reported to the Department and Government (January 2005), their reply had not been received (October 2005).

7.14 Non levy of purchase tax

As per Section 10 of Adapted Act and Rules made thereunder, purchase tax is leviable on purchase value of raw material in case where raw material is purchased without payment of tax for use in manufacturing.

Test check of records of regional office, Raigarh revealed that in case of a

manufacturer assessed for the period 1998-99 in October 2001, raw material amounting to Rs.5.41 crore was purchased on declaration without payment of tax for use in manufacture of jute cloth/jute bags. Purchase tax of Rs.24.89 lakh leviable on raw material was not levied for further adjustment in total exemption limit admissible to the new industry.

After this was pointed out in September 2004, the assessing officer replied (August 2005) that the case was reopened under Section 28(i) in March 2005 and purchase tax of Rs.13.92 lakh assessed and levied.

The matter was reported to the Department and Government (January 2005), their reply had not been received (October 2005).

7.15 Non/short levy of penalty

Section 69 of Adapted Act provides penalty of a sum not less than three times but not exceeding five times of the amount of tax evaded in cases where a dealer concealed his turnover or the aggregate amount of purchase price or furnished false particulars of sales or purchases.

Test check of records of two regional offices, Raipur revealed that out of two dealers assessed for the period 1999-2000 in January 2003, in one case, penalty of Rs.66.50 lakh was imposed instead of minimum penalty of Rs.72.60 lakh and, in another case, though order for levy of penalty was passed, it was neither calculated nor levied resulting in non levy of penalty of Rs.7.05 lakh. Thus there was short realisation of revenue of Rs.13.15 lakh.

The department replied between August 2004 and June 2005 that one case had been reopened U/S 28 (1) while final reply in other case has not been received.

The matter was reported to the Department and Government between January 2005 to April 2005; their replies had not been received (October 2005).

- As per Section 69 of Adapted Act, if the total tax shown as payable and paid by a dealer is less than 80 *per cent* of the total tax assessed, such dealer shall be deemed to have concealed his turnover and the Commissioner may initiate proceedings separately for imposition of penalty as specified.

Test check of records of Regional Office, Raipur revealed that in case of a dealer for the period 1999-2000, assessment order was passed on 20 December 2002 showing tax paid of Rs.1.15 lakh though actual tax paid upto the date of assessment order was Rs.0.02 lakh which was less than 80 *per cent* of the tax assessed of Rs.1.18 lakh. Balance of Rs.1.13 lakh was deposited by the dealer on 24 December 2002 i.e. after the date of assessment order. Thus a penalty of five times the tax evaded was applicable. Proceedings for imposing this penalty of Rs.4.61 lakh were not initiated and facts of the case were misrepresented by the assessing officer in the assessment order.

After this was pointed out (December 2004), the assessing officer replied that facts had been examined and penalty was not applicable. The reply of the assessing officer was not acceptable in view of the fact that total tax shown to

have been paid was less than 80 *per cent* of the tax assessed.

The matter was reported to the Department and Government between April and May 2005; their reply had not been received (October 2005).

7.16 Non levy of tax on taxable turnover

Under the provisions of Adapted Act, tax is leviable on the taxable turnover at the rates mentioned in the relevant Schedules to the Act. Duty Entitlement Pass Book (DEPB) is also a commodity liable to tax.

Test check of records of the Regional Officer, Raipur revealed that in case of a dealer assessed for the period 1999-2000 in December 2002, sale of DEPB amounting to Rs.1.55 crore was not included in gross and taxable turnover. As a result, tax of Rs.14.28 lakh leviable thereon was not levied.

The matter was reported to Department and Government in February 2005. The Department admitted the objection in October 2005 and reopened the case under section 28 of the Act.

7.17 Irregular refund of tax

As per section 73(2) of Adapted Act, any amount collected by any person in excess of prescribed rates shall be liable to forfeiture to the State Government.

Test check of records of the Regional Office, Raipur revealed in December 2004 that in two cases, a dealer collected tax at higher rates on sale of goods between 1998-99 and 1999-2000 and remitted it to Government account and filed returns. The excess collection of tax was liable to be forfeited and the dealer was not entitled for any refund. However, it was noticed that the dealer availed irregular refund of tax of Rs.12.72 lakh for the period 1998-99 and 1999-2000 between June 2002 and July 2003.

After this was pointed out, the assessing officer in one case of 1999-2000 stated that refund was allowed on account of set off admissible to the dealer on purchase of raw material for use in manufacture of goods. The reply is not tenable as the dealer collected tax on the sale of goods. The final reply in other case has not been received (October 2005).

The matter was reported to the Department and the Government between April 2005 and May 2005; their reply had not been received (October 2005).

7.18 Incorrect determination of turnover

Under Adapted Act and decision thereon³, expenditure incurred on freight/ transportation charges on door delivery basis would form part of the sale price.

³ *Decision of Hon'ble High Court of Madhya Pradesh in case of M/s Birla Jute Industries Limited Vs Coal India Limited and Others (1997) 19 TLD 233.*

Test check of records of Circle II, Durg revealed that in four cases of dealers assessed between August and December 2002 for the period 1999-2000, transportation charges amounting to Rs.1.31 crore on door delivery basis were not included in gross/ taxable turnover although it was part of the sale price. This resulted in short levy of tax of Rs.12.06 lakh.

After this was pointed out in February 2005, the assessing officer agreed to take action in two cases. In remaining two cases it was replied that freight separately charged was not included in the sale price in light of judicial pronouncements⁴. The reply of assessing officer was not tenable as the circumstances the court cases cited were not applicable in the instant case. In the instant case, the price mentioned in the contract was on door delivery basis where as in the two court cases cited, there was separate contract for transportation or the goods were sold under control order notification.

The matter was reported to the Department and Government (July 2005); their reply had not been received (October 2005).

7.19 Short levy of tax

Under the provision of Section 9B of Adapted Act, value added tax (VAT) is leviable on value addition derived by the dealer between tax paid purchases and sales thereof.

Test check of records of the Regional office Raipur revealed that in a case of a dealer assessed for the period 1999-2000 in January 2003, tax paid purchase of de oiled cake(DOC)worth Rs.1.26 crore was made and the same was resold at Rs.1.75 crore with value addition of Rs.40.35 lakh. VAT leviable on value addition was Rs.4.54 lakh against which only Rs.0.09 lakh was levied resulting in short levy of VAT of Rs.4.45 lakh.

After this was pointed out in August 2004, Government replied in September 2005 that tax paid DOC worth Rs.1.26 lakh was resold interstate, therefore, vat was not leviable. The reply of Government was not tenable as no separate account for tax paid and taxable sales of goods was maintained by the dealer and vat was levied by the assessing officer on estimated value addition of tax paid goods. Further, there was no document on record to show that tax paid goods were sold interstate.

The matter was reported to the Department and Government (January 2005), their reply had not been received (October 2005).

⁴ (i) Decision of Hon'ble Supreme Court in case of *M/s Bangalore Soft Drink Private Limited Vs State of Karnataka and Another* (2000) 117 STC-413.
(ii) Decision of Hon'ble High Court of U.P. Lucknow in case of *Vinod Coal Syndicate Vs Commissioner of Sales Tax* (1989) 73 STC-317.

STATE EXCISE

7.20 Short production of alcohol

The State Government has not laid down norms for the production of alcohol from bases other than molasses. However, Technical Excise Manual provides that per quintal grain⁵ should yield average 27.71 litre of alcohol.

Test check of records of one distillery at Durg revealed in March 2005 that 1,40,75,377.3 litre of alcohol at average strength of 66.1 over proof was produced from 5,32,823 quintal grain between February 2003 and February 2005 as against the stipulated yield of 1,47,64,525.3 litre of alcohol. Thus there was a shortfall of 6,89,148 litre or 11,44,674.9 proof litre alcohol involving potential loss of excise duty of Rs.5.49 crore.

After this was pointed out, the District Excise Officer (DEO), Durg stated in March 2005 that production of alcohol was according to norms of Technical Excise Manual. The reply is not tenable as facts and figures revealed that production was far less than norms prescribed in the manual.

The matter was reported to the Department and Government (July 2005); their reply had not been received (October 2005).

7.21 Non maintenance of minimum stock of spirit

Rule 4(4) of Chhattisgarh Distillery Rules, 1995 provides that licensee shall maintain a minimum stock of spirit in the distillery as prescribed by the Excise Commissioner. Failure to do so will attract a penalty not exceeding Rs.5 per proof litre on the quantity found short of the minimum prescribed stock. This penalty shall be payable by the licensee irrespective of whether loss has been caused to Government or not.

Test check of records of distilleries in Bilaspur and Durg District revealed that the distillers failed to maintain minimum prescribed stock of spirit at the distilleries between July 2002 and February 2005 by 73.16 lakh proof litre. A penalty of Rs.3.66 crore was leviable but not levied which resulted in non realisation of revenue of Rs.3.66 crore.

After this was pointed out between June 2004 and February 2005, the Assistant Commissioner, Excise, Bilaspur replied that the production of spirit was affected due to closure of old plant and expansion of new plant. The DEO, Durg stated that the supply of spirit was not affected. The reply is not tenable as the distillery rules do not provide for exemption on the grounds of expansion of plant and supply of spirit is not linked with the imposition of penalty.

The matter was reported to the Department and Government between

⁵ *Wheat, Rice, Rye, Barley, Oats and Indian corn*

September 2004 and February 2005; their reply has not been received (October 2005).

7.22 Loss of excise duty

Chhattisgarh Distillery Rules prescribe that every quintal of fermentable sugar present in molasses should yield at least 91.8 proof litre of alcohol. Rule 5 of these Rules further says that samples of molasses will be drawn at intervals by the distillery officer as prescribed by the Excise Commissioner and sent to the departmental laboratory for determining the fermentable sugar content. On the basis of the report furnished by the departmental laboratory, the distillery officer shall calculate the minimum yield of alcohol likely to be extracted. As per Indian Standard Specification (ISS) there are three grades of molasses with minimum sugar content of 50, 44 and 40 *per cent* of which 95 *per cent* is fermentable. As the sugar content in molasses deteriorates over time, for correct estimation of yield it is essential that samples be tested within minimum time after being drawn.

Test check of records of one distillery in Durg district revealed in March 2005 that a set of 26 samples was drawn by the distillery officer in four batches in January 2004 from two grades of molasses with 50 and 47.4 *per cent* of sugar content. These samples were sent after 10 to 35 days to departmental laboratory, and were tested after further delay of four to five months. Time gap between drawing of samples and its testing resulted in reduction of fermentable sugar contents in these samples of molasses from 47.5⁶ and 45.51⁶ *per cent* to 42.83 and 41.21 *per cent*. Based on the reduced sugar content, the estimated yield was calculated as 16.17 lakh proof litre whereas as per grade of molasses the minimum yield should have been 17.92 lakh. Actual yield was 16.52 lakh proof litre of alcohol from 41,395 quintals of molasses, which was more than the norms fixed under the rules but had the testing been done earlier, the estimated yield of alcohol would have been higher by 1.40 lakh proof litre. Thus the revenue foregone of excise duty for delayed testing was Rs.67.16 lakh.

After this was pointed out in audit, the DEO (Distillery) Durg stated in March 2005 that actual production of alcohol was more than the norms fixed under the rules. The reply underlines the inherent flaw in the distillery rules since large time gap between drawing of samples and testing results in reduction of fermentable sugar content. As such, the amount of duty payable depends on time gap; it is essential that, time limit is prescribed for collecting samples and testing. As potential revenue loss is high (Rs.67.16 lakh in instant case) it is essential that some time limit for testing of samples be prescribed in the rules.

The matter was reported to the Department and Government in July 2005; their reply had not been received (October 2005).

⁶ 95 *per cent* of 50 and 47.4.

7.23 Non recovery of expenditure

Rule 4(41) of Chhattisgarh Distillery Rules provides that expenditure incurred on Government establishment at a distillery in excess of five *per cent* of the excise revenue earned from that distillery shall be recovered from the distiller.

Test check of records of one distillery in Durg District revealed in March 2005 that expenditure of Rs.28.74 lakh incurred on State Government establishment exceeded the limit of five *per cent* of total receipt of Rs.16.27 lakh i.e. Rs.0.82 lakh during 2001-02 to 2004-05 by Rs.27.92 lakh. This was not recovered from the distiller.

The matter was reported to the Department and Government in July 2005; their reply has not been received (October 2005).

7.24 Non recovery of excise duty

According to Rule 10-A of Chhattisgarh Country Spirit Rules 1995, the wastage of country liquor transported in sealed bottles from manufacturing warehouse to storage warehouse situated within the district is admissible at the rate of 0.1 *per cent*. Duty for wastage in excess of limit is to be recovered from the licensee.

Test check of records of Assistant Commissioner (Excise)/ DEO, Bilaspur, Durg and Rajnandgaon revealed between July 2004 and March 2005 that 27.45 lakh proof litres of country liquor under 1,513 permits was transported in filled bottles from manufacturing warehouses to storage warehouses within the same district during the period between September 2001 and February 2005, of which 27.19 lakh proof litres were acknowledged. Wastage of 0.26 lakh proof litre exceeded the permissible limit of 2,745 proof litre by 0.23 lakh proof litre. Excise duty of Rs.11.31 lakh was leviable on excess wastage but was not levied leading to non realisation of revenue to that extent.

After this was pointed out, Assistant Commissioner, Excise, Bilaspur replied in July 2004 that the cases were being submitted to Collector for decision. DEO Durg stated in March 2005 that action for recovery of loss from distiller would be taken after verification. Further report from Assistant Commissioner (Excise), Bilaspur and District Excise Officer, Durg has not been received (September 2005). Reply from Assistant Commissioner, Excise, Rajnandgaon has not been received.

The matter was reported to the Department and Government (July 2005). Reply had not been received (October 2005).

7.25 Non realisation of excise duty

Rule 12(4) and 13 of Chhattisgarh Foreign Liquor Rules, 1995 requires the licensee to deposit the prescribed excise duty leviable on full quantity of foreign liquor to be exported or to furnish a bank guarantee for an equal amount or execute a bond with adequate solvent sureties, so that the leviable

duty is recovered if verification reports from importing units of foreign liquor are not furnished by the exporter within 21 days. Besides penalty upto Rs.50,000 may also be imposed under Rule 19.

Test check of records of one distillery in Durg District revealed in March 2005 that 4,725 proof litre foreign liquor involving excise duty of Rs.3.31 lakh was exported to a unit in Assam under bond in May 2005. Verification report was not received from the Assam unit even after eight months. Action to recover excise duty of Rs.3.31 lakh and penalty of Rs.0.50 lakh leviable was not taken by Excise Department. This resulted in non realisation of revenue of Rs.3.81 lakh.

After this was pointed out, DEO (Distillery) Durg stated in September 2005 that distiller has been asked to call for the verification report. The reply is not tenable as distiller did not submit verification reports within 21 days, as such, excise duty alongwith penalty was recoverable.

The matter was reported to the Department and Government in July 2005; their reply has not been received (October 2005).

TAXES ON VEHICLES

7.26 Non levy of vehicle tax and penalty

According to the provisions of Chhattisgarh Motaryan Karadhan Adhiniyam 1991 (Adhiniyam) and Rules made thereunder, tax is leviable at prescribed rates on every vehicle used or kept for use in the state. In case of non payment of tax, the owner shall be liable to pay penalty at the rate of one twelveth of the unpaid tax for each month of default or part thereof but not exceeding the unpaid tax. If the owner fails to pay the unpaid tax or penalty or both, the taxation authority is required to issue a demand notice and recover the dues as arrears of land revenue.

Test check of records of three Regional Transport Offices⁷ (RTOs), Additional Regional Transport Office (ARTO), Durg and District Transport Office (DTO), Korba revealed that vehicle tax amounting to Rs.1.6 crore was not levied and recovered between September 2001 to March 2004 from the owners of various categories of vehicles⁸. Penalty of on equal amount (Rs.1.6 crore) was also leviable, but was not levied. This resulted in non realisation of revenue of Rs.3.2 crore.

After this was pointed out, RTO Jagdalpur stated in February 2005 that demand notice was being issued for maxi cab carriages RTO, Raipur confirmed in March 2005 that action for recovery was being taken in respect of vehicles viz. spare stage carriages and regular stage carriages. In respect of other units, it is stated that position will be informed after scrutiny of cases.

⁷ *Bilaspur, Jagdalpur and Raipur*

⁸ *Regular stage carriages, goods carriages, private service vehicles, maxi cab carriages and reserve or spare stage carriages*

No further response has been received (October 2005).

The matter was reported to the Department and Government (between December 2004 and July 2005); their reply has not been received (November 2005).

7.27 Non realisation of tax from other States

As per Adhiniyam and Rules made thereunder, motor vehicles of other states are permitted to ply in the state on reciprocal agreements, on payment of tax at the rate specified in the first schedule. In case the tax is not paid within the stipulated time, a penalty at the rate of one twelfth of the unpaid amount of tax for the default of each month and part there of but not exceeding the unpaid amount is also leviable.

Test check of records of RTO Raipur revealed in March 2005 that vehicle tax on 12 public service vehicles of other states plying on reciprocal agreements for the period between April 2002 and March 2003, was not paid to the extent of Rs.14.84 lakh for which no demand was raised by tax authorities. Penalty of Rs.14.84 lakh was also not levied. This resulted in non levy of vehicle tax and penalty amounting to Rs.29.68 lakh.

After this was pointed out in March 2005, RTO stated that audit would be intimated after scrutiny of records.

The matter was reported to the Department and Government in July 2005; their reply has not been received (August 2005).

LAND REVENUE

7.28 Non payment/short assessment of premium and ground rent

Madhya Pradesh Government issued instructions (between 1983 and 1991) that anticipated premium is recoverable in advance prior to handing over possession in respect of land approved for transfer to a local body or Government undertaking besides the annual rent as fixed by Government.

Scrutiny of records in September 2004 of the Municipal Council Janjgir Naila (MC) revealed that 46,260 sq.ft. nazul land valued at Rs.60.83 lakh situated at three different places was transferred/ allotted and advance possession was given in September 1998 by the Collector Janjgir-Champa to the MC at concessional rate i.e. premium at the rate of 50 *per cent* and ground rent at the rate of 7.5 *per cent* per annum of the total value of land with the condition that the total amount should be deposited within six months from the date of order. However, MC deposited in November 2001 Rs.3 lakh only on account of premium and remaining premium of Rs.27.19 lakh and ground rent Rs.22.64 lakh for the period 1999 to 2004 was not deposited as of September 2004.

After this was pointed out between September 2004 and April 2005, MC

stated that the said amount could not be deposited due to financial hardship; however, action will be taken to deposit the amount.

The reply was not tenable as MC had earnings from selling/ auction of shops constructed on this land and should have deposited the amount as per provisions.

7.29 Non-auction of shops

Section 109(2)(1)(c) of Madhya Pradesh Municipality Law Manual (also applicable in Chhattisgarh), empowers the Chief Municipal Officer (CMO) to transfer any immovable property of council on lease, by sale/ auction. CMO is over all incharge of auction from Government side.

Test check of records of CMO Municipal council Janjgir-Naila in September 2004 and further information collected in July 2005 revealed that 93 shops were constructed by the CMO at different places under Integrated Development of Small and Medium Town (IDSMT) scheme during the year 1997-98 to 2000-01. The shops were completed in the year 2000-01. Of the above 93 shops, 36 shops were not auctioned even after a lapse of more than four years. Thus non auction of shops resulted in loss of revenue of Rs.43.92 lakh (on premium and rent) during the period April 2001 to March 2005.

After this was pointed out the CMO, Janjgir Naila stated in September 2004 that the shops could not be auctioned due to lack of sufficient bidders and due to election of local bodies. Action will be taken for auction of remaining shops in August 2005. The reply is not tenable as 36 shops remained unauctioned due to lack of wide publicity in newspaper for more than four years and no concrete measures have been taken to quickly effect the sale of these shops.

The matter was reported to the Department in November 2004 and to Government in August 2005. Further report has not been received (October 2005).

7.30 Short assessment of premium and ground rent

As per para 26 of Revenue Book Circular (RBC) of Madhya Pradesh Government (as adopted), nazul land⁹ can be given to housing board on lease without auction on payment of premium at the rate of 60 *per cent* of average market value¹⁰ of Nazul land decided in previous year. In addition, ground rent worked out at 50 *per cent* of 7.5 *per cent* of the premium is to be collected annually from housing board.

Madhya Pradesh Government, Revenue Department allotted 45,302 square feet nazul land situated on G.E. Road at Rajnandgaon district on lease to housing board at premium of Rs.20.39 lakh and ground rent of Rs.0.61 lakh

⁹ A Government land likely to be used for the purpose of building construction or public facilities or entertainment place and includes road way.

¹⁰ Market value calculated as per guideline issued by the Collector.

per annum. According to the guidelines for valuation of land applicable to the area (Rajnandgaon) premium on the land was payable at the rate of Rs.132 per square feet. The premium payable was Rs.35.88 lakh and ground rent for six years was Rs.8.07 lakh. Thus, Rs.15.49 lakh towards premium and Rs.4.41 lakh as ground rent was short recovered aggregating to Rs.19.90 lakh.

After this was pointed out in October 2004, the Nazul Officer Rajnandgaon replied that action would be taken after obtaining direction from Government.

The matter was reported to the Department and Government (April 2005) reply is awaited (October 2005).

OTHER TAX REVENUE

STAMP DUTY AND REGISTRATION FEE

7.31 Purchase of stamps from unauthorised persons in insurance sector

Madhya Pradesh Stamps Rules, 1942 (as adopted) requires licensed vendors to purchase stamps from authorised treasury and sell the same at the authorised place. The sale/ purchase of stamps by vendors at a place other than the places mentioned in their licenses is not permissible under the rule. The sale of stamps by persons not duly authorised is prohibited.

During the course of review of purchase and usage of non judicial stamps in insurance sector, it was noticed that Life Insurance Corporation (LIC) divisions of Raipur and Shahdol purchased stamps valued at Rs.48.83 lakh and Rs.29.16 lakh respectively from two unlicensed vendors during the period between 1999-2000 and 2000-01.

After this was pointed out in June 2004, no reply was given by the LIC division Raipur, whereas LIC division Shahdol stated in July 2004 that since the partners of the firm were holding valid licenses which were in force at the time of purchase of stamps, the vendor was authorised with proper licence. The reply is not tenable because no licence was issued in favour of the firm from which stamps were purchased.

Thus the purchase of stamps valued at Rs.77.99 lakh in insurance sector was not in accordance with the Rules.

The matter was reported to the Department and Government in December 2004. In reply, Government stated in April 2005 that the district registrars have been directed to investigate this unauthorised purchase of stamps.

7.32 Undervaluation of properties

The Indian Stamp Act, 1899, as applicable to Chhattisgarh State requires the market value of property to be specified in any deed for its conveyance. This

value is the basis for determining stamp duty and registration fee leviable. The Act empowers a sub registrar to refer the documents to the Collector for determination of market value of the property. If there are reasons to believe that market value of the property has not been truly set forth in the document then such cases are to be finalised by the Collector within a period of 90 days, as per Inspector General Registration and Superintendent Stamps instructions of September 2003.

Test check of records of three sub registrars Jagdalpur, Jashpurnagar and Raipur revealed between August 2004 and March 2005 that 52 instruments registered between April 2001 and February 2004 were valued at Rs.2.15 crore whereas the market value of these documents was Rs.4.70 crore at the time of execution. The sub registrars did not refer these cases to the Collector for determination of correct market value. This resulted in short realisation of stamp duty and registration fee by Rs. 25.43 lakh.

It was further noticed between August 2004 and March 2005 that 126 documents referred to the Collector of Stamps between October 2000 and November 2004 by the sub registrar, Jagdalpur and Raipur, for determination of market value of properties had not been finalised. Stamp duty and registration fee recoverable on these documents, based on the value proposed by the sub registrars, worked out to Rs.47.57 lakh, which remained unrealised.

After this was pointed out, the sub registrars stated between August 2004 and March 2005 that the documents would be referred to the Collector for determination of correct market value after scrutiny of the cases. The sub registrars Jagdalpur and Raipur further stated that the Collector of Stamps would be requested for early disposal of pending cases. Further progress in the matter has not been received (July 2005).

The matter was reported to the Department and Government between August 2004 and June 2005, their reply has not been received (October 2005).

7.33 Incorrect levy of stamp duty

As per provisions of Indian Stamp Act, 1899, stamp duty and advalorem registration fee is chargeable on instruments of power of attorney when given without consideration in favour of persons who are not his/her spouse, children, mother/father, brother/sister, authorising the attorney to sell or transfer any immovable property.

Test check of records of the sub registrar, Raipur revealed in August 2004 that in eight instruments of power of attorney registered between April 2002 and February 2004, an unrelated person was authorised to sell/transfer immovable property. The stamp duty and registration fee was charged on incorrect market value of Rs.7.16 lakh as against the current market value¹¹ of Rs.40.36 lakh resulting in under valuation of Rs.33.20 lakh having revenue effect of Rs. 2.79 lakh Further in another five cases, registration fee of Rs.9,837 was leviable instead of Rs.330 levied by the registering authorities due to application of

¹¹ *Market Value calculated as per guide line issued by the Collector.*

incorrect rates. This resulted in short levy/realisation of stamp duty and registration fee of Rs.2.89 lakh.

After this was pointed out, it was replied in August 2004 that stamp duty/registration fee would be recovered at the time of registration of sale deeds. The reply is not tenable as it is not in conformity with the provisions of the Act.

The matter was reported to the Department and Government between August 2004 and June 2005, their reply has not been received (October 2005).

7.34 Incorrect exemption of stamp duty and registration fee

According to the Indian Stamp Act, 1899, market value of any property with effect from 15 November 1997, shall be the value, in the opinion of Collector or the appellate authority, as the case may be, which it would have fetched if sold in the market. As per Government notification of 24 October 1980, instruments executed in favour of societies for acquisition of land for housing purposes were exempted from payment of stamp duty.

During test check of records in August 2004 of sub register, Raipur, loss of revenue aggregating Rs.36.27 lakh in instruments executed by/in favour of societies was noticed as detailed below:

- In nine instruments executed between April 2002 and January 2004 by/in favour of societies, the purpose of purchase of land was not mentioned. Therefore, stamp duty and registration fee on market value of the property (Rs.92.49 lakh) was leviable but the Department exempted these instruments from payment of stamp duty and registration fee. This resulted in short realisation of stamp duty and registration fee of Rs.9.23 lakh.
- Three instruments involved sale of land previously purchased by two societies between January 2001 August 2003 for housing purposes for its members with benefit of exemption from payment of stamp duty and registration fee. The sales were made between October 2002 and September 2003 to persons other than members of societies. As the land of Rs.46.61 lakh was not utilised for housing purposes of members of societies, stamp duty and registration fee on the instruments previously exempted was recoverable but the same was not demanded and recovered by the Department. This resulted in short realisation of stamp duty and registration fee of Rs.8.26 lakh.
- In three instruments having deed value of Rs.2.82 crore executed after 15 November 1997 and registered between October 2002 and September 2003, value of plots was determined at rates lower than prevailing market rates. Action was, however, not initiated under provisions of the Act resulting in loss of stamp duty and registration fee of Rs.18.78 lakh.

After this was pointed out, the sub register stated in August 2004 that appropriate action would be taken after obtaining the guidance of higher authorities in regard to incorrect exemption and recovery. He also stated that the cases of undervaluation would be referred to the Collector of Stamps after investigation. Further progress in the matter has not been intimated (May

2005).

The matter was reported to the Department and Government between August 2004 and June 2005, their reply has not been received (October 2005).

7.35 Incorrect/unauthorised remission of stamp duty and registration fee

Government notification (September 1978) exempted stamp duty on mortgage/hypothecation deeds on loans taken from specified banks for agricultural purpose and executed by bhoomiswami holders belonging to scheduled castes/tribes and other bhoomiswami holders holding land not exceeding 10 hectares.

Test check of records of sub registrars, Jagdalpur and Raipur between August 2004 and March 2005 revealed that 51 mortgage deeds and five instruments of security bonds registered between April 2002 and January 2004 were incorrectly exempted from payment of stamp duty and registration fee. The transaction did not fulfill various criteria specified in Government notification, therefore, exemption granted to the extent of Rs.10.02 lakh towards stamp duty and registration fee was irregular.

After this was pointed out, the sub registrar Raipur, accepted the objection relating to six cases and stated that in one case guidance of the higher departmental officers would be obtained. In remaining seven cases he stated that appropriate action would be taken after taking up the matter with the bank to ascertain the factual position. Sub registrar Jagdalpur stated that audit would be intimated about the action taken in 42 cases after scrutiny of the documents. Further report in the matter has not been received (October 2005).

The matter was reported to the Department and Government between August 2004 and June 2005, their reply has not been received (October 2005).

7.36 Short levy of stamp duty and registration fee

As per provisions of Indian Stamp Act, stamp duty and registration fee leviable is determined by the market value of properties involved in the instruments and by the category in which the instrument is classified. Different rates are prescribed in the Stamp Act for different categories of instruments like settlement trust, lease, gift etc.

Test check of records of the sub registrar, Raipur revealed in August 2004 that six instruments registered between April 2002 and August 2003 were misclassified¹² and hence only Rs.0.28 lakh was levied in lieu of leviable stamp duty and registration fee of Rs.6.73 lakh. This resulted in short levy of stamp duty and registration fee of Rs.6.45 lakh.

¹² "Settlement" as "trust" (4), "Mortgage with possession" as "lease" (1), "Gift as settlement" (1).

After this was pointed out the sub registrar intimated that requisite action would be taken in the matter. Further progress in the matter has not been intimated (May 2005).

The matter was reported to the Department and Government (between November 2004 and January 2005); Reply has not been received (October 2005).

7.37 Loss of revenue due to theft

As per provisions of Madhya Pradesh Treasury Code (as adapted) Vol: 1, any Government money received by department/office should be deposited in bank/treasury through challan on the same day or next day in unavoidable circumstances. It should otherwise be kept in a strong chest with double lock system.

Madhya Pradesh Financial Code also provides that any loss caused by defalcation or otherwise, when detected should immediately be reported by the officer concerned to the head of the department as well as to the Accountant General. This should be followed by a full investigation report submitted to the same authorities.

Test check of records of Sub register, Raipur (August 2004) revealed that registration fee and franking amount aggregating Rs.3.23 lakh received on 6.11.2003 was not deposited in bank/treasury on the same day and kept in a simple cash box. The above cash was stolen from the cash box, which was reported to police on 7.11.2003 and Inspector General of Registration as well. The case was closed by the police which reported to the department on 4.2.2004 that no recovery could be made. No action was however, taken by the department to conduct departmental investigation and fix responsibility for the loss. The requisite investigation report was also not prepared and furnished to the concerned authorities. Thus due to non observance of rules and orders regarding safe custody of cash, Government suffered a loss of Rs.3.24 lakh and prescribed follow up action was also not taken by the Department.

After this was pointed out, the sub registrar stated in August 2004 that action would be taken as per rules. Further report in the matter has not been received (December 2004).

The matter was reported to the Department and Government (between November 2004 and January 2005); their reply has not been received (October 2005).

NON TAX REVENUE

FOREST RECEIPTS

7.38 Loss of revenue due to non exploitation of bamboo coupes

Bamboos are felled/exploited in three to four years felling cycle prescribed in the relevant working plan of the division. The crop is prone to rapid deterioration/ decay if not exploited, when due, as per the prescriptions in the working plan. Non exploitation of bamboo crop also prevents fresh growth of coppice shoots/ clumps, which eventually form future bamboo crop. As per instruction issued by State Government in July 1997, Chief Conservator of Forest has been nominated by the State Government for recommending any deviation in the working plan to Government of India for their approval.

Test check of records (between December 2003 and June 2004) of three¹³ general forest divisions revealed that out of 420 coupes which were due for felling, only 161 were felled during the period 1999-2000 to 2003-04. Non felling of 259 coupes was a deviation from the working plan, but requisite sanction from competent authority was not obtained. This resulted in loss of revenue of Rs.27.40 crore on the basis of estimated yield of 95,498.117 tonns bamboo from 1,11,664.532 hectare area. The estimated yield was prepared by the department itself.

After this was pointed out, the concerned divisional forest officers (DFOs) stated between October 2004 and December 2004 that non felling was due to uneconomical working of coupes and naxalite activities. It was also stated that most of the cases were written off by Conservator of Forest Jagdalpur circle.

The reply is not tenable as decision of declaring working of coupes as uneconomical was not supported by necessary documentation and deviation from the working plan did not have prior approval of the competent authority.

The matter was reported to the Department and Government (October 2004), their reply has not been received (July 2005).

7.39 Loss of revenue due to low yield of forest produce

Department prescribed in January 1984, that variation between estimated and actual yield of timber should not exceed 10 *per cent*. No such norms were however, fixed for permissible variation in estimated and actual production of bamboo. The estimated yield of bamboo from the coupe is determined by survey and drawing sample plots in the coupe.

Test check of records of two DFOs revealed in September 2004 that actual production of bamboo and timber was less than estimated yield of bamboo and timber worked out by the department. This resulted in short realization of

¹³ Dantewada, Sukma and Bijapur.

Rs.50.35 lakh as detailed below:

Sl. No	Name of the division	Year of extraction	Name of forest produce	Estimated yield	Actual yield	Less production	Percentage variation	Short realisation (Rupees in lakh)
1.	West Bhanup-ratapur	2001-02 to 2003-04	Bamboo					32.65
			Commercial	700.00 SU	302.265 SU	397.735 SU	56.82	
			Industrial	2350.00 SU	1525.977 SU	824.023 SU	35.06	
2.	Kanker Division	2003-04	Bamboo					9.60
			Commercial	210.00 SU	73.493 SU	136.507 SU	65.00	
			Industrial	615.00 SU	477.284 SU	137.736 SU	22.39	

After this was pointed out the DFO stated in September and October 2004 that the estimated yield is only a rough estimate determined by sample plotting and this cannot be taken as target of production. The reply was not tenable as the estimates are prepared by the Department itself and variation between the estimated yield and actual yield was very large and varied between 22 per cent to 65 per cent. No reason for this huge variation was on record which resulted in less realisation Government revenue by Rs.42.25 lakh

3.	Kanker division	2003-04	Timber	325.528 ¹⁴	165.812	127.163	39.06	8.10
			Fuel	271.5	88	156.000	57.45	
				Stacks	Stack	Stack		

After this was pointed out, the DFO stated in September 2004 that the estimated yield has been worked out on the basis of form factor¹⁵ depending on surveyed site quality and actual site conditions may differ. The reply is not acceptable because these facts are taken into account in determining the estimated yield. Low yield of production resulted in loss of Rs.8.10 lakh after allowing the permissible deduction.

The matter was reported to the Department and Government in November 2004 and January 2005; their reply has not been received. Audit has further recommended to Department that norms for maximum permissible variation between estimated and actual yield of bamboo should be prescribed (June 2005).

¹⁴ 10 per cent variation allowed

¹⁵ Form factor-denotes the height and girth of tree in a site which indicates the estimated yield

MINING RECEIPTS

7.40 Short realisation of royalty

According to Section 9 (i) of Mines and Minerals (D and R) Act 1957, read with the decision of Hon'ble Supreme Court (October 1998)¹⁶ the holder of a mining lease shall pay royalty in respect of any mineral removed or consumed by him from the leased area at the rates specified in the second schedule. To ensure proper accounting of minerals extracted/ removed from mines and payment of royalty, lessee is required to submit monthly and annual returns to the mining officer showing therein the quantity of minerals extracted and removed from the mining area, as well as the closing balance at the end of month/ year.

Test check of records of Mining Office, Raipur revealed in November 2004 that two lessees were submitting biennial and annual returns. In four biennial returns between January 2002 and December 2003, they reduced their respective closing stocks of lime stone by 3,36,563 and 3,57,249 metric tones. Out of this 1,61,983 and 3,57,249 metric tones was shown as screen reject¹⁷. While one unit showed the entire quantity to be screen reject the other showed 1,61,983 MT as screen reject and did not mention any reason for the remaining 1,74,580 metric tones. This reduction was irregular as there is no specific provision in the Act/ Rules for reducing the closing stock of minerals at any stage on account of any reason whatsoever. Royalty of Rs.2.79 crore payable on the reduced stock was not paid by lessees. Department did not take any action to recover the same resulting in non realisation of revenue of Rs.2.79 crore.

After this was pointed out in November 2004, Mining Officer stated that audit would be intimated after taking proper action on receipt of orders from higher authority. Further report has not been received (October 2005).

The matter was reported to the Department and Government in April 2005; their reply has not been received (October 2005).

7.41 Non realisation of interest on royalty

Mining Resources Department/ Government of Madhya Pradesh in the letter dated 25.10.1999 allowed a mining lessee to deposit outstanding amount of Rs.5.41 crore on account of cess and interest thereon in 10 equal instalments while the amount of royalty of Rs.1.20 crore outstanding against the lessee was also recoverable in 10 equal instalments along with penal interest.

Test check of records of Mining Office, Raipur in November 2004 revealed that lessee paid royalty in the prescribed instalment but penal interest of Rs.36.67 lakh was neither demanded by the department nor was paid by the

¹⁶ *State of Orissa and Others Vs M/s Steel Authority of India Limited VI (1998) SLP553*
¹⁷ *Wastage generated during crushing of limestone.*

lessee resulting in short realisation of Government revenue to the extent.

After this being pointed out, the Mining Officer stated in November 2004 that the progress on realising interest on arrear of royalty would be intimated after raising of demand and taking action for recovery. Further progress has not been reported (August 2005).

The matter was reported to the Department and Government in April 2005; their reply has not been received (August 2005).

7.42 Short levy of stamp duty and registration fees on mining lease

As per instructions of Government of Madhya Pradesh as applicable to Chhattisgarh Mining Resources Department, stamp duty leviable on renewal of mining lease is calculated on the basis of highest quantity of mineral to be extracted as shown in the application, average quantity of production in last three years and quantity of production given in the mining plan.

Test check of records of Mining Office Raipur, revealed in November 2004 that while renewing mining lease of a lime stone unit for a period of 20 years w.e.f. 4.8.1999, lease deed was executed/ registered on the basis of probable average annual royalty of Rs.4.40 crore as shown in the application form by the lessee in place of average quantity of production in the last three years of Rs.5.64 crore. This resulted in short realisation of stamp duty and registration fees aggregating Rs.48.79 lakh.

After this was pointed out in audit, the Mining Officer stated in November 2004 that proper action would be taken after scrutiny of the case. Further reply has not been received (August 2005).

The matter was reported to the Department and Government in April 2005; their reply has not been received (October 2005).

7.43 Short levy of dead rent and interest

According to the provisions of Section 9 of the Mines and Minerals (D&R) Act, 1957 and Rules made thereunder, a lessee is liable to pay royalty on minerals removed from the leased area or dead rent as the case may be, by the prescribed date, failing which he is liable to pay interest at 24 *per cent* per annum from the sixtieth day of the expiry of the stipulated date. Further, as per Government instructions (September 1995) the dead rent is to be paid by the lessee by 20th January of every year.

Test check of records of Mining Offices, Raipur and Dantewada revealed between May and November 2004 that dead rent of Rs.10.87 lakh was paid by two lessees as against Rs.25.61 lakh payable for the period between 1999 and 2004. Consequently Rs.14.74 lakh was short/not paid on which interest amounting to Rs.1.40 lakh was also leviable. Further, penal interest of Rs.2.74 lakh on belated payment of dead rent though leviable was not levied. This resulted in non realisation of revenue aggregating to Rs.18.88 lakh (dead rent

Rs.14.74 lakh and interest Rs.4.14 lakh).

After this was pointed out in audit the Mining Officer, Dantewada stated in May 2004 that demand letter was issued to the lessee in May 2004. Mining Officer, Raipur replied in November 2004 that after scrutiny the progress of recovery will be intimated to audit. Further report in this matter has not been received (July 2005).

The matter was reported to the Department and Government in April and July 2004; their reply has not been received (October 2005).

OTHER NON TAX REVENUE

FISHERIES DEPARTMENT

7.44 Loss of revenue due to non recovery of royalty

The Department of Fisheries is required to recover royalty on fish produced by Chhattisgarh Rajya *Matsya Mahasangh Maryadit* Raipur (Mahasangh) at the rate of Rs.4 per kilogram.

Scrutiny of records of Director of Fisheries (Director) in June 2004 and further information collected in April 2005 and June 2005 revealed that 2,562.61 MT fish were produced by Mahasangh since the inception of Chhattisgarh State in November 2000 and royalty payment of Rs.1.02 crore was due. Out of this, only Rs.12 lakh was deposited by the Mahasangh in the year 2003-04 and an amount of Rs.90.50 lakh was still outstanding for recovery as per details given below:-

Sl No.	Year	Fish produced in MT	Rate per Kg.	Amount of Royalty Rs. in lakh	Amount deposited	Outstanding amount
1	2	3	4	5	6	7
1	2000-01 (11/2000)	464.95	Rs. 4/-	18.598	Nil	18.598
2.	2001-02	374.72	"	14.988	Nil	14.988
3.	2002-03	768.78	"	30.751	Nil	30.751
4.	2003-04	319.79	"	12.792	12.00 lakh	0.792
5.	2004-05 (upto 2/05)	634.368	"	25.370	Nil	25.37
	Total	2562.608		102.499	12.00	90.499

After this was pointed out, the Director admitted that inspite of correspondence with Mahasangh during June 2003 to March 2005 for the recovery of royalty, the amount could not be recovered and penalty could not be imposed as there was no agreement with the Mahasangh.

The matter was referred to Government in December 2004 and reply is awaited (June 2005).

PUBLIC WORKS DEPARTMENT

7.45 Non recovery of lease amount and interest

As per Madhya Pradesh Works Department Manual adapted in Chhattisgarh State, the lessee is liable to pay the instalments of lease amount on the date stipulated in lease deed for collection of toll tax on bridges, failing which he is liable to pay interest at the rate of 10 *per cent* per annum for such delayed payment.

Test check of records of Executive Engineer (EE), National Highway, Public Works Department Raipur, revealed in August 2004 that the right to collect toll tax for the period 20 May 1993 to 5 April 1994 was leased for an amount of Rs.49.51 lakh. Amount was recoverable in 10 monthly instalments from 1.6.1993. The lessee paid only Rs.14.90 lakh in 11 instalments against this and balance amount of Rs.34.61 lakh remained unrealised on which interest payable upto August 2004 worked out to Rs.35.98 lakh. Further delayed payment of lease instalments for five days to 31 days also attracted interest amounting to Rs.1.75 lakh. Failure to effect recovery of balance amount and interest resulted in non recovery of revenue to the extent of Rs.72.33 lakh.

After this was pointed out, EE, NH Division PWD, Raipur stated that the action to recover amount as arrears of land revenue was being taken.

The matter was reported to the Department and Government between (November 2004) and (January 2005); reply is awaited (October 2005).

7.46 Non levy of stamp duty and registration fee in Public Works Department

According to para 9.048 of M.P. Works Department Manual, a lessee is liable to pay requisite stamp duty under Article 35 (b) of schedule 1-A of Indian Stamp Act on all types of lease. For lease beyond one year, registration under section 17(1)(d) of Indian Registration Act, 1908 is compulsory and therefore registration fee is also payable. As per instructions of Inspector General Registration and Superintendent of Stamp dated 7.7.2000 and Madhya Pradesh Government PWD instruction/order dated 18.9.96, stamp duty and registration fee is leviable on lease deed executed by contractors for recovery of toll tax under private capital scheme investment. District Registrar, Raipur had also directed in his letter dated 2.3.2002 to EE (Setu Nirman) Raipur to ensure registration of all lease deeds and payment of stamp duty and registration fee thereon as per rules.

Test check of records of EE, Public Works Department (Setu Nirman) Raipur Division, Raipur revealed in August 2004 that construction of four bridges including approach road, toll booth and barrier etc. under private capital investment scheme was sanctioned to a contractor, who was entitled to recover the toll tax. An agreement was executed in March 1999 for an amount of Rs.3.20 crore but the lease deed was not registered which resulted in non

realisation of stamp duty and registration fee of Rs.42 lakh.

After this was pointed out in August 2004, the EE, PWD (Setu Nirman) Raipur Division replied that the agreement was executed on the proforma approved by Government in which there was no provision for payment of stamp duty and registration fee. Moreover the word lease or lessee was not used in the agreement and it was not a kind of lease. The case was also referred to law department for its comments. The reply is not tenable as stamp duty and registration fee is leviable on lease deed in terms of instructions issued by I.G. Registration, Superintendent of Stamp and M.P. PWD Department order/instruction.

The matter was reported to the Department and Government between October 2004 and January 2005; their reply has not been received. However, Chief Engineer, Setu Parikshetra, PWD, Raipur stated in August 2005 that PWD, Chhattisgarh Government had been requested to obtain the comments of law department and action would be taken in this case as per direction of Government. Further reply has not been received (October 2005).

RAIPUR
The

(Subir Mallick)
Accountant General
Chhattisgarh

Countersigned

NEW DELHI
The

(VIJAYENDRA N. KAUL)
Comptroller and Auditor General of India