# Report of the Comptroller and Auditor General of India

for the year ended 31 March 2009

(Revenue Receipts)

Government of Madhya Pradesh

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# PREFACE

*This report for the year ended 31 March 2009 has been prepared for submission to the Governor under Article 151(2) of the Constitution.*

*The audit of revenue receipts of the State Government is conducted under Section 16 of the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971. This report presents the results of audit of receipts comprising commercial tax/VAT, state excise duty, taxes on vehicles, land revenue, other tax receipts, forest receipts, mining receipts and other non-tax receipts of the State.*

*The cases mentioned in this report are among those which came to notice in the course of test audit of records during the year 2008-09 as well as those which came to notice in earlier years but could not be included in previous reports.*

# OVERVIEW

This report contains 81 paragraphs including three reviews relating to non/short levy of tax, interest, penalty, etc. involving Rs. 1,339.50 crore. Some of the major findings are mentioned below:

## I. General

The total revenue receipts of the State Government for the year amounted to Rs. 33,577.21 crore against Rs. 30,688.73 crore for the previous year. Fifty *per cent* of this was raised by the State through tax revenue (Rs. 13,613.50 crore) and non-tax revenue (Rs. 3,342.86 crore). The balance 50 *per cent* was received from the Government of India as State share of divisible union taxes (Rs. 10,767.14 crore) and grants-in-aid (Rs. 16,620.85 crore).

**(Paragraph 1.1)**

Test check of records of commercial tax, state excise, motor vehicles tax, stamps duty and registration fee, land revenue, other tax receipts, forest receipts and other non-tax receipts conducted during the year 2008-09 revealed under-assessment/short levy/loss of revenue amounting to Rs. 2,342.15 crore in 2,96,745 cases.

**(Paragraph 1.13)**

## II. Commercial Tax

A review of **'Transition from Madhya Pradesh Commercial tax to Value Added tax'** revealed the following:

- Cross verification of sale could not be conducted due to lack of provision in the Act to furnish sale list.

**(Paragraph 2.2.7.2)**

- Lack of mandatory provision for furnishing security by the dealers resulted in non-realisation of revenue of Rs. 2.18 crore.

**(Paragraph 2.2.7.5)**

- Incorrect availing of inventory rebate and input tax credit of Rs. 15.70 lakh.

**(Paragraph 2.2.11.1)**

- Loss of revenue of Rs. 50.73 lakh due to non-levy of tax on fabric, sugar and tobacco products.

**(Paragraph 2.2.12)**

Non/short levy of tax resulted in non-realisation of revenue of Rs. 3 crore including penalty.

**(Paragraph 2.4)**

Application of incorrect rate of tax resulted in short levy of tax of Rs. 2.57 crore and interest/penalty of Rs. 6.61 lakh.

**(Paragraph 2.5)**

Non-registration of dealers resulted in non-realisation of profession tax of Rs. 1.89 crore.

**(Paragraph 2.6)**

Incorrect deduction of tax free sales resulted in non-realisation of tax of Rs. 1.80 crore.

**(Paragraph 2.7)**

Non/short levy of entry tax resulted in non-realisation of revenue of Rs. 1.41 crore including interest and penalty of Rs. 33.99 lakh.

**(Paragraph 2.8)**

Incorrect grant of exemption resulted in non-realisation of revenue of Rs. 1.09 crore.

**(Paragraph 2.9)**

Incorrect deduction of tax paid sales resulted in non-realisation of tax of Rs. 1.01 crore.

**(Paragraph 2.10)**

Grant of inadmissible discount resulted in non-realisation of tax of Rs. 72.59 lakh.

**(Paragraph 2.11)**

Incorrect grant of refund resulted in short realisation of revenue of Rs. 70.96 lakh.

**(Paragraph 2.12)**

## III. State Excise

Non-receipt of verification reports of export/transport of foreign liquor/beer/spirit within the prescribed period resulted in non-realisation of excise duty of Rs. 13.47 crore.

**(Paragraph 3.3)**

Incorrect fixation of reserve price resulted in short realisation of revenue of Rs. 3.03 crore.

**(Paragraph 3.4)**

Non-disposal of spirit and foreign liquor resulted in non-realisation of excise duty of Rs. 1.28 crore.

**(Paragraph 3.5)**

Penalty of Rs. 1.16 crore was not imposed for non-maintenance of minimum stock of spirit by distilleries.

**(Paragraph 3.6)**

## IV. Taxes on Vehicles

Vehicle tax of Rs. 18.59 crore including penalty of Rs. 7.46 crore on 4,851 vehicles was neither paid by the vehicle owners, nor was it demanded by the department.

**(Paragraph 4.3.1)**

Vehicle tax of Rs. 47.22 lakh and penalty of Rs. 25.65 lakh on 30 public service vehicles plying on all India tourist permits was neither paid by the operators, nor was it demanded by the department.

**(Paragraph 4.3.2)**

## V. Other Tax Receipts

### Stamp duty and registration fee

Non-submission of instruments to the public officers for determination of proper duty leviable thereon resulted in short levy/realisation of stamp duty and registration fee of Rs. 5.95 crore.

**(Paragraph 5.3)**

Inordinate delay in disposal of cases referred to the Collector resulted in non-realisation of revenue of Rs. 4.85 crore.

**(Paragraph 5.4)**

Loss of revenue of Rs. 3.71 crore due to inconsistency in rules.

**(Paragraph 5.5)**

Short levy of stamp duty and registration fee of Rs. 2.05 crore on instruments of power of attorney.

**(Paragraph 5.6)**

Incorrect determination of market value resulted in short levy of stamp duty and registration fee of Rs. 1.49 crore.

**(Paragraph 5.7)**

### Entertainment duty

Non-recovery of entertainment duty from cable operators and hotel owners resulted in non-realisation of revenue of Rs. 47.27 lakh.

**(Paragraph 5.14)**

Non-levy of penalty on cable operators for breach of rules resulted in non-realisation of revenue of Rs. 15.60 lakh.

**(Paragraph 5.15)**

## Land Revenue

The department failed to recover process expenses at the rate of three *per cent* on principal amount of Rs. 51.14 crore which resulted in non-realisation of revenue of Rs.1.53 crore.

**(Paragraph 5.18)**

The department did not raise the demand of premium, diversion rent and fine which resulted in non-realisation of revenue of Rs. 1.27 crore.

**(Paragraph 5.19)**

Incorrect assessment of diversion rent and premium resulted in non-realisation of revenue of Rs. 1.45 crore.

**(Paragraph 5.20)**

Non-deduction of collection charges from *Panchayat Raj Nidhi* resulted in non-realisation of revenue of Rs. 38.50 lakh.

**(Paragraph 5.21)**

## VI. Forest receipts

A review of **Forest Receipts in Madhya Pradesh** revealed the following:

- Due to incorrect classification of Commercial tax/VAT receipts under forest head, receipts of Forest Department were overstated by Rs. 270.67 crore.

**(Paragraph 6.2.6)**

- Due to absence of any system to monitor timely preparation of working plan, revenue of Rs. 185.84 crore remained deferred.

**(Paragraph 6.2.7.1)**

- Lack of any system to monitor timely preparation and submission of coupe records resulted in deferring and non-realisation of revenue of Rs. 143.80 crore.

**(Paragraph 6.2.8.1)**

- Non-exploitation of bamboo as per the working plan resulted in loss/deferring of revenue of Rs. 11.06 crore.

**(Paragraph 6.2.8.3)**

- Delay in communication of sanction of bids resulted in blocking of revenue of Rs. 9.38 crore.

**(Paragraph 6.2.9)**

- Delay in remittance of revenue in government account resulted in late accounting of Rs. 13.40 crore.

**(Paragraph 6.2.10)**

- Lack of uniform procedure for working out the cost of illicitly felled trees and seized material resulted in under reporting of revenue loss of Rs. 76 lakh.

**(Paragraph 6.2.11.2)**

- Large variation in the estimated and actual yield of forest produce resulted in loss of revenue of Rs. 4.80 crore.

**(Paragraph 6.2.12)**

- Sale of timber below upset price resulted in loss of revenue of Rs. 1.52 crore.

**(Paragraph 6.2.13)**

## VII. Mining receipts

Non-assessment of road development tax resulted in non-realisation of revenue of Rs. 93.56 crore.

**(Paragraph 7.3)**

Irregular reduction of stock in the records of coal resulted in non-realisation of revenue of Rs. 2.76 crore.

**(Paragraph 7.4)**

Non-levy of interest on belated payment of contract money resulted in non-realisation of revenue of Rs. 1.98 crore.

**(Paragraph 7.6)**

Short realisation of revenue of Rs. 1.88 crore due to irregular issue of temporary permits.

**(Paragraph 7.7)**

Failure of the department to recover contract money resulted in short realisation of revenue of Rs. 1.53 crore.

**(Paragraph 7.8)**

## VIII. Other non-tax receipts

### Water resources department

A review of **Assessment and collection of water rates** revealed the following:

- Failure of the department to ensure execution of agreement before drawal of water, resulted in drawal of water without payment of water rates of Rs 586.64 crore.

**(Paragraph 8.2.7.2)**

- Failure of the department to optimally utilise the created irrigation potential resulted in loss of revenue of Rs. 160.85 crore.

**(Paragraph 8.2.8)**

- Incorrect application of water rates led to non/short realisation of revenue of Rs. 24.29 crore.

**(Paragraph 8.2.11)**

- Five users of water did not deposit security money of Rs. 2.21 crore.

**(Paragraph 8.2.13)**

- Loss of revenue of Rs. 10.14 crore due to non-levy of betterment contribution.

**(Paragraph 8.2.14)**

### Electricity duty

Non-imposition of penalty on the owners of electrical installations for breach of rules resulted in non-realisation of revenue of Rs. 97.40 lakh.

**(Paragraph 8.4)**

Non-realisation of revenue of Rs. 83 lakh due to inaction of the department.

**(Paragraph 8.5)**

# CHAPTER I: GENERAL

## 1.1 Trend of revenue receipts

**1.1.1** The tax and non-tax revenue raised by the Government of Madhya Pradesh during the year 2008-09, the State's share of divisible Union taxes and grants-in-aid received from the Government of India during the year and the corresponding figures for the preceding four years are mentioned below:

**(Rupees in crore)**

| Sl. no. | Particulars | 2004-05 | 2005-06 | 2006-07 | 2007-08 | 2008-09 |
|---|---|---|---|---|---|---|
| I. | **Revenue raised by the State Government** | | | | | |
| | • Tax revenue | 7,772.97 | 9,114.70 | 10,473.13 | 12,017.64 | 13,613.50 |
| | • Non-tax revenue | 4,461.86 | 2,208.20 | 2,658.46 | 2,738.18 | 3,342.86 |
| | **Total** | **12,234.83** | **11,322.90** | **13,131.59** | **14,755.82** | **16,956.36** |
| II. | **Receipts from the Government of India** | | | | | |
| | • State's share of divisible Union taxes | 5,076.68 | 6,341.35 | 8,088.54 | 10,203.50 | 10,767.14[1] |
| | • Grants-in-aid | 2,431.74 | 2,932.54 | 4,474.15 | 5,729.41 | 5,853.71 |
| | **Total** | **7,508.42** | **9,273.89** | **12,562.69** | **15,932.91** | **16,620.85** |
| III. | **Total receipts of the State** | **19,743.25** | **20,596.79** | **25,694.28** | **30,688.73** | **33,577.21** |
| IV. | **Percentage of I to III** | **62** | **55** | **51** | **48** | **50** |

The above table indicates that during the year 2008-09, the revenue raised by the State Government was 50 *per cent* of the total revenue receipts (Rs. 33,577.21 crore) against 48 *per cent* in the preceding year. The balance 50 *per cent* of receipts during 2008-09 was from the Government of India.

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1 For details please see statement No. 11: "Detailed accounts of revenue by minor heads" in the Finance Accounts of the Government of Madhya Pradesh for the year 2008-09. Figures under the head "0021 Taxes on income other than corporation tax - Share of net proceeds assigned to States" booked in the Finance Accounts under A - Tax revenue have been excluded from the revenue raised by the State and included in the State's share of divisible Union taxes in this statement.

**1.1.2** The following table presents the details of tax revenue raised during the period from 2004-05 to 2008-09:

**(Rupees in crore)**

| Sl. no. | Head of revenue | 2004-05 | 2005-06 | 2006-07 | 2007-08 | 2008-09 | Percentage increase (+)/ decrease (-) in 2008-09 over 2007-08 |
|---|---|---|---|---|---|---|---|
| 1. | • Sales tax<br>• Central Sales Tax | 3,912.01 | 4,508.42 | 5,261.41 | 6,045.07 | 6,842. 99 | (+) 13.20 |
| 2. | State excise | 1,192.36 | 1,370.38 | 1,546.68 | 1,853.83 | 2,301. 95 | (+) 24.17 |
| 3. | Stamp duty and registration fee | 788.71 | 1,009.48 | 1,251.10 | 1,531.54 | 1,479.29 | (-) 3.41 |
| 4. | Taxes on goods and passengers | 468.07 | 578.58 | 744.60 | 916.44 | 1,332. 57 | (+) 45.41 |
| 5. | Taxes on vehicles | 488.65 | 556.02 | 634.30 | 702.62 | 772. 56 | (+) 9. 95 |
| 6. | Taxes and duties on electricity | 707.18 | 842.27 | 714.55 | 626.08 | 343. 06 | (-) 45.21 |
| 7. | Land revenue | 46.80 | 77.16 | 132.21 | 129.15 | 338. 84 | (+) 162.36 |
| 8. | Other taxes on income and expenditure - tax on professions, trades, callings and employments | 150.21 | 153.08 | 163.81 | 185.02 | 172. 29 | (-) 6.88 |
| 9. | Other taxes and duties on commodities and services | 14.28 | 14.15 | 19.55 | 20.10 | 20. 28 | (+) 0. 90 |
| 10. | Hotel receipts | 4.75 | 5.37 | 4.92 | 7.79 | 9. 67 | (+) 24.13 |
| 11. | Taxes on immoveable property other than agricultural land | (-) 0.05 | (-) 0.21 | -- | -- | -- | -- |
| | **Total** | **7,772.97** | **9,114.70** | **10,473.13** | **12,017.64** | **13,613. 50** | **(+) 13.28** |

The following reasons for variation were reported by the departments.

**Sales Tax:** The increase of 13.20 per cent was stated to be due to increase in price and special recovery campaign.

**State excise:** The increase of 24.17 *per cent* was stated to be due to increase in auction value.

**Taxes and duties on electricity:** The decrease of 45.21 *per cent* was stated to be due to non-deposit of Rs. 583.34 crore by the Madhya Pradesh State Electricity Board for the year 2008-09. However, no reason was cited by the department for the arrears pending with the Madhya Pradesh State Electricity Board.

**Hotel Receipts:** The increase of 24.13 *per cent* was stated to be due to expiry of exemption period to new hotels.

The other departments did not inform (October 2009) the reasons for variation, though called for (April 2009).

**1.1.3** The following table presents the details of the major non-tax revenue raised during the period 2004-05 to 2008-09:

**(Rupees in crore)**

| Sl. no. | Head of revenue | 2004-05 | 2005-06 | 2006-07 | 2007-08 | 2008-09 | Percentage increase (+)/ decrease (-) in 2008-09 over 2007-08 |
|---|---|---|---|---|---|---|---|
| 1. | Non-ferrous mining and metallurgical industries | 733.72 | 815.31 | 923.91 | 1,125.39 | 1,361.08 | (+) 20. 94 |
| 2. | Forestry and wildlife | 559.11 | 490.40 | 536.50 | 608.89 | 685.60 | (+) 12.60 |
| 3. | Miscellaneous general services | 79.61 | 21.30 | 736.58 | 374.60 | 380.17 | (+) 1. 49 |
| 4. | Other non-tax receipts | 2,906.97 | 152.02 | 159.30 | 220.17 | 580.56 | (+) 163.69 |
| 5. | Interest receipts | 25.90 | 527.20 | 132.73 | 206.98 | 163. 29 | (-) 21.11 |
| 6. | Other administrative services | 50.78 | 67.20 | 59.55 | 68.15 | 55.58 | (-) 18.44 |
| 7. | Major and medium irrigation | 37.92 | 29.57 | 29.82 | 37.42 | 37.08 | (-) 0. 91 |
| 8. | Police | 23.23 | 26.16 | 24.26 | 25.03 | 23.63 | (-) 5.59 |
| 9. | Public works | 9.94 | 53.08 | 16.39 | 20.33 | 21.74 | (+) 6. 94 |
| 10. | Medical and public health | 16.76 | 11.73 | 20.88 | 21.93 | 20.88 | (-) 4.79 |
| 11. | Co-operation | 17.92 | 14.23 | 18.54 | 29.29 | 13.25 | (-) 54.76 |
| | **Total** | **4,461.86** | **2,208.20** | **2,658.46** | **2,738.18** | **3,342.86** | **(+) 22.08** |

The following reasons for variation were reported by the departments.

**Non-ferrous mining and metallurgical industries:** The increase of 20.94 *per cent* was stated to be due to revision of royalty on coal and constant vigil by the department.

**Forestry and wildlife:** The increase of 12.60 *per cent* was stated to be due to increase in sale of forest produce against the target.

**Co-operation:** The decrease of 54.76 *per cent* was stated to be due to non-receipt of audit fee from District Co-operative Banks by virtue of amendment in the provisions of Co-operative Act.

**Other non-tax receipts:** The increase of 163.69 *per cent* was mainly due to substantial increase in receipts under the head 'Education, sports, art and culture' (0202) during the year 2008-09. Against the receipt of Rs. 13.75 crore during the previous year, the receipt under this head was Rs. 318.97 crore during 2008-09.

**Miscellaneous general services:** The sharp increase under this head during the year 2006-07 as compared to the previous year was mainly due to receipt of Rs. 726.12 crore on account of Debt consolidation and Relief facility to the state under recommendations of the 12$^{th}$ Finance Commission.

The other departments did not inform (October 2009) the reasons for variation, though called for (April 2009).

## 1.2 Variations between the budget estimates and actuals

The variations between the budget estimates and actuals of revenue receipts for the year 2008-09 in respect of the principal heads of tax and non-tax revenue are mentioned below:

**(Rupees in crore)**

| Sl. no. | Head of revenue | Budget estimates | Actuals | Variation excess (+) or shortfall (-) | Percentage increase (+)/decrease (-) over budget estimates |
|---|---|---|---|---|---|
| **A. Tax revenue** | | | | | |
| 1. | Sales tax | 6,720 | 6,842.99 | (+) 122.99 | (+) 1.83 |
| 2. | State excise | 2,150 | 2,301.95 | (+) 151.95 | (+) 7.07 |
| 3. | Stamp duty and registration fee | 1,700 | 1,479.29 | (-) 220.71 | (-) 12.98 |
| 4. | Taxes and duties on electricity | 900 | 343.06 | (-) 556.94 | (-) 61.88 |
| **B. Non-tax revenue** | | | | | |
| 1. | Non-ferrous mining and metallurgical industries | 1,235 | 1,361.08 | (+) 126.08 | (+) 10.21 |
| 2. | Forestry and wildlife | 600 | 685.60 | (+) 85.60 | (+) 14.27 |
| 3. | Cooperation | 10 | 13.25 | (+) 3.25 | (+) 32.50 |

The reasons for variations of actuals over budget estimates during 2008-09 as intimated by the respective departments are given below:

**Taxes and duties on electricity**: As stated by the department, the actual receipts under the head was Rs. 926.39 crore against the estimate of Rs. 900 crore. An amount of Rs. 343.06 crore is exhibited in the Finance accounts (2008-09) due to non-deposit of Rs. 583.34 crore by the Madhya Pradesh State Electricity Board. However, no reasons were cited for the arrears pending with the Board.

**Non-ferrous mining and metallurgical industries:** The increase of 10.21 *per cent* was stated to be due to revision of royalty on coal and constant vigil by the department.

**Forestry and wildlife:** The increase of 14.27 *per cent* was stated to be due to sale of more/excess forest produce than the target.

The other departments did not inform (October 2009) the reasons for variation, though called for (April 2009).

## 1.3 Cost of collection

The gross collection in respect of major revenue receipts, expenditure incurred on collection as furnished by the concerned departments and the percentage of expenditure to gross collection during the years 2006-07, 2007-08 and 2008-09 along with the relevant all India average percentage of expenditure on collection to gross collection for 2007-08 are mentioned below:

**(Rupees in crore)**

| Sl. no. | Head of revenue | Year | Collection | Expenditure on collection of revenue | Percentage of expenditure on collection | All India average percentage for the year 2007-08 |
|---|---|---|---|---|---|---|
| 1. | Sales tax | 2006-07 | 5,261.41 | 48.20 | 0.92 | 0.83 |
| | | 2007-08 | 6,045.07 | 60.36 | 1.00 | |
| | | 2008-09 | 6,842.99 | 96.23 | 1.41 | |
| 2. | Taxes on vehicles | 2006-07 | 634.30 | 6.41 | 1.01 | 2.58 |
| | | 2007-08 | 702.62 | 7.60 | 1.08 | |
| | | 2008-09 | 772.56 | 5.88 | 0.76 | |
| 3. | State excise | 2006-07 | 1,546.68 | 303.79 | 19.64 | 3.27 |
| | | 2007-08 | 1,853.83 | 396.04 | 21.36 | |
| | | 2008-09 | 2,301.95 | 505.46 | 21.96 | |
| 4. | Stamp duty and registration fee | 2006-07 | 1,251.10 | 36.48 | 2.92 | 2.09 |
| | | 2007-08 | 1,531.54 | 44.54 | 2.91 | |
| | | 2008-09 | 1,479.29 | 41.72 | 2.82 | |

Thus, the percentage of expenditure on the collection of sales tax and stamp duty and registration fee was marginally higher than the all India average. This and the continuous increase in the former need to be looked into by the Government. The percentage of expenditure on the collection of taxes on vehicles was below the all India average.

In case of state excise where the figures are abnormally higher than the all India average percentage, **audit observed that in the Finance Accounts, there was no separate head showing 'collection charges' as was available in the case of other taxes like taxes on sales/trade, taxes on vehicles *etc.*,** and the cost of liquor paid to the manufacturers from the budget provisions for expenditure was also being booked under the head 2039-state excise along with other expenditures.

**The Government may consider opening of a separate sub-head 'collection charges' on the lines of practice for the other taxes for effectively monitoring the functioning and the performance of the department. This will also enable the State to compare the collection cost position vis-a-vis the all India average Government percentage on a like to like basis.**

## 1.4 Analysis of arrears of revenue

The arrears of revenue as on 31 March 2009 in respect of some principal heads of revenue amounted to Rs. 765.45 crore of which Rs. 533.03 crore (excluding Transport Department) was outstanding for more than five years as mentioned below:

**(Rupees in crore)**

| Sl. no. | Head of revenue | Amount outstanding as on 31 March 2009 | Amount outstanding for more than five years as on 31 March 2009 |
|---|---|---|---|
| 1. | Taxes on vehicles | 31.17 | Information not furnished |
| 2. | State excise | 59.60 | 55.49 |
| 3. | Taxes & duties on electricity | 19.72 | 13.86 |
| 4. | Sales tax | 546.04 | 424.29 |
| 5. | Non-ferrous mining and metallurgical industries | 12.19 | 12.19 |
| 6. | Co-operation | 9.23 | 5.51 |
| 7. | Stamp duty and registration fee | 87.50 | 21.69 |
| **Total** | | **765.45** | **533.03** |

The position of arrears of revenue at the end of 2008-09 in respect of other departments was not furnished (October 2009) by the Government despite being requested (April 2009). Also, the stages at which arrears were pending for collection were not furnished by the departments (October 2009).

## 1.5 Arrears in assessment

The details of assessments relating to sales tax, profession tax, entry tax, luxury tax, tax on works contracts pending at the beginning of the year, additional cases becoming due for assessment during the year, cases disposed during the year and pending cases at the end of each year during 2006-07, 2007-08 and 2008-09 as furnished by the Commercial Tax Department are mentioned below:

| Name of tax | | Opening balance | New cases due for assessment during the year | Total assess-ments due | Cases disposed during the year | Balance at the end of the year | Percentage of column 5 to 4 |
|---|---|---|---|---|---|---|---|
| 1. | | 2. | 3. | 4. | 5. | 6. | 7. |
| **Commercial Tax Department** | | | | | | | |
| Sales tax | 2006-07 | 2,60,792 | 4,02,291 | 6,63,083 | 2,99,596 | 3,63,487 | 45.18 |
| | 2007-08 | 3,63,487 | 2,81,575 | 6,45,062 | 3,41,769 | 3,03,293 | 52.98 |
| | 2008-09 | 3,03,293 | 3,41,838 | 6,45,131 | 3,78,096 | 2,67,035 | 58.61 |
| Profession tax | 2006-07 | 1,11,924 | 1,10,091 | 2,22,015 | 1,06,502 | 1,15,513 | 47.97 |
| | 2007-08 | 1,15,513 | 1,45,481 | 2,60,994 | 1,33,479 | 1,27,515 | 51.14 |
| | 2008-09 | 1,27,515 | 1,50,048 | 2,77,563 | 1,53,188 | 1,24,375 | 55.19 |

| 1. | | 2. | 3. | 4. | 5. | 6. | 7. |
|---|---|---|---|---|---|---|---|
| Entry tax | 2006-07 | 1,41,158 | 2,40,983 | 3,82,141 | 1,97,047 | 1,85,094 | 51.56 |
| | 2007-08 | 1,85,094 | 2,23,297 | 4,08,391 | 2,19,980 | 1,88,411 | 53.87 |
| | 2008-09 | 1,88,411 | 2,36,999 | 4,25,410 | 2,55,054 | 1,70,356 | 59.95 |
| Luxury tax | 2006-07 | 590 | 819 | 1,409 | 711 | 698 | 50.46 |
| | 2007-08 | 698 | 1,007 | 1,705 | 1,007 | 698 | 59.06 |
| | 2008-09 | 698 | 1,330 | 2,028 | 1,364 | 664 | 67.26 |
| Tax on works contracts | 2006-07 | 1,721 | 5,487 | 7,208 | 3,707 | 3,501 | 51.43 |
| | 2007-08 | 3,501 | 3,211 | 6,712 | 2,965 | 3,747 | 44.17 |
| | 2008-09 | 3,747 | 5,160 | 8,907 | 6,366 | 2,541 | 71.47 |

Thus there has been increase in disposal of assessment cases during 2008-09 as compared to the previous years.

## 1.6 Evasion of tax

The details of evasion as reported by the Sales Tax, State Excise and Stamp Duty and Registration Fee Departments are mentioned below:

| Sl. no. | Name of the tax/duty | Cases pending as on 31 March 2008 | Cases detected during 2008-09 | Total | No. of cases in which assessments/investigations completed and additional demand including penalty etc. raised | | No. of pending cases as on 31 March 2009 |
|---|---|---|---|---|---|---|---|
| | | | | | No. of cases | Amount of demand (Rs. in crore) | |
| 1. | Sales tax | 353 | 297 | 650 | 183 | 3.14 | 467 |
| 2. | State excise | 7 | 65 | 72 | 34 | 0.006 | 38 |
| 3. | Stamp duty and registration fee | 7,165 | 5,638 | 12,803 | 4,929 | 12.83 | 7,874 |

Thus, there was increase in the number of pending cases under all the three Heads.

## 1.7 Refunds

The number of refund cases pending at the beginning of the year 2008-09, claims received during the year, refunds allowed during the year and cases pending at the end of the year 2008-09 as reported by the departments are mentioned below:

(Rupees in crore)

| Sl. no. | Category | State excise | | Sales tax | | Stamp duty and registration fee | |
|---|---|---|---|---|---|---|---|
| | | No. of cases | Amount | No. of cases | Amount | No. of cases | Amount |
| 1. | Claims outstanding at the beginning of the year | 21 | 1.27 | 1,520 | 16.04 | 912 | 2.43 |
| 2. | Claims received during the year | 71 | 10.38 | 9,589 | 131.33 | 820 | 2.14 |
| 3. | Refunds made during the year | 45 | 2.42 | 10,456 | 131.67 | 761 | 2.82 |
| 4. | Balance outstanding at the end of the year | 47 | 9.22 | 653 | 15.70 | 971 | 1.75 |

Thus, there was an increase in the number and amount of refund cases at the end of the year in the State excise department.

## 1.8 Failure to enforce accountability and protect the interest of the Government

Accountant General (Works & Receipt Audit), Madhya Pradesh conducts periodical inspection of the Government departments to test check the transactions and verify the maintenance of important accounting and other records as prescribed in the rules and procedures. These inspections are followed up with inspection reports (IR) incorporating irregularities detected during inspection and not settled on the spot. These are issued to the heads of the offices inspected with copies to the next higher authorities for taking prompt corrective action. The heads of offices/Government are required to comply with the observations contained in the IRs and rectify the defects and omissions promptly and report compliance through initial reply to the Accountant General within six weeks from the date of issue of the IRs. Serious financial irregularities are reported to the heads of the department and Government separately.

Inspection Reports issued upto December 2008 pertaining to various offices of commercial tax, land revenue, registration and other departments disclosed that 20,189 paragraphs relating to 6,253 IRs have remained outstanding since 1997-98 to the end of December 2008.

The huge pendency of IRs due to non-receipt of replies indicates that the heads of the offices/departments failed to initiate action to rectify the defects, omissions and irregularities pointed out in the IRs. To ensure that action to recover the revenue due does not become time barred, it is recommended that the Government take suitable steps to ensure that prompt and appropriate

responses are given to the audit observations, action is initiated against officials/officers responsible to send replies to IRs/paragraphs as per the prescribed time schedule and take action to recover loss/outstanding demands in a time bound manner.

## 1.9 Response of the departments to draft audit paragraphs

The draft audit paragraphs proposed for inclusion in the Report of the Comptroller and Auditor General of India are forwarded by the audit office to the Principal Secretaries/Secretaries of the departments concerned, drawing their attention to the audit findings and requesting them to send their response within six weeks. The fact of non-receipt of replies from the departments is invariably indicated at the end of each paragraph included in the Audit Report.

Draft paragraphs included in this Report were sent to the Principal Secretaries/ Secretaries of the concerned departments. Their replies have not been received (October 2009). The paragraphs pertaining to these departments have been included in this Report without the response of the departments.

## 1.10 Follow-up on Audit Reports

The Report of the Comptroller & Auditor General of India for the year ended 31 March 2008 (Revenue Receipts) was laid on the table of *Vidhan Sabha* on 18 March 2009. Reports upto the year 2005-06 have been discussed by the Public Accounts Committee (PAC) and Report for year 2006-07 has also been partly discussed. The recommendations of the PAC have been received for Audit Reports pertaining to different years.

Action taken reports (ATN) on the PAC recommendations upto 1992-93 have been received. In respect of Audit Reports for 1993-94 and thereafter, ATNs have not been received from the concerned departments although instructions of November 1994 issued by the State Legislature Affairs Department stipulate that these should be issued within six months from the date of receipt of recommendations by the PAC.

## 1.11 Compliance with the earlier Audit Reports

During the years between 2003-04 and 2007-08 the departments/Government accepted audit observations involving Rs. 782.56 crore of which only Rs. 9.78 crore has been recovered till 31 March 2008 as mentioned below:

**(Rupees in crore)**

| Year of the Audit Report | Total money value of the Report | Accepted money value | Amount recovered |
|---|---|---|---|
| 2003-04 | 125.53 | 26.26 | 0.29 |
| 2004-05 | 41.96 | 13.24 | 0.28 |
| 2005-06 | 85.85 | 32.56 | 2.42 |
| 2006-07 | 318.57 | 288.61 | 1.93 |
| 2007-08 | 623.43 | 421.89 | 4.86 |
| **Total** | **1,195.34** | **782.56** | **9.78** |

## 1.12 Departmental audit committee meetings

During the year 2008-09, thirteen departmental audit committee meetings were held in which 326 IRs and 1,956 paragraphs involving money value of Rs. 300.32 crore were settled.

## 1.13 Results of audit

Test check of records of sales tax, land revenue, state excise, tax on vehicles, stamp duty and registration fee, other tax receipts, forest receipts and other non-tax receipts conducted during the year 2008-09 revealed underassessment/ short levy/loss of revenue amounting to Rs. 2,342.15 crore in 2,96,745 cases. During the year, the departments accepted underassessment and other losses of Rs. 804.20 crore in 77,791 cases. An amount of Rs. 18.95 crore had been recovered in 1,426 cases relating to different years.

This report contains 81 paragraphs including three reviews involving Rs. 1,339.50 crore. The departments/Government accepted audit observations involving Rs. 112.89 crore out of which Rs. 3.11 crore had been recovered. In respect of observations not accepted by the department, the reasons for non-acceptance have been included in the related paragraphs. These are discussed in succeeding chapters II to VIII.

# CHAPTER II: COMMERCIAL TAX

## 2.1 Results of audit

Test check of assessment cases and other records relating to Commercial Tax Department during the year 2008-09 revealed underassessment, non/short levy of tax and penalty, application of incorrect rate of tax etc., involving Rs. 181.03 crore in 1,234 cases which can be categorised as under:

**(Rupees in crore)**

| Sl. no. | Category | Number of cases | Amount |
|---|---|---|---|
| 1. | **Transition from Madhya Pradesh Commercial Tax to Value Added Tax (A Review)** | 01 | 2.88 |
| 2. | Non/short levy of tax | 484 | 109.25 |
| 3. | Incorrect grant of exemption/deduction/ set off | 158 | 15.22 |
| 4. | Application of incorrect rate of tax | 206 | 11.62 |
| 5. | Incorrect determination of taxable turnover | 78 | 5.83 |
| 6. | Other irregularities | 307 | 36.23 |
| **Total** | | **1,234** | **181.03** |

During the year 2008-09, the department accepted underassessment of tax of Rs. 39.97 crore in 497 cases. All these cases pertained to 2008-09. The department recovered Rs. 82 lakh in 14 cases during the year.

A review on **'Transition from MP Commercial Tax to Value Added Tax'** and few illustrative audit observations involving Rs. 19.48 crore are mentioned in the following paragraphs.

## 2.2 Review on "Transition from Madhya Pradesh Commercial Tax to Value Added Tax"

### Highlights

- Cross verification of sale could not be conducted due to lack of provision in the Act to furnish sale list.

**(Paragraph 2.2.7.2)**

- Lack of mandatory provision for furnishing security by the dealers resulted in non-realisation of revenue of Rs. 2.18 crore.

**(Paragraph 2.2.7.5)**

- Incorrect availing of inventory rebate and input tax credit of Rs. 15.70 lakh.

**(Paragraph 2.2.11.1)**

- Loss of revenue of Rs. 50.73 lakh due to non-levy of tax on fabric, sugar and tobacco products.

**(Paragraph 2.2.12)**

### 2.2.1 Introduction

The empowered committee of State Finance Ministers constituted by the Government of India on 23 January 2002 unanimously decided to introduce Value Added Tax (VAT) in all States and Union Territories with effect from April 2003. White paper prepared by the committee inter alia specified that

It would eliminate cascading effect due to credit of tax paid on purchase for resale or for use in production;

Other taxes will be abolished and overall tax burden will be rationalised;

Overall tax would increase and there will be higher revenue growth;

There would be self assessment by dealers and set off will be given for input and tax paid on previous purchases.

The Government of Madhya Pradesh repealed the Madhya Pradesh Commercial Tax Act, 1994 (CT) and enacted the Madhya Pradesh Value Added Tax Act (Act), 2002 which came into effect from 1 April 2006 with certain amended provisions. The MP VAT Rules, 2006 (Rules) govern the administration of the Act under the new dispensation. A dealer registered under the repealed Act continued to be so registered under the MP VAT Act. Every dealer, whose turnover during the period of 12 months immediately preceding the commencement of the Act exceeds Rs. five lakh, shall be liable to pay tax. Besides, there is a provision for identification of unregistered dealers through periodic surveys. Unlike the commercial tax regime there is no statutory assessment of dealers. Those dealers who have filed their returns within the prescribed period, deposited tax and interest would be deemed to be covered under self-assessment. The Act provides for tax audit, which shall be completed within a period of six months from the institution

of the proceedings. The department had set up the deadline of June 2009 for assessment of the cases of 2006-07.

**A review on transition from sales tax to VAT in Madhya Pradesh was conducted which revealed a number of deficiencies as discussed in the following paragraphs.**

### 2.2.2 Organisational set up

The Principal Secretary, Commercial Taxes Department is the administrative head of the Department at the Government level. The Commissioner of Commercial Tax (CCT) is the head of the department. The department is divided in four zones, each headed by zonal Additional Commissioners. Each zone comprises of the divisional offices headed by 13 divisional Deputy Commissioners (DC). Under these divisions, there are 78 circle offices headed by the Commercial Tax Officers/Assistant Commissioners (CTO/AC).

### 2.2.3 Audit objectives

The review was conducted to ascertain whether:

- planning for implementation and the transition from the CT Act to VAT Act was effected timely and efficiently;
- organisational structure was adequate and effective;
- the provisions of the VAT Act and the Rules were adequate and enforced properly to safeguard revenue of the State; and
- adequate and effective internal control mechanism existed in the department to prevent leakage of revenue.

### 2.2.4 Scope of audit

Records and returns/assessments for the year 2006-07 and 2007-08 of six[1] CTOs/ACs were test checked in audit between May 2009 and September 2009. The selection of units was done through simple random sampling method. Besides, information was collected from the office of the Commissioner, Commercial Tax, three[2] out of five divisional offices (tax audit) and five[3] CTOs/ACs.

### 2.2.5 Acknowledgement

The Indian Audit and Accounts Department acknowledges the co-operation of the Commercial Tax Department for providing information and records to audit. The findings of the review were communicated to the department/ Government in August 2009. Reply of the department/Government has not been received (October 2009). Exit conference to discuss the audit findings and recommendations was not arranged by the department despite formal requests (August 2009).

1 CTO Circle VIII and IX Indore, Circle- IV Gwalior, AC Indore (2) and AC Bhopal.
2 Divisional Office (Tax Audit), Division I and II Indore and Gwalior.
3 CTO Circle I, II, III Gwalior and AC Gwalior (2).

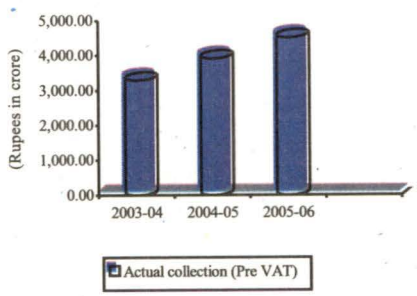
## Audit findings

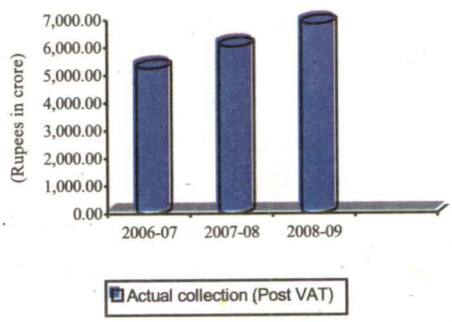
### 2.2.6 Pre-VAT and post-VAT tax collection

The comparative position of pre-VAT commercial tax collection (2003-04 to 2005-06) and post-VAT (2006-07 to 2008-09) tax collection and the growth rate in each of the years is shown below:

**(Rupees in crore)**

| Pre-VAT | | | Post-VAT | | |
|---|---|---|---|---|---|
| **Year** | **Actual collection** | **Percentage of growth (over previous year)** | **Year** | **Actual collection** | **Percentage of growth (over previous year)** |
| 2003-04 | 3,293.26 | 13.32 | 2006-07 | 5,261.41 | 16.70 |
| 2004-05 | 3,912.01 | 18.79 | 2007-08 | 6,045.07 | 14.89 |
| 2005-06 | 4,508.42 | 15.25 | 2008-09 | 6,842.99 | 13.19 |




### 2.2.7 Deficiencies in the Act and the Rules

The review revealed a number of deficiencies in the provisions of the VAT Act and the Rules. Some of the important deficiencies are discussed below:

#### 2.2.7.1 Loss of revenue due to lack of any provision to mention the name of commodity in the form prescribed for filing return

Rules 21, 22 and 23 of MP VAT Rules (Chapter VI) provide that every registered dealer shall furnish to the appropriate CTO for each quarter of a year, a quarterly return in Form 10. **Part B of the form mentions the rate of tax for computation of VAT but does not have the provisions to mention the name of the commodity against the rate of tax. In the absence of the name of the commodity, the exigible rate of tax cannot be verified.** In earlier Commercial Tax Act, the commodity and its code number were mentioned in the return filed by the assessee. As most of the cases under the VAT regime are to be covered under self-assessment, it is not understood how the department planned to scrutinise the returns in the absence of such basic details.

Test check of records of CTO, Circle VIII, Indore revealed that motor parts valued at Rs. 13.51 lakh was shown in the assessment order to be sold at the rate of four *percent* in place of 12.5 *percent*. This led to short realisation of revenue of Rs. 1.14 lakh.

After this was pointed out, the CTO replied (May 2009) that 'bearing' was in stock, which was sold at the rate of four *per cent*. The fact, however, remains that there was no documentary proof to sustain the contention that 'bearing' was sold. This would have been avoided if there was provision in Form 10 to mention the name of the commodity.

**The Government may consider amending the format of quarterly return to accommodate the name of the commodity and its code number in the interest of revenue.**

### 2.2.7.2 Absence of cross verification of sales due to lack of provision in the Act to furnish sale list

Part J of Form 10 (prescribed for filing returns) provides for furnishing dealer wise list of purchases exceeding Rs. 25,000 in the quarter for goods specified in Schedule II. **There is no provision in the Act/Rules to furnish sale list, in the absence of which the department could not conduct cross verification of sales.** During the Commercial Tax regime, sale and purchase lists of more than Rs. 20,000 were to be submitted with the returns as per the Commissioner's circular (November 1997) to facilitate cross verification.

After this was pointed out, no reply was given by the department.

**The Government should consider prescribing mandatory furnishing of sale list in Form 10 for proper cross verification of the transactions of a dealer. It may also consider issuing instructions to the dealers for receiving consideration through cheques or bank drafts for sale above Rs. 25,000.**

### 2.2.7.3 Absence of provision in the Act/Rule to include purchase from unregistered dealers

As per Section 11 of the Act, a registered dealer purchasing goods specified in Schedule II from another such dealer within the state after payment to him of tax under Section 9 and/or purchasing goods specified in Schedule I and whose turnover in a year does not exceed Rs 50 lakh, may opt, in the prescribed form, for payment, in lieu of tax, a lump sum at such rate not exceeding four *per cent*. **The quarterly return prescribed under this section (Form 5), however, does not have the provision to capture purchase from unregistered dealers for levy of Purchase tax.**

**The Government may consider modifying the format of the return providing details of purchases made from unregistered dealers as well.**

### 2.2.7.4 Loss of revenue due to lack of any system for cross verification in case of export

Export of goods is conducted through Form H under the CST Act. However, there is no provision in the Act for cross verification of the particulars mentioned in the bill of lading to safeguard revenue.

Test check of records of CTO Circle VIII, Indore revealed that auto parts of Rs 1.13 crore was exported and Form H was submitted in support of the claim. It was observed that neither any proof regarding customs clearance was available nor a copy of agreement was submitted. The consignee name was also not found in the bill of lading. This resulted in non levy of tax of Rs. 14.09 lakh at the rate of 12.5 *per cent*.

After this was pointed out, the assessing authority stated (May 2009) that Form H, bill of lading & sales bill were submitted in the case. He further stated that agreement was done on telephone and exported through agent; hence, customs clearance certificate was not necessary. The reply underscores the need to prescribe further checks in cases of export to safeguard revenue.

### 2.2.7.5 Lack of mandatory provision for furnishing security by the dealers

Sub section 12 (a) of Section 17 of the Act lays down that the Commissioner may, for the proper realisation of tax, from time to time, demand from a registered dealer reasonable security as may be prescribed to be furnished. Rule 20 prescribes that the amount of security shall be the highest amount of tax payable by such dealer in any quarter of the previous year subject to maximum of Rs. 1 lakh or where there is no previous year, Rs. 10,000. **The provisions are not mandatory. However, to prevent loss of revenue, the dealers should be analysed case by case to assess the scope of leakage and realisation of security determined. Audit scrutiny revealed that there was no such system of analysis of dealers for recovery of security deposit to safeguard revenue.**

Test check revealed that in two CTOs (Circle VIII and IX, Indore) registration of 2,176 dealers was cancelled due to non-submission of returns. It was, however, noticed that though the registrations were cancelled due to non-submission of returns, there was nothing on record to show that any assessment was attempted to ascertain the revenue accrued from these dealers. If the provision for security had been mandatory, the department would have recovered at least Rs. 2.18 crore from these defaulting dealers.

After this was pointed out, the CTO stated (May 2009) that the provision for security was not mandatory.

**The Government may consider making it mandatory to realise security deposit from all dealers based on their volume of transactions.**

### 2.2.7.6 Inconsistency between the Act and Rules

Under Section 57 (8 and 10) of the Act, the check post officer is empowered to levy penalty on the transporter for violation of sub section (2). Sub section 12 further states that if the penalty is not paid within 15 days of the service of the

order, the check post officer shall cause the goods to be sold in such manner as may be prescribed. However, Rule 74 (4) lays down that if the amount of penalty under sub section 8 and 10 of Section 57 of the Act, is not paid within 30 days of the service of the order, the check post officer shall serve a notice to the transporter to show cause why the goods or the vehicle should not be disposed of by sale. **This inconsistency requires to be reconciled.**

### 2.2.8 Other deficiencies

#### 2.2.8.1 Database of dealer registration

As per departmental circular dated 9 January 2007, the database of all the dealers was to be completed by incorporating details like photo identity, bank account details etc. by 20 January 2007.

Information collected from six[4] CTOs revealed that database was completed only in 7,981 out of 17,005 cases (46.93 *per cent*) upto May 2009.

#### 2.2.8.2 Incomplete assessment

Section 20 (7) of the Act lays down that assessment of a dealer shall be made within a period of one calendar year from the end of the period for which assessment is to be made. Information collected from six[5] CTOs and four[6] ACs revealed that out of 29,280 cases of 2006-07, assessment of only 12,620 cases (43.1 *per cent*) was done till December 2008. This period was extended till March 2009 and further till June 2009. It was observed that 12,345 cases were due for assessment as of March 2009.

#### 2.2.8.3 Survey and registration of dealers

Section 5 of the Act provides that every dealer whose gross turnover exceeds the taxable limit, which shall not exceed Rs 5 lakh during any period of twelve consecutive months, shall be liable to pay tax in accordance with the provisions of the Act. Further, as per provisions of the section 17 of the Act, no dealer shall, while being liable to pay tax under section 5, carry in business as a dealer unless he has been registered under the Act and possesses a certificate of registration. Sections 56 of the Act also provides for periodical survey to unearth unregistered dealers.

Information collected from the office of the Commissioner, Commercial Taxes and five circle offices[7] revealed that no survey was conducted even after lapse of three years from the commencement of the Act. Besides unearthing unregistered dealers, the survey would also have facilitated identification of dealers whose registrations were cancelled due to various reasons.

**The Government may consider making it mandatory to conduct periodic survey to unearth unregistered dealers in the interest of revenue.**

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4 CTO, Circle I, II, III & IV, Gwalior and CTO, Circle VIII & IX, Indore.
5 CTO, Circle I, II, III & IV, Gwalior and CTO, Circle VIII & IX, Indore.
6 ACCT, Gwalior (2), ACCT, Indore (2).
7 CTO, Circle I, II, III & IV, Gwalior and CTO, Circle IX, Indore.

### 2.2.8.4 Non-submission of returns

Section 18 (1) (a) of the Act prescribes that every dealer shall furnish a return in such form, in such manner, for such period, by such dates and to such authority as may be prescribed.

Test check of records in two CTOs[8] and information collected from two CTOs[9] revealed that out of 11,959 returns due to be filed in 2006-07, 3,329 returns (27.84 *per cent*) were not submitted by the dealers. Similarly, out of 10,775 returns due in the year 2007-08, 2,747 (25.49 *per cent*) returns were not filed by the dealers. Though action was taken by two CTOs, no action was taken by the other two CTOs.

**As submission of returns is vital for the success of VAT, the Government may consider putting in place stringent penal measures for non-submission of returns within the prescribed time frame.**

### 2.2.9 Non-submission of annual audit report

Under section 39 and Rule 54 of the Act and Rules made thereunder, the dealer having a turnover exceeding Rs.40 lakh in a year shall be required to furnish audit report to the CTO before 31 October of the next year, failing which the dealer shall not be eligible for self assessment. **But there is no penal consequence for this failure.** Further, Rule 54 prescribes that separate details relating to the business done by the dealer in the state of MP shall be included in the audit report. **But no separate format has been prescribed to submit these details and it is not clear what type of separate details shall be required to be submitted.**

Information collected from four out of six circle offices revealed that annual accounts were received in 771 out of 5,298 cases during 2006-07 and 883 out of 5,075 cases during 2007-08. The percentage of receipts was 14.55 *per cent* and 17.40 *per cent* respectively. **This shows that there was no machinery to watch over the submission of annual accounts.** Information was not furnished by two circle offices.

**As audit certificate is a control mechanism to prevent evasion of tax, the Government may prescribe penal measures for non-submission of audit reports by the dealers along with their returns.**

### 2.2.10 Tax audit

As per Section 19 of the MPVAT Act, 2002, the Commissioner or an agency authorised by him shall, after previous intimation to the dealer, undertake tax audit, in such manner as may be prescribed and tax audit shall be generally taken up in the office, business premises or warehouse of the dealer. The audit shall be completed within a period of six calendar months from the date of institution. After such audit, if the return or returns filed by the dealer are not found to be correct, the Commissioner shall, by issue of a notice in prescribed form, require such dealer to make the payment of tax and/or interest payable by him. If the dealer does not comply with the

[8] CTO Circle VIII & IX Indore.
[9] CTO Circle I & II Gwalior.

requirement made in the notice, the Commissioner shall assess or reassess him to tax and interest and/or to imposition of penalty in accordance with the provision of the Act. Accordingly, five DC (Tax Audit) were posted for conducting tax audit (August 2008).

Test check of records in two offices of Deputy Commissioners[10] revealed that during the period 2006-07, out of 663 units selected for tax audit, the tax audit of only 288 units was completed (short fall of 56.56 *per cent)*. In one office of the Deputy Commissioner, Tax Audit Wing, 241 units were selected for tax audit, but the position regarding shortfall could not be ascertained as no information was made available. Similarly, for the period 2007-08, information collected from one office of the Deputy Commissioner and two offices of the Deputy Commissioner, Tax Audit Wing revealed that out of 645 units selected for tax audit, the tax audit of only 200 units was completed (shortfall of 69 *per cent)*. The department needs to take up the remaining tax audits for effective deterrence.

### 2.2.11 Input tax credit

#### 2.2.11.1 Incorrect availing of inventory rebate and input tax credit

Under Section 14 of the VAT Act, rebate of input tax is allowed to a registered dealer under certain specified conditions.

Test check of records of two circle offices[11] and one regional office[12] revealed that incorrect availing of input tax rebate of Rs. 15.70 lakh was taken in eight cases of eight dealers assessed for the period 2006-07 between March 2008 and January 2009 either without purchase list, or used in tax free job work or tax not shown separately.

After this was pointed out, the assessing authority stated that action would be taken in five cases. In one case, it was stated that the purchase list was enclosed. The reply is not acceptable, as the list was unverified. The assessing authority stated in two cases that the list was enclosed showing the tax separately. Reply is not acceptable as the fact remains that the list was not available earlier in the file during audit.

**2.2.11.2** As per section 14 (1), a rebate of input tax provided in this section shall be claimed by or be allowed to a registered dealer subject to provision of sub section 5 and such restriction and conditions as may be prescribed. Moreover, section 14 (6) (vi), provides that no input rebate under sub section (1) shall be claimed or be allowed to a registered dealer who opts for composition under section 11 and 11A.

Test check of records of regional office, Bhopal revealed that input tax credit of Rs. 2.68 lakh was taken by one works contractor assessed in July 2008 for the period 2006-07. It was noticed that the contractor had opted for composition under section 11 (A).

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10 Divisional Office (Tax Audit), Indore (2).
11 CTO, Circle VIII and IX, Indore.
12 ACCT, Indore.

After this was pointed out, the assessing authority stated (July 2009) that the input tax credit was allowed on the amount on which composition facility was not taken. The reply is not acceptable as there is no such provision in the Act to allow partial input tax credit.

**Other cases**

### 2.2.12 Loss of revenue due to non-levy of tax on fabric, sugar and tobacco products

As per entry number 48, 49 and 50 of Schedule 1 of MP VAT Act, fabrics, sugar and tobacco products are tax free goods provided additional excise duty is levied or leviable on them under the Central Excise and Tariff Act 1985. Otherwise, these goods are charged at the rate of four *per cent* under entry number 34, 84 and 87 of the Part II of Schedule II. Government of India, by notification No. 11/2006-CE dated 1 March 2006 exempted additional excise duty on fabric, sugar and tobacco products with immediate effect. Thus, these goods were exigible to tax at the rate of four *per cent*.

Test check of records in two circle offices[13] and one regional office[14] revealed that tax of Rs. 50.73 lakh was not levied (six cases) in case of six dealers assessed/audited for the period 2006-07 and 2007-08 between March and September 2008, treating them as tax free goods, which was irregular.

After this was pointed out, the assessing authority stated (May 2009) in one case that action would be taken while in other cases, it was stated that there would be no effect even after issue of the said notification and in four cases, it was stated (May 2009) that excise duty has been charged in the sale bill. The reply is not acceptable as these goods were exigible to four *per cent* tax after the exemption notification of Government of India of March 2006. Moreover, there was no proof of levy of excise duty on the sale bill. **Besides, as per Paragraph 2.19 of the *White Paper* on VAT (17 January 2005) and decision taken by the Empowered Committee, VAT on sugar, fabrics and tobacco shall not be levied for one year due to some organisational difficulties and this position would be reviewed after one year. It was observed that this has not been reviewed so far.**

### 2.2.13 Conclusion

It was observed that the department faltered in its preparedness for implementation of VAT. There were shortfalls in the registration and survey of dealers and tax audit while there were arrears in assessments and submission of annual accounts by the dealers. There were some deficiencies in the Act/Rules leading to loss of revenue. The department was constrained in cross verification in the absence of provisions for furnishing sale list by the dealers.

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13 CTO Circle VIII and IX, Indore.

14 Assistant Commissioner, Division-III, Indore.

### 2.2.14 Summary of recommendations

The Government may consider implementation of the following recommendations to rectify the deficiencies.

- Amend the format of the quarterly return to accommodate the name of the commodity and its code number in the interest of revenue;
- make it mandatory to furnish sale list in Form 10 and receiving consideration through cheques in case of sales above Rs. 25,000;
- modify the format of the return providing details of purchases made from unregistered dealers also;
- make it mandatory to realise security deposit from all dealers based on their volume of transactions;
- reconcile the inconsistencies between the Act and Rules for violation of check post declarations;
- make it mandatory to conduct periodic survey to unearth unregistered dealers in the interest of revenue;
- put in place stringent penal measures for non-submission of returns/audit reports within the prescribed time frame; and
- consider levying VAT on fabrics, sugar and tobacco.

## 2.3 Other audit observations

*Scrutiny of assessment records of sales tax/value added tax (VAT) in Commercial Taxes Department revealed several cases of non-observance of provisions of Acts/Rules, non/short levy of tax/penalty/interest, incorrect determination/classification/turnover and other cases as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on a test check carried out in audit. Such omissions on the part of assessing authorities (AA) are pointed out in audit each year, but not only the irregularities persist; these remain undetected till an audit is conducted. There is need for Government to improve the internal control system including strengthening of internal audit to ensure that such ommissions are detected and rectified.*

## 2.4 Non/short levy of tax

**2.4.1** Under the Madhya Pradesh *Vanijyik Kar* (MPVK) *Adhiniyam*, 1994, every dealer who in the course of his business purchases any goods which have not suffered tax, shall be liable to pay purchase tax at concessional rate of four *per cent*, except goods specified in Schedule III, if after such purchase the goods are used or consumed in the manufacture of other goods for sale. Under the *Adhiniyam*, if any registered dealer purchasing the goods exempted in whole or part from payment of tax, does not comply with the conditions of the exemption, he shall be liable to pay tax on the purchase price of such goods at the full rate, and penalty equal to 25 *per cent* of the amount of tax so payable.

Test check of records of six regional offices and five circle offices, as mentioned below, revealed non/short levy of tax of Rs. 2.96 crore (including penalty) on a turnover of Rs. 26.39 crore.

**(Rupees in crore)**

| Sl. no. | Name of unit<br>Period<br>Month of assessment | Value of goods sold/ purchased<br>Amount of tax not levied/ penalty | Nature of observation | Department's reply | Audit comments |
|---|---|---|---|---|---|
| 1. | 2. | 3. | 4. | 5. | 6. |
| 1. | RAC, Circle-V, Bhopal<br>2004-05<br>January 2008 | 6.36<br>1.54 | Purchase tax on High Speed Diesel (HSD) was levied at concessional rate of 4.6 *per cent* instead of 28.75 *per cent*. | Tax was correctly levied at concessional rate because HSD is goods of Schedule II of the *Adhiniyam*. | HSD is also included in Schedule III for which concessional rate of purchase tax under Section 10 is not admissible. |
| 2. | RAC, Satna<br>2004-05<br>December 2007 | 2.46<br>0.23<br>0.23 | Sale value of Rs. 2.46 crore of plant and machinery was not included in the taxable turnover resulting in non-levy of tax and penalty. | Assessing Authority (AA) stated (August 2008) that action will be taken after verification. | Final action has not been intimated (September 2009). |

| 1. | 2. | 3. | 4. | 5. | 6. |
|---|---|---|---|---|---|
| 3. | RAC, Gwalior<br>2003-04<br>January 2007 | 8.99<br>0.09<br>0.27 | Tax on purchase of wheat from unregistered dealers was neither paid by the dealer nor was levied by the AA. This was incorrectly treated as purchase of tax free flour. | It was intimated (January 2009) that a demand of Rs. 17.98 lakh had been raised (August 2008). | Reply does not explain why the penalty (equal to amount of tax) was imposed under Section 28 (1) instead of three times of the tax under Section 69, when this was on record that the dealer had furnished false particulars of purchases. |
| 4. | RAC, Indore<br>2004-05<br>January 2008 | 2.91<br>0.11 | As against the leviable tax of Rs. 11.64 lakh on inter-state sale of valves, the AA levied tax of Rs. 72,000 only. | AA stated (December 2008) that action would be taken after verification. | Final action has not been intimated (October 2009). |
| 5. | CTO-VI, Indore<br>2003-04 & 2004-05<br>October 2006 &2007<br>CTO-VI, Bhopal<br>2003-04<br>January 2007<br>CTO-V, Bhopal<br>2004-05 & 2005-06<br>January & February 2008<br>CTO-I, Indore<br>2004-05<br>January 2008 | 2.56<br>0.11<br>0.04 | Tax was not levied on raw material purchased without paying tax thereon. | In three cases, demand of Rs. 8.27 lakh was raised and adjusted against balance quantum of exemption (May & September 2008). In one case, the AA accepted the audit observation (January 2009). In the remaining cases, the AA stated (December 2008) that action would be taken after verification. | Final action has not been intimated (October 2009). |
| 6. | CTO, Rewa<br>2004-05<br>January 2008 | 0.45<br>0.10<br>0.02 | Though HSD purchased against declarations was not used for the specified purpose of manufacturing other goods for sale, yet purchase tax on the same was levied incorrectly at the concessional rate of 6.9 *per cent* instead of 28.75 *per cent*. | The dealer used HSD in the captive power plant; hence grant of concessional rate was correct. | The reply does not correctly interpret the exemption notification which states that the electrical energy generated from HSD should be used in the manufacture of other goods for sale, while in this case there was nothing on record which could prove sale of manufactured goods. |
| 7. | RAC, Ratlam<br>2003-04<br>April 2006 | 1.05<br>0.08 | Tax on light diesel oil (LDO) was levied at concessional rate of six *per cent* instead of 13.8 *per cent*. | Tax was correctly levied at concessional rate because LDO is goods of Schedule II of the *Adhiniyam*. | LDO is also included in Schedule III for which concessional rate of purchase tax under Section 10 is not admissible. |
| 8. | RAC, Gwalior<br>2004-05<br>August 2007 | 0.28<br>0.06 | Tax on HSD was levied at concessional rate of 6.9 *per cent* instead of 28.75 *per cent*. | AA stated (November 2008) that action would be taken after verification | Final action has not been intimated (October 2009). |

| 1. | 2. | 3. | 4. | 5. | 6. |
|---|---|---|---|---|---|
| 9. | RAC, Indore<br>2002-03<br>December 2005 | 0.31<br>0.03 | Sale value of Rs. 31.14 lakh of duty entitlement pass book (DEPB) was not included in the taxable turnover with the contention that the transaction occurred out of state. This resulted in short realisation of tax. | Demand of Rs. 1.37 lakh had been raised at the rate of 4.6 *per cent.* | During the relevant period, rate of tax on DEPB was 9.2 *per cent.* Hence rate of tax levied is not in consonance with the provisions of the Act. |
| 10. | RAC, Guna<br>2004-05<br>January 2008 | 0.56<br>0.03 | Tax on goods sold against declarations in Form 32, was not levied whereas it was leviable at the rate of 4.6 *per cent.* | Tax is not leviable on goods sold against declarations. | Under the *Adhiniyam*, sale of goods against declaration in Form 32 is liable to tax at concessional rate of 4.6 *per cent.* |
| 11. | RAC, Jabalpur<br>2003-04<br>January 2007 | 0.46<br>0.02 | Tax on purchase of pulses from unregistered dealers was not levied due to incorrect treatment of the goods as tax paid. | AA stated (December 2007) that action would be taken after verification. | Final action has not been intimated (October 2009). |

**2.4.2** As per MPVK *Adhiniyam*, where a sale or purchase takes place in pursuance of a contract of sale, such sale or purchase shall be deemed to have been taken place in the State wherever the contract of sale or purchase might have been made, if the goods are within the State.

Test check of records of RAC, Indore in July 2006 revealed that tax on deemed sale of paper by a dealer, for the period 2002-03, engaged in job work of photo developing was not levied treating the job as a contract of service instead of contract of sale. This resulted in non-realisation of tax of Rs. 3.80 lakh on the deemed sale of paper of Rs. 45.06 lakh at the rate of 9.2 *per cent.*

After this was pointed out, the AA in June 2007 reassessed the case and raised a demand of Rs. 3.80 lakh. A report on recovery has not been received (October 2009).

The cases were reported to the Commissioner, Commercial Tax, Madhya Pradesh (CCT, MP) and the Government between August 2006 and December 2008; their reply has not been received (October 2009).

## 2.5 Application of incorrect rate of tax

The MPVK *Adhiniyam,* read with the Central Sales Tax (CST) Act, 1956 and notifications issued thereunder, specify the rates of commercial tax leviable on different commodities.

Test check of records of 16 regional offices[15] and 15 circle offices[16] between December 2003 and January 2009 revealed that in case of 40 dealers, assessed between November 2002 and February 2008 for the period 1999-2000 to 2005-06, tax on the sales turnover of Rs. 41.04 crore was levied at

[15] Bhopal (02), Chhindwara, Guna, Gwalior, Indore (04), Jabalpur (03), Satna (02) and Ujjain (02).

[16] Bhopal, Burhanpur, Dhar, Gwalior (02), Indore (06), Jabalpur, Mandsaur (02) and Rewa.

incorrect rates. This resulted in short levy of tax of Rs. 2.57 crore and interest/penalty of Rs. 6.61 lakh. A few instances are mentioned below:

**(Rupees in crore)**

| Sl. no. | Name of auditee unit/No. of cases | Assessment period/ Month of assessment | Turn-over amount of short levy of tax | Audit observations |
|---|---|---|---|---|
| 1 | RAC, Ujjain<br>03 | 2002-03 to 2004-05<br>November 2006, June 2007 and February 2008 | 14.97<br>1.36 | Tax on pigment black was levied at the rate of 4.6 *per cent* treating it as chemical. However, as per the judicial decision[17] it is included in dyes and paints, liable to tax at the rate of 13.8 *per cent.* |
| 2. | RAC, Bhopal<br>01 | 2004-05<br>January 2008 | 3.01<br>(Intra-State)<br>0.14<br>2.40<br>(Inter-state)<br>0.09 | Tax on mango pulp was levied at the rate of 9.2/10 *per cent* vide entry No. 26 of part IV of Schedule II of the *Adhiniyam* whereas it was liable to tax as preserved food article at the rate of 13.8 *per cent.* |
| 3. | RAC, Indore<br>02 | 2004-05 & 2005-06<br>July 2007& December 2007 | 3.73<br>0.17 | Tax on white petroleum jelly was levied at the rate of 9.2 *per cent* treating it as drugs and medicines whereas the same is liable to tax as cosmetics at the rate of 13.8 *per cent* under entry No. 41 of part III of Schedule II of the *Adhiniyam.* |
| 4. | RAC, Satna<br>01 | 2003-04<br>January 2007 | 2.52<br>0.12 | Tax on craft paper was levied at the rate of 4.6 *per cent* treating it as packing material whereas the same is liable to tax as paper at the rate of 9.2 *per cent.* |
| 5. | RAC, Jabalpur<br>01 | 2004-05<br>January 2008 | 1.47<br>0.10<br>(including interest) | Tax on high density polyethylene (HDPE) pipes was levied at the rate of 4.6 *per cent* vide notification dated 11 August 2004 incorrectly as the said notification was applicable to PVC pipes and not HDPE pipes. |

After the cases were pointed out, the AAs, in case of seven dealers raised a demand for Rs. 23.88 lakh, out of which Rs. 19.55 lakh was adjusted against the cumulative quantum of tax. In case of one dealer, the AA accepted the audit observation while in case of 12 dealers it was stated that action would be taken after verification.

In the remaining cases of 20 dealers, departmental replies and audit comments thereon are as under:

| Sl. no. | Name of auditee unit/No. of dealers | Commodity | Departmental reply | Audit comment |
|---|---|---|---|---|
| 1. | 2. | 3. | 4. | 5. |
| 1. | CTO, Gwalior<br>01 | Polyurethane foam | Polyurethane foam is different from other kinds of foam, therefore is taxable at the rate of 9.2 *per cent* under entry no. 39 of part IV of Schedule II of the *Adhiniyam* as unspecified item. | Reply is not in consonance with the Chapter 39 of the Central Excise Tariff Act wherein polyurethane foam is classified as plastic goods and is accordingly taxable at the rate of 13.8 *per cent* under entry no. 43 of part III of Schedule II of the *Adhiniyam.* |

17 M/s Rang Rasayan Vs CCT, MP (2004-4-STJ-76).

| 1. | 2. | 3. | 4. | 5. |
|---|---|---|---|---|
| 2. | RAC, Bhopal 01 | Motor vehicle parts | Assessment was correct in view of notification no. 70 dated 9 July 2002. | The said notification was in force only upto 31 March 2003, hence it was not applicable for the accounting year 2003-04. |
| 3. | CTO, Jabalpur 01 | Bearings | Tax at concessional rate was levied in view of notification no. 43 dated 4 May 2000. | The said notification came into force with effect from 1April 2000, hence was not applicable for the year 1999-2000. |
| 4 | RAC, Indore 01 | Motor vehicle parts | The dealer sold aluminium scrap. | Reply is not in consonance with the accounts furnished by the dealer wherein sale of motor vehicle parts is recorded. |
| 5. | CTO, Gwalior 01 | Metavik Stearate, PVC Stabilizers | The sold goods was chemical as the same was used in the manufacture of PVC granules. | The CCT in the case of M/s BCM organics[18] has decided that plastic stabilisers are taxable under residuary entry at the rate of 9.2 *per cent*. |
| 6. | CTO, Vidisha and CTO, Indore 03 | Tractor parts | Tractor parts are taxable as unspecified goods under entry no. 39 of part IV of Schedule II of the *Adhiniyam* because the same have no specific entry in the Schedule II. | As per the decision of Appellate Board in the case of M/s Raj Tractors, Bina, tractors are included in motor vehicles. Accordingly, tractor parts not having any specific entry in the schedule shall be liable to tax under entry no.11 of part III of Schedule II as motor vehicle parts. |
| 7. | RAC, Indore 01 | Herbals | The goods manufactured by the dealer were correctly treated as basic drugs in view of MP Appellate Board's decision in the case of M/s Lupin Laboratories Vs CCT, MP. | The subject matter of the said decision was not to define basic drugs but to decide whether the notification issued in respect of basic drugs was specific or general. |
| 8. | CTO, Indore 01 | Racks (furniture) | The dealer sold IT related goods, as specified in the notification no. 42 dated 2 May 2001. | As per basic records of the dealer, he manufactured and sold racks which have not been specified in the said notification. Racks are generally included in furniture. |
| 9. | RAC, Gwalior 01 | Chlorinated paraffin wax (CPW) | The goods sold are covered in chemicals. | The reply is not in consonance with the CCT, MP orders dated 15 July 2005 which decided that CPW is a plasticiser which is not included in chemicals. |
| 10. | CTO, Burhanpur 01 | Lay flat tube | Lay flat tube is soft PVC pipe used for irrigation, hence taxable at the rate of 4.6 *per cent* vide notification no. 78, dated 10 October 2000. | PVC pipes are different from lay flat tubes because they do not lay flat when they are not in use. |
| 11. | CTO, Mandsaur RAC Jabalpur 02 | Bitumen/ sound system/ pumps | The goods were sold against form A-1 under notification no. 28 dated 13 April 2000. | The said notification was in force only upto 31 March 2002 whereas the observation relates to the periods 2003-04 and 2004-05. |
| 12. | CTO, Bhopal 01 | Medical equipments | Tax was levied at the rate of 4.6 *per cent* as per rules. | The reply does not explain why the tax was levied at the rate of 4.6 *per cent* instead of prescribed rate of 9.2 *per cent*. |
| 13. | RAC, Jabalpur 01 | HDPE pipe | HDPE pipe is a kind of PVC pipe, thus taxable at the rate of 4.6 *per cent* under notification no. 12 dated 11 August 2004. | The notification dated 11 August 2004 provides concessional rate only for PVC pipes and not for HDPE pipes. |

[18] (2005-7-STJ-215)

| 1. | 2. | 3. | 4. | 5. |
|---|---|---|---|---|
| 14. | RAC, Ujjain 01 | Pigment-black | The assessment was made in view of CCT, MP's order dated 2 December 1998 issued under section 68 in the case of the assessee dealer. | The reply is not in consonance with the decision of MP Appellate Board given in the case of M/s Rang Rasayan Vs CCT, MP (2004-4-STJ-76) wherein it has been held that pigments are included in dyes and paints. |
| 15. | RAC, Bhopal 01 | Mango pulp | Mango pulp is not a food article rather it is used for preparation of fruit juice. It was also stated that pulp is exigible to tax at the rate of eight *per cent* under entry no. 26 part IV of Schedule II of the *Adhiniyam*. | Mango pulp is a food article because it is used directly or indirectly in the manufacture of fruit juice. Hence the said entry no. 26 does not cover mango pulp which is a preserved food article. |
| 16. | RAC, Indore 01 | White Petroleum jelly | In view of MP Board of Revenue's decision in the case of M/s Ponds India Ltd. (2003-2-STJ-78) petroleum jelly is taxable as drugs and medicines. | Under the *Adhiniyam*, medicinal preparations of cosmetics are taxable at the rate of 13.8 *per cent* vide entry no. 41 of part III of Schedule II of the *Adhiniyam*. |
| 17. | RAC, Indore 01 | Plasticiser | As per literature obtained from a web-site, plasticiser is chemical. | As per CCT, MP's orders dated 15 July 2005, issued under Section 68, plasticisers are chemical products and different from chemicals. They are exigible to tax at the rate of 9.2 *per cent*. |

The matter was reported to the CCT, MP and the Government between February 2004 and March 2009; their reply has not been received (October 2009).

## 2.6 Non-realisation of profession tax

As per provisions of Section 3 (2) of Profession Tax Act, 1995, every person who carries on a trade either himself or by an agent or representative or who follows a profession or calling other than agriculture in Madhya Pradesh shall be liable to pay profession tax at the rate specified against the class of such persons in column (3) of the Schedule of the Act. Section 8 (2) of the said Act further provides that such person liable to pay tax shall obtain a certificate of registration from the profession tax assessing authority in the prescribed manner.

Cross verification of information obtained from 10 Circle Offices[19] and two Deputy Commissioners[20] with the list furnished in respect of liquor licensees, cinema houses, video parlours, cable operators and hotels by the State Excise Department, list of beauty parlours furnished by the Customs and Central Excise Department and list of contractors furnished by eight offices[21] of Gwalior district revealed that 8,037 persons remained unregistered with the Commercial Tax Department under the Profession tax Act for the years 2002-03 to 2007-08, although they were liable to pay profession tax. This resulted in non-registration of these dealers and consequent non-realisation of profession tax of Rs. 1.89 crore at the rate ranging from Rs. 1,000 to Rs. 2,500 per annum.

19 CTO - Balaghat, Chhindwara (2), Dewas, Guna, Katni, Ratlam (2) and Sagar (2).

20 Dy. Commissioner, Commercial Tax, Gwalior (2).

21 Executive Engineer (EE) (PWD)-2, Superintending Engineer (SE) (PWD), Chief Engineer (WRD), EE (PHE), SE (PHE), EE (RES) and SE (*Nagar Nigam*).

The matter was reported to the CCT, MP and the Government in March and April 2009; their reply has not been received (October 2009).

## 2.7 Non-levy of tax on sales incorrectly treated as tax free

The MPVK *Adhiniyam* and notifications issued thereunder prescribe rates of commercial tax leviable on different commodities except those specified under Schedule I of the *Adhiniyam* and those which are exempted from whole of tax through notifications. Further, the MP High Court in the case of M/s Raj Pack Well Ltd. Vs Union of India {1990 (50) ELT 201} held that high density polyethylene/poly propylene fabric is not a kind of cloth/textile material, rather it is covered in plastic goods.

**2.7.1** Test check of records of six regional offices[22] and seven circle offices[23] between December 2007 and January 2009 revealed that in case of 15 dealers, assessed between April 2006 and February 2008 for the period 2002-03 to 2005-06, tax on high density polyethylene/poly propylene (HDPE/PP) fabrics valued at Rs. 29.58 crore was not levied treating the same as tax free cloth. This resulted in non-levy of tax of Rs. 1.71 crore.

After this was pointed out, the AAs in case of two dealers stated (July and December 2008) that action would be taken after verification. In case of five dealers, it was stated that exemption was allowed under notification no. 68 dated 24 August 2000. The reply does not correctly interpret the said notification which exempts all varieties of cloth and not HDPE/PP fabrics which is plastic goods. In case of one dealer, it was stated (January 2008) that HDPE fabric is tax free under entry no. 4 of Schedule I of the *Adhiniyam*. Reply is not acceptable because HDPE fabric being plastic goods is not covered under the said entry, which includes cloth. In case of one dealer no specific comments were offered by the AA. In case of six dealers the AAs stated that as per order of the Commissioner, Sales Tax, dated 16 February 1983 issued under Section 42-B of the repealed Act (MPGST Act), HDPE fabric was deemed as a kind of cloth. Contention of the AAs is not acceptable in view of the MP High Court decision referred to above.

**2.7.2** Test check of records of a Circle office at Ujjain in December 2008 revealed that in case of a dealer, assessed in February 2008 for the period 2005-06, tax on sale of paper *dona*[24] valued at Rs. 63.83 lakh was not levied treating the same as sale of tax free goods. This resulted in non-levy of tax of Rs. 5.87 lakh including penalty.

After this was pointed out, the AA raised demand of Rs. 5.87 lakh including penalty (March 2009).

**2.7.3** Test check of records of a circle office at Chhindwara in January 2008 revealed that in case of a dealer, assessed in January 2007 for the period 2003-04, tax on sale of *Khandsari* valued at Rs. 40.49 lakh was not levied treating the goods as tax free. This resulted in non-levy of tax of Rs. 3.24 lakh at the rate of four *per cent* and penalty.

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22 Indore (4), Jabalpur and Khandwa.

23 Gwalior (2) and Indore (5).

24 *dona* – bowl like container.

After this was pointed out, the AA raised demand of Rs. 3.24 lakh including penalty of Rs. 1.62 lakh (July 2008).

The matter was reported to the CCT, MP and the Government between February 2008 and March 2009; their reply has not been received (October 2009).

## 2.8 Non/short levy of Entry Tax

Under the Madhya Pradesh *Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhiniyam*, 1976 and rules and notifications issued thereunder, entry tax (ET) is leviable at the specified rates on the goods entering into a local area for consumption, use or sale therein.

Test check of records of 11 regional offices[25] and 13 circle offices[26] between March 2006 and January 2009 revealed that in case of 36 dealers assessed/ reassessed between August 2004 and February 2008 for the period 2001-02 to 2005-06, ET on goods like timber, furnace oil, diesel, motor vehicles, tractors, cigarettes, iron and steel etc. valued at Rs. 68.65 crore was not/short levied on their entry into local area. This resulted in non/short realisation of ET of Rs. 1.41 crore including interest and penalty of Rs. 33.99 lakh.

After the cases were pointed out, the AAs in 18 cases stated (between January 2008 and January 2009) that action would be taken after verification. In 15 cases, the AAs reassessed the cases and raised demand of Rs. 41.20 lakh (October 2008 to May 2009), of which, Rs. 5.08 lakh has been recovered. In the remaining three cases, the replies are as under:

| Sl. no. | Name of auditee unit/No. of dealers | Commodity | Departmental reply | Audit comment |
|---|---|---|---|---|
| 1. | RAC, Gwalior 01 | Cement, coal, sand and HTS wire | As per the judicial decision of hon'ble Madhya Pradesh High Court in the case of M/s Jai Prakash Associates, factory situated on railway's land is not covered under 'local area'. | The subject of the said decision was "reopening of assessment" and not to decide whether railway siding is a local area. Further, Madhya Pradesh Board of Revenue in its judgement[27] of 2002 has held that railway sidings and rail lines are covered in local area. |
| 2/ | CTO, Indore 01 | Timber | The dealer purchased soft wood and not timber. | The reply is contradictory to the fact mentioned in the purchase bills, which show the purchase of timber. |
| 3. | RAC, Khargone 01 | LDO | As per a notification dated 06 September 2001, raw material is exempted from ET. | LDO is not recorded as raw material in the registration certificate of the dealer. |

The cases were reported to the CCT, MP and the Government between March 2006 and March 2009; their reply (except in one case) has not been received (October 2009).

25 Bhopal (3), Gwalior (2), Indore (3), Khargone, Neemuch and Satna.

26 Betul, Bhopal (3), Burhanpur, Gwalior (2), Indore (4), Neemuch and Vidisha.

27 M/s Larsen and Toubro Ltd. Vs CCT (2002-35-VKN-50).

## 2.9 Incorrect grant of exemption

**2.9.1** As per exemption notification dated 6 October 1994 issued under the MPGST Act, a new industrial unit engaged in repacking of goods is not eligible for exemption. The notification further stipulates that industrial units engaged in processing of iron and steel and manufacture of HDPE/LDPE bags, commencing production after 31 December 1996 and 30 September 1999 respectively, shall not be eligible for exemption. Exemption notifications dated 6 October 1994 and 6 June 1995 provide for exemption to the extent of maximum cumulative quantum of tax as specified in the eligibility certificates (EC) issued thereunder.

Test check of records of four regional offices and two circle offices between December 2007 and September 2008 revealed that six dealers were allowed incorrect exemption having tax effect of Rs. 1.06 crore as mentioned below:

| Sl. No. | Name of auditee unit | Period Month of assessment | Observation in brief |
|---|---|---|---|
| 1. | 2. | 3. | 4. |
| 1. | RAC, Sagar | 2003-04 & 2004-05 September 2006 | Two dealers engaged in bottling of liquified petroleum gas (LPG) from bulk containers were allowed exemption from payment of tax on the basis of ECs issued to them. This was not correct because as per exemption notification dealers engaged in repacking of goods are not eligible for exemption. This deprived the Government of revenue of Rs. 72.08 lakh. |
| | CTO-VI, Bhopal | 2003-04 January 2007 | |
| After the cases were pointed out, the AAs stated (December 2007) that as per letter dated 16 June 1998, issued by the Government (Commercial Tax Department), refilling of LPG is a process of manufacture, as such the exemption allowed was correct. The reply is not in consonance with the judicial decisions[28] wherein it has been held that refilling of LPG is not a manufacturing process but in fact is repacking of goods. | | | |
| 2. | RAC, Indore | 2003-04 January 2007 | Exemption from payment of tax was incorrectly allowed to two dealers engaged in manufacturing of HDPE/LDPE bags and steel forgings and castings, although they commenced production after expiry of the prescribed dates. This deprived the Government of revenue of Rs. 16.74 lakh. |
| | CTO, Guna | 2003-04 December 2006 | |
| After the cases were pointed out, the AA in one case stated (December 2007) that action would be taken after verification. In the other case, it was stated (January 2008) that the exemption was allowed in view of the EC issued to the dealer, however, the matter regarding incorrect issue of EC will be communicated to the Industries department. Further action/progress has not been intimated (October 2009). | | | |

[28] Modi Gas Service, Indore Vs. State of M.P. & others (2006-8-STJ-536) (MP High Court), State of Gujarat Vs. Kosan Gas Co. (1992-STC-237) (Gujarat High Court).

| 1. | 2. | 3. | 4. |
|---|---|---|---|
| 3. | RAC, Indore | 2005-06 June 2007 | In case of one dealer, exemption from payment of tax of Rs. 1.11 lakh was allowed in excess of the maximum cumulative quantum of tax specified in the EC. In case of another dealer, though tax was computed as Rs. 33.22 lakh, only Rs. 16.89 lakh was adjusted against the cumulative quantum of tax. This resulted in excess grant of tax benefit of Rs. 17.44 lakh. |
| | RAC, Morena | 1997-98 October 2007 | |
| After the cases were pointed out (June 2008), the AA in one case effected recovery of Rs. 1.11 lakh (October 2008) while in other case, it was stated (September 2008) that action would be taken after verification. Further developments have not been reported (October 2009). | | | |

**2.9.2** Notification dated 12 October 2000, issued under the MPVK *Adhiniyam*, exempts goods manufactured and sold by specified village industries whose annual gross turnover does not exceed Rs. 10 lakh.

Test check of records of a circle office at Neemuch in April 2008 revealed that a village industry was assessed between August 2004 and March 2007 for the periods 2001-02 and 2003-04 to 2005-06. Though the turnover in the relevant years exceeded Rs. 10 lakh, exemption from payment of tax of Rs. 3.16 lakh was incorrectly allowed as shown below:

**(Rupees in lakh)**

| Period | Turnover | Amount of tax levied, if any | Amount of tax leviable | Short levy of tax |
|---|---|---|---|---|
| 2001-02 | 46.97 | - | 1.88 | 1.88 |
| 2003-04 | 11.48 | 0.06 | 0.47 | 0.41 |
| 2004-05 | 12.00 | 0.08 | 0.50 | 0.42 |
| 2005-06 | 25.20 | 0.59 | 1.04 | 0.45 |
| **Total** | | **0.73** | **3.89** | **3.16** |

This resulted in short realisation of tax of Rs. 3.16 lakh.

After the case was pointed out, the AA accepted (April 2008) to take action after verification as proposed by audit. Further developments have not been reported (October 2009).

The matter was reported to the CCT, MP and the Government in January 2008 and November 2008; their reply has not been received (October 2009).

## 2.10 Incorrect deduction of tax paid sales

The MPVK *Adhiniyam* provides for deduction of sale of goods which are in the nature of tax paid goods in the hands of a dealer in order to determine the taxable turnover of such dealer. The *Adhiniyam* also provides that where a dealer has furnished false particulars of his sales or purchases in his returns, the Commissioner shall impose a penalty not less than three times the tax payable.

Test check of records of two regional offices and two circle offices between October 2004 and September 2008 revealed grant of incorrect deduction of tax paid sales of Rs. 3.12 crore having tax effect of Rs. 1.01 crore including penalty of Rs. 71.06 lakh as shown below:

| Sl. no. | Name of auditee unit | Assessment period/month of assessment | Audit observation |
|---|---|---|---|
| 1. | RAC, Satna | 2004-05 December 2007 | Deduction on account of tax paid sale of bitumen of Rs. 2.58 crore was allowed on the ground that the bitumen was purchased from another registered dealer. Cross verification revealed that the assessee dealer had not purchased any tax paid bitumen. This resulted in non-levy of tax of Rs. 23.68 lakh and minimum penalty of Rs. 71.06 lakh. |
| The case was reported to the AA in January 2009, his reply has not been received (October 2009). | | | |
| 2. | RAC, Satna | 2000-01 January 2004 | Deduction on account of tax paid sale of cement of Rs. 21.72 lakh was allowed incorrectly though the said goods had not suffered tax. This resulted in non-levy of tax of Rs. 3 lakh. |
| After the case was pointed out, the AA intimated (January 2009) that a demand of Rs. 3 lakh had been raised. A report on recovery has not been received (October 2009). | | | |
| 3. | CTO-XIII, Indore | 2003-04 September 2006 | Deduction of sale of tax paid cement of Rs. 18.50 lakh was allowed although the dealer himself was manufacturer of cement and was the first selling dealer. This resulted in non-levy of tax of Rs. 2.40 lakh. |
| After the case was pointed out, the AA stated (January 2008) that besides own manufactured cement, the dealer also purchased and resold cement. The reply is not in consonance with the audited accounts furnished by the dealer wherein fuel/power charges of Rs. 28.83 lakh were shown as incurred for processing of raw material. This confirms that the sale of cement of Rs. 22.27 lakh, as recorded in the accounts, was the sale of his own manufactured product and did not include any sale of tax paid cement. | | | |
| 4. | CTO, Shahdol | 2004-05 February 2008 | The AA allowed deduction of sale of tax paid mustard oil of Rs. 14.21 lakh on the ground that the mustard oil was purchased from another registered dealer. Cross verification of the transactions revealed that the dealer, from whom the mustard oil was claimed to be purchased, had 'nil' turnover in the relevant period. Therefore, the deduction allowed was incorrect. Thus, it resulted in non-levy of tax of Rs. 57,000. |
| After the case was pointed out, the AA stated (September 2008) that the deduction was allowed after verifying the purchase bills furnished by the dealer. Reply is contradictory to the results of cross verification. Further reply has not been received (October 2009). | | | |

The cases were reported to the CCT, MP and the Government between December 2004 and January 2009; their reply has not been received (October 2009).

## 2.11 Incorrect deduction on account of discount

As per the definition of sale price under the MPVK *Adhiniyam,* only cash discount allowed as per ordinary trade practice can be deducted from the sale price. Further, in various judicial decisions[29], it has been held that various kinds of discounts like turnover discounts, target discount, sales promotion discount etc., allowed to the customers through credit notes are not eligible for deduction from the sale price.

Test check of records of a regional office at Sagar in January 2009 revealed that two dealers assessed in December 2007 for the period 2004-05, allowed quantity discount and cash discount of Rs. 5.26 crore to their customers through credit notes. The AA however, allowed deduction of the said discounts from the turnover. The deduction was incorrect, as the discounts were not granted through the invoice/bill itself at the time of sale of goods. This resulted in non-levy of tax of Rs. 72.59 lakh at the rate of 13.8 *per cent.*

After this was pointed out, the AA stated (January 2009) that the said discounts were not part of the turnover and therefore deduction allowed was correct. However, the fact remains that, only cash discount allowed from the invoice/bill itself at the time of sale can be deducted from the turnover. But the discounts allowed after sale/through credit notes is part of the turnover. Therefore, such discounts were not eligible for deduction as has been held in the decisions.

The cases were reported to the CCT, MP and the Government in April 2009; their reply has not been received (October 2009).

## 2.12 Incorrect grant of refund

Under the MPVK *Adhiniyam,* any amount collected by any person by way of tax not payable under any provision of the *Adhiniyam* shall be liable to forfeiture to the State Government.

Test check of records of a regional office at Chhindwara in February 2008 revealed that two dealers, assessed between July and September 2006 for the periods 2002-03 and 2004-05, were liable to pay tax of Rs. 1.95 crore but they collected by way of tax a sum of Rs. 2.66 crore and deposited the same into the treasury. The AA instead of forfeiting the excess amount of tax of Rs. 70.96 lakh so collected by the dealers, incorrectly allowed refund of the same. This resulted in incorrect grant of refund of Rs. 70.96 lakh.

After the cases were pointed out, the AA in one case stated (February 2008) that it was due to issue of incorrect EC for exemption from tax that the dealer had to deposit tax of Rs. 1.11 crore. Later on, as per revised EC, thereby increasing the quantum of exemption, liability of the dealer to pay tax was reduced to Rs. 53 lakh only. He further stated that the excess amount of tax so collected remaining in the hands of the dealer was refunded to the purchasing dealers through credit notes. The reply is not acceptable because there was nothing on record to prove the refund of excess tax to the purchasing dealers.

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[29] (i) Orient Paper Mill, Amlai Vs CCT, MP (2009 14 STJ 128) (MP-Bd)
(ii) Apollo Tyres Ltd. Vs CCT, MP (2003) 1 STJ 24 (MP-Bd);
(iii) Vandana Sales Corporation (1996) 29 VKN 376

In the other case, the AA stated (February 2008) that grant of deduction on account of various kinds of discounts to the purchasing dealers led to refund. The reply does not explain how the dealer was eligible for refund as the discounts granted by him to the purchasing dealers after sale could not be said to be inclusive of tax.

The matter was reported to the CCT, MP and the Government in May 2008; their reply has not been received (October 2009).

## 2.13 Mistake in computation of tax

Test check of records of four regional offices[30] and one circle office[31] between December 2004 and August 2008 revealed that in case of five dealers, assessed between January 2003 and December 2007 for the period 1999-2000 to 2004-05, the AAs erroneously computed/levied tax of Rs. 16.91 crore instead of Rs. 17.21 crore. This resulted in short levy of tax of Rs. 29.40 lakh.

After the cases were pointed out, the AAs in two cases raised demand for Rs. 17.85 lakh and adjusted the same against cumulative quantum of exemption of tax (June 2008), while in three cases the AAs stated (December 2004 to August 2008) that action would be taken after verification. Further replies in these cases have not been received (October 2009).

The cases were reported to the CCT, MP and the Government between March 2005 and September 2008; their reply has not been received (October 2009).

## 2.14 Incorrect grant of set off

Under the MPVK *Adhiniyam,* when a registered dealer purchases any tax paid goods for consumption or use by him as raw material or as incidental goods in the manufacture of any other goods for sale within the State or in the course of inter-state trade or for export out of the territory of India, he shall be entitled to set off at a rate equal to the difference between the tax at full rate and the tax at concessional rate of four *per cent* or such other concessional rate as may be notified, on the quantum of price of goods so purchased. Notification dated 1 April 1995 issued under the *Adhiniyam* prescribes the other concessional rate of zero *per cent* in respect of iron and steel of any category meant for use as raw material in the manufacture of goods belonging to the same or any other category of iron and steel.

30 Indore (2), Satna and Ujjain.
31 Rewa

Test check of records of two regional offices and two circle offices between November 2005 and December 2008 revealed incorrect grant of set off of Rs. 24.46 lakh as mentioned below:

| Sl. no. | Name of unit | Period/ Month of assessment | Observation in brief | Department's reply/audit comments |
|---|---|---|---|---|
| 1. | RAC, Katni | 1997-98 April 2001 1998-99 June 2002 | Set off of Rs. 7.58 lakh was incorrectly allowed in respect of tax paid raw material used/consumed in the manufacture of goods which were not sold but stock transferred. | After this was pointed out, the AA effected recovery of Rs. 7.58 lakh (February 2006). |
| 2. | RAC, Bhopal. CTO, Jabalpur. | 2001-02 September 2006 2003-04 November 2006 | Set off of Rs. 14.21 lakh and of Rs. 1.20 lakh was allowed to two works contract dealers in respect of tax paid goods used by them in the construction work. This was not correct because the tax paid goods so purchased were not used in the manufacture of other goods for sale. | After this was pointed out, in one case the AA stated (February 2008) that set off was allowed in accordance with a notification dated 13 April 2000. The reply is not acceptable as the said notification deals with exemption under section 17 of the *Adhiniyam* while set off is covered by section 13. In another case, the AA stated (April 2007) that action would be taken after verification. Further development has not been reported (October 2009). |
| 3. | CTO, Indore | 2004-05 & 2005-06 January 2008 | Set off of Rs. 1.47 lakh was incorrectly granted in respect of tax paid iron and steel used/consumed in the manufacture of wire nails (hardware) which do not belong to any category of iron & steel. | After this was pointed out, the AA in one case raised demand of Rs. 60,430 (March 2009), while in the other case stated (December 2008) that action would be taken after verification. Further development has not been reported (October 2009). |

The matter was reported to the CCT, MP and the Government between March 2006 and January 2009; their reply has not been received (October 2009).

## 2.15 Short levy of tax due to grant of incorrect deduction

Section 2 (w) (v) of the MPVK *Adhiniyam* and Section 8-A of the CST Act prescribe a formula[32] to arrive at the amount of taxable turnover. It also provides that no deduction on the basis of the formula shall be allowed if the amount of tax is not included in the aggregate of sale prices.

[32] $\frac{\text{Turnover X rate of tax}}{100 + \text{rate of tax}}$

The *Adhiniyam* also provides for deduction on account of sales return of goods within six months from the date of purchase of the same.

**2.15.1** Test check of records of four regional offices[33] and three circle offices[34] between January and December 2008 revealed that in case of nine dealers, assessed between August 2004 and January 2008 for the period 2001-02 to 2004-05, deduction aggregating Rs. 1.75 crore on the basis of the formula was allowed incorrectly as tax was not included in the sale price. This resulted in short levy of tax of Rs. 10.29 lakh.

After this was pointed out, the AAs in two cases raised demand of Rs. 2.03 lakh and adjusted the same against cumulative quantum of exemption of tax (June 2008 and May 2009), while in case of five dealers it was stated (between January and December 2008) that action would be taken after verification. In one case, it was stated that the deduction allowed was correct as the sale price was inclusive of tax. The reply does not explain how tax was included in the turnover as the dealer was having facility of exemption from payment of tax by virtue of eligibility certificate issued to him under notification dated 6 October 1994. In one case, the AA stated that assessment was made in the light of various decisions of Tribunal. Reply is contrary to the CCT, MP's circular dated 28 April 2003 which states that in case of a new unit eligible for exemption from payment of tax, deduction under Section 2(w)(v) of the MPCT Act and under Section 8-A of the CST Act will not be allowed.

**2.15.2** Test check of records of a regional office at Indore in May 2008 revealed that in case of a dealer, assessed in November 2007 for the period 2004-05, deduction of Rs. 21.47 lakh was incorrectly allowed on account of sales returns after the prescribed period of six months. This resulted in non-realisation of tax of Rs. 2.96 lakh.

After this was pointed out, the department stated (February 2009) that the case had been reassessed and in view of revised list of sales returns furnished by the dealer, a demand of Rs. 1.13 lakh has been raised. However, scrutiny revealed that there were 197 cases of sales return received after six months/ pertaining to previous accounting year involving value of Rs. 21.97 lakh. It is not understood how the list was revised subsequently thereby reducing the demand. Further reply has not been received (October 2009).

The matter was reported to the CCT, MP and the Government between April 2008 and February 2009; their reply has not been received (October 2009).

## 2.16 Short levy of tax on intra-state sale treated incorrectly as inter-state sale

As per the CST Act, sale of goods shall be deemed to take place in the course of inter-state trade, if the sale occasions the movement of goods from one State to another or is effected by a transfer of documents of title to the goods during their movement from one State to another. It further stipulates that if the movement of goods commences and terminates in the same State, it shall not be deemed to be a movement from one State to another.

[33] Indore (03), Jabalpur.

[34] Bhopal, Indore and Neemuch.

Test check of records of two circle offices[35] in March 2008 revealed that three dealers, assessed between December 2005 and December 2006 for the period 2002-03 to 2004-05, sold bauxite valued at Rs. 1.07 crore against declaration in form C to local registered dealers. The AAs, however, while finalising the assessment treated the local sale as inter-state sale incorrectly and allowed levy of tax at concessional rate of four *per cent* on the basis of C forms issued by the local purchasing dealers. This resulted in short levy of tax of Rs. 10.47 lakh at the differential rate of 9.8 *per cent*.

After the cases were pointed out, the AA, in case of two dealers, stated (March 2008) that action would be taken after verification. In case of one dealer, the AA did not offer any specific comments. Further development has not been reported (October 2009).

The matter was reported to the CCT, MP and the Government in May 2008; their reply has not been received (October 2009).

## 2.17 Short levy of value added tax

Under Section 9-B of the MPVK *Adhiniyam*, VAT is leviable at the prescribed rate on the value addition on resale of goods specified in Part II to VI of Schedule II of the *Adhiniyam*.

Test check of records of four regional offices[36] and three circle offices[37] between January 2005 and November 2008 revealed that in case of seven dealers, assessed between December 2002 and January 2008 for the period 1999-2000 to 2005-06, value addition on resale of goods was short determined to the extent of Rs. 68.33 lakh. This resulted in short realisation of VAT of Rs. 5.76 lakh at the rate of 9.2 *per cent* (including surcharge).

After this was pointed out, the AA in one case raised (March 2006) a demand of Rs. 1.41 lakh, including penalty, while in four cases it was stated that action would be taken after verification. Further development has not been received (October 2009).

In one case, the AA stated (September 2008) that VAT is not worked out on the profit element but is calculated on the value addition. The fact, however, remains that value addition can never be less than the profit element.

In one case, the AA contended (September 2008) that while calculating the value addition, audit did not consider the tax paid opening balance of Rs. 11.52 lakh. Reply is not acceptable because as per trading account the dealer had no opening balance of tax paid goods.

The cases were reported to the CCT, MP and the Government between March 2005 and November 2008; their reply has not been received (October 2009).

35 Rewa and Satna.
36 Bhopal, Indore, Jabalpur, Satna.
37 Indore, Neemuch, Tikamgarh.

## 2.18 Non/short levy of tax under CST Act

The CST Act and the rules made thereunder lay down that every selling dealer who fails to furnish declarations in form C, received from and duly signed by the purchasing dealers, shall be liable to pay tax in respect of inter-state sale of declared goods at twice the specified rate and in respect of other goods at the rate of 10 *per cent* or at the specified rate, whichever is higher, instead of concessional rate of four *per cent*. Further, where any dealer fails to furnish any proof/declaration in respect of movement of any goods by him to any other place of his business otherwise than by way of sale, the movement of such goods shall be deemed to have been occasioned as a result of sale.

**2.18.1** Test check of records of eight regional offices and five circle offices between December 2007 and January 2009 revealed that in case of 16 dealers, tax on inter-state sale of goods valued at Rs. 17.64 crore in respect of which declarations in form C were not furnished, was either not levied or levied at incorrect rates. This resulted in non/short levy of tax of Rs. 1.30 crore as shown below:

**(Rupees in crore)**

| Sl. no. | Name of audited unit No. of dealers | Period Month of assessment | Commodity Turnover | Rate of tax applicable (*per cent*) | Rate of tax applied (*per cent*) | Amount of non/ short levy of tax |
|---|---|---|---|---|---|---|
| 1. | 2. | 3. | 4. | 5. | 6. | 7. |
| 1. | RAC, Indore 02 | 2004-05 October 2007 & February 2008 | Computer parts 4.09 | 10 | 1 | 0.39 |
| | | | Yarn 0.39 | 10 | 4 | |
| In case of one dealer, the AA accepted the mistake but did not intimate any action taken in this regard (October 2009). In case of other dealer, it was stated (May 2008) that concessional rate on inter-state sale of yarn was allowed in view of notification no. 81 dated 6 September 2001. The reply is not in consonance with the said notification which provides concessional rate subject to furnishing of form C. | | | | | | |
| 2. | RAC, Bhopal 01 | 2004-05 December 2007 | Sliver *(Pooni)* 2.78 | 10 | - | 0.28 |
| After this was pointed out, demand of Rs. 2.93 lakh was raised as C forms involving value of Rs. 2.48 crore were produced at the time of reassessment (February 2009). | | | | | | |
| 3. | RAC, Indore 01 | 2004-05 June 2007 | Thermal energy storage system 2.04 | 10 | - | 0.20 |
| The AA raised (July 2008) a demand of Rs. 20.40 lakh and adjusted the same against the balance quantum of exemption. | | | | | | |
| 4. | RAC, Sagar 01 | 2003-04 November 2006 | Edible oil 1.32 | 10 | 2.3 | 0.10 |
| After this was pointed out, demand of Rs. 3.93 lakh was raised as C forms involving value of Rs. 89 lakh were produced at the time of reassessment (June 2009). | | | | | | |

| 1. | 2. | 3. | 4. | 5. | 6. | 7. |
|---|---|---|---|---|---|---|
| 5. | CTO-I, Indore<br>02 | 2004-05<br>January 2008 | Explosives<br>0.37 | 13.8 | 12 | 0.07 |
| | | | Edible Oil<br>0.64 | 10 | - | |
| The AA stated (December 2008 and January 2009) that action would be taken after verification. | | | | | | |
| 6. | CTO-IV, Jabalpur<br>02 | 2002-03 & 2004-05<br>January 2006 & January 2008 | Readymade garments<br>0.82 | 10 | 4 | 0.06 |
| | | | Iron & Steel scrap<br>0.20 | 8 | 4 | |
| In case of one dealer, the AA raised (May 2008) a demand of Rs. 4.95 lakh, while in the case of other dealer, it was stated (September 2008) that action would be taken after verification. Further development has not been received (October 2009). | | | | | | |
| 7. | CTO-VI, Bhopal<br>01 | 2003-04<br>January 2007 | Asbestos pipes<br>1.35 | 13.8 | 10 | 0.05 |
| The AA stated (December 2007) that action would be taken after verification. Further reply has not been received (October 2009). | | | | | | |
| 8. | RAC, Indore<br>01 | 2004-05<br>February 2008 | Television, Airconditioners, DVD and parts thereof<br>0.92 | 13.8 | 10 | 0.04 |
| The AA stated (August 2008) that tax on inter-state sale of TV, DVD, AC and parts thereof was correctly levied at the rate of 10 *per cent* because intra-state sale of the said goods is taxable at the rate of 9.2 *per cent*. Reply is self-contradictory as the AA himself levied tax on intra-state sale of the said goods at the rate of 13.8 *per cent*. | | | | | | |
| 9. | RAC, Khargone<br>01 | 2003-04<br>January 2007 | Cotton yarn<br>1.30 | 4 | 2 | 0.03 |
| The AA stated (January 2008) that concessional rate on inter-state sale of yarn was allowed in view of notification no. 81 dated 6 September 2001. Reply is not in consonance with the said notification which provides concessional rate subject to furnishing of Form C. | | | | | | |
| 10. | RAC, Indore<br>01 | 2004-05<br>January 2008 | Thinner<br>0.69 | 13.8 | 10 | 0.03 |
| The AA stated (July 2008) that tax on inter-state sale of thinner was levied at the rate of 10 *per cent* by treating it as chemical. Reply is not in consonance with the decision of MP High Court[38], which held that thinner is covered in 'dyes & paints' which is taxable at the rate of 13.8 *per cent*. | | | | | | |

[38] M/s Asian Paints India Ltd., Indore Vs CST [(2002) 35 VKN 155].

| 1. | 2. | 3. | 4. | 5. | 6. | 7. |
|---|---|---|---|---|---|---|
| 11. | CTO- XII, Indore 01 | 2003-04 January 2007 | Loose leaf springs 0.34 | 8 | 1 | 0.02 |
| After this was pointed out, the AA raised demand of Rs. 2.36 lakh (April 2009). | | | | | | |
| 12. | RAC, Indore 01 | 2003-04 January 2007 | Loose leaf springs 0.28 | 8 | 2.3 | 0.02 |
| After this was pointed out, the AA stated (December 2007) that action would be taken after verification. Further development has not been reported (October 2009). | | | | | | |
| 13. | CTO-I Chhindwara 01 | 2003-04 January 2007 | *Gur*[39] 0.11 | 10 | 4 | 0.01 |
| After this was pointed out, demand of Rs. 26,228 was raised as C forms involving value of Rs. 4.99 lakh were produced at the time of re-assessment (August 2009). | | | | | | |

**2.18.2** Test check of records of RAC, Ujjain in August 2008 revealed that a dealer, assessed in January 2008 for the period 2004-05, although failed to furnish requisite proof/declaration in respect of packing material valued at Rs. 1.28 crore which was claimed by the dealer to be transferred to other State otherwise than by way of sale, the AA did not levy tax on the said deemed sale of packing material. This resulted in non-levy of tax of Rs. 12.77 lakh at the rate of 10 *per cent*.

After this was pointed out, the AA stated (August 2008) that furnishing of declarations was not imperative in case of sale of packing material. Fact remains that in case of movement of goods from one State to another otherwise than by way of sale, the burden of proof rests on the dealer.

**2.18.3** Test check of records of a circle office at Ratlam in February 2008 revealed that although two dealers, assessed between October 2005 and September 2006 for the period 2002-03 to 2004-05, furnished form C in respect of inter-state sale of mono filament yarn valued at Rs. 1.72 crore, tax was levied incorrectly at the rate of 2.3 *per cent* instead of four *per cent*. This resulted in short levy of tax of Rs. 2.93 lakh.

After the cases were pointed out, the AA reassessed (August 2008) and raised demands in both the cases.

**2.18.4** Test check of records of a regional office at Indore in December 2008 revealed that a dealer, assessed in November 2007 for the period 2004-05, furnished form C in respect of inter-state sale of footwears valued at Rs. 46.81 lakh. The AA, however, did not levy tax even at concessional rate, and allowed exemption, on the basis of a notification dated 29 August 2003 issued under the MPVK *Adhiniyam*. This was not correct in view of explanation below Section 8(2) of the Act that if under sales tax law of the appropriate State, sale or purchase of any goods is exempt only in specified circumstances/conditions, such goods shall not be deemed to be exempt from tax generally. Thus, grant of incorrect exemption resulted in non-realisation of tax of Rs. 1.87 lakh at the rate of four *per cent*.

[39] Jaggery.

After the case was pointed out, the AA stated (December 2008) that action would be taken after verification. Further reply has not been received (October 2009).

**2.18.5** Test check of records of a circle office at Shahdol in August 2008 revealed that a dealer, assessed in January 2008 for the period 2004-05, furnished form C in respect of inter-state sale of *tendu* leaves valued at Rs. 34.08 lakh. The AA, however, did not levy tax thereon treating the sale as tax paid. This was not correct because the dealer did not have any tax paid goods during the period in which the said sale was effected. This resulted in non-realisation of tax of Rs. 1.36 lakh at the rate of four *per cent*.

After this was pointed out (August 2008), the AA did not offer any specific comment.

The cases were reported to the CCT, MP and the Government between January 2008 and March 2009; their reply has not been received (October 2009).

# CHAPTER III: STATE EXCISE

## 3.1 Results of audit

Test check of the records of State Excise conducted during the year 2008-09 revealed non-assessment, under assessment, loss of revenue and non-levy of penalty amounting to Rs. 115.01 crore in 12,489 cases, which can be categorised as under:

**(Rupees in crore)**

| Sl. no. | Category | Number of cases | Amount |
|---|---|---|---|
| 1. | Non-levy/recovery of duty on excess wastages. | 3,698 | 21.66 |
| 2. | Loss in re-auction/bidding of excise shops. | 173 | 8.67 |
| 3. | Non-levy of penalty on non-maintenance of minimum stock of country sprit/rectified sprit. | 2,593 | 6.48 |
| 4. | Non-realisation of licence fee from excise shops. | 379 | 4.59 |
| 5. | Non-levy of penalty for breach of licence conditions. | 2,811 | 0.31 |
| 6. | Others | 2,835 | 73.30 |
| **Total** | | **12,489** | **115.01** |

During the year 2008-09, the department accepted underassessment of tax of Rs. 99.14 crore involved in 10,677 cases. An amount Rs. 1.58 crore had been recovered in 260 cases.

Few illustrative audit observations involving Rs. 21.68 crore are mentioned in the following paragraphs.

## 3.2 Audit Observations

*Scrutiny of records of various excise offices revealed several cases of non-compliance of the provisions of the Madhya Pradesh Excise Act and Rules made thereunder and Government orders as mentioned in the succeeding pargaraphs in this chapter. These cases are illustrative and are based on a test check carried out in audit. Such omissions on the part of the departmental officers are pointed out in audit each year but not only the irregularities persist; these remain undetected till an audit is conducted. There is need for Government to improve the internal control system so that such errors can be detected, avoided and prevented in future.*

## 3.3 Non-recovery of excise duty

### 3.3.1 On unacknowledged export of foreign liquor/beer

The Madhya Pradesh Foreign Liquor Rules, 1996 provide that the export of foreign liquor/beer within India is permissible on payment of duty or on furnishing a bank guarantee or on executing a bond with adequate solvent sureties for the amount of duty involved. The licensee should obtain a verification report from the importing unit and furnish it to the authority who issued the permit within 21 days up to 16 October 2007 and thereafter within 40 days of the expiry of the permit. If the licensee fails to do so, duty leviable on liquor exported shall be recovered from him in addition to any other penalty under the rules.

Test check of records of four distilleries[1] and one brewery[2] of three districts[3] between May and August 2008 revealed that the licensees exported 6,87,375 proof litres (PL) foreign liquor and 10,920 bulk litres (BL) beer on 236 permits between May 2007 and July 2008. Though the verification reports for receipt of quantity of liquor were not received from the destination units within the prescribed time limit, yet action for recovery of duty of Rs. 12.42 crore was not taken by the department even after a lapse of 1 to 12 months. This resulted in non-realisation of excise duty of Rs. 12.42 crore.

The matter was reported to the department and the Government between January and April 2009. The Excise Commissioner (EC) stated (July 2009) that 14 cases are under consideration in different courts for violation of conditions of the permits and in 222 cases the verification reports have been received. However, it was found in audit that in 219 cases, the copies of permits were received and not the excise verification reports. Besides, duty was also recoverable in remaining cases on account of non-receipt of verification reports within prescribed period for which the department did not take any action. The reply from the Government has not been received (October 2009).

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1 (i) M/s United Spirit Ltd., Bhopal.
(ii) M/s Jubilee Beverages, Bhopal.
(iii) M/s Oasis Distillery, Dhar.
(iv) M/s Associated Alcohol and Brewery Limited, Khargone (AABL).

2 M/s Lila sons Brewery, Bhopal.

3 Bhopal, Dhar and Khargone.

### 3.3.2 On unacknowledged transport of foreign liquor

The Madhya Pradesh Excise Act, 1915 provides that no intoxicant shall be transported from any distillery, brewery, warehouse or any other place of storage unless the duty is paid or bond is executed for the payment of duty. Further, as per notification issued by the State Government dated 3 October 2008, the licensee shall deposit the prescribed duty leviable on the full quantity of foreign liquor to be transported or furnish a bank guarantee for an equal amount or execute a bond with adequate solvent sureties for the amount mentioned in form FL-23. Besides, the licensee shall obtain a verification report from the officer-in-charge of the foreign liquor warehouse and furnish it to the authority who issued the transport permit within 40 days of the expiry of period of permit. If the licensee fails to do so, the leviable duty on foreign liquor transported shall be recovered from the deposit made, bank guarantee furnished or the security bond executed by him. This shall be in addition to any other penalty under the rules.

**3.3.2.1** Test check of records of M/s Gwalior Distillers Ltd. (Gwalior district) in January 2009 revealed that the licensee transported 23,321.25 PL of foreign liquor to different foreign liquor warehouses in the state on seven permits between October and December 2008 involving excise duty of Rs. 53.80 lakh without depositing the prescribed duty or furnishing bank guarantee or executing a bond with adequate solvent sureties for the amount of duty. The verification reports for receipt of above liquor in the destination units were also not obtained by the licensee and submitted to the permit issuing authority within the prescribed time limit of 40 days. However, the department did not recover the leviable duty of Rs. 53.80 lakh under the rules. This resulted in non-realisation of revenue of Rs. 53.80 lakh.

The matter was reported to the department and the Government in April 2009. The EC stated (August 2009) that the verification reports have been received after expiry of the prescribed period. The fact remains that the duty was to be recovered immediately after expiry of the grace period of 40 days, which was not done. Besides, there is no provision for accepting verification reports after expiry of the time limit. The reply from the Government has not been received (October 2009).

**3.3.2.2** Test check of records of District Excise Officer, Dhar (August 2008) revealed that in three cases, 6,866.10 PL of foreign liquor involving excise duty of Rs. 20.80 lakh were transported from bottling units to foreign liquor warehouse in March 2008 without payment of duty or execution of bond. Further, verification reports of these consignments had also not been received from the foreign liquor warehouse even after a lapse of five months. In the absence of verification report, it cannot be ascertained whether the duty of Rs. 20.80 lakh was actually levied and recovered on the transported foreign liquor.

The matter was reported to the department and the Government in February 2009. The EC stated (July 2009) that three cases were pending in Jabalpur Court. Further development in this matter and reply from the Government had not been received (October 2009).

### 3.3.3 On unacknowledged transport of spirit

According to MP Distillery Rules, the removal of spirit from a distillery to another distillery or liquor warehouse or bottling unit or any other industrial unit within or outside the state of Madhya Pradesh shall be without payment of duty subject to execution of a bond in form D-2 by the seller licensee with adequate solvent sureties for the payment as prescribed by the EC. As per notification of October 2008 the licensee shall obtain a verification report from the officer-in-charge of the destination unit and furnish it to the authority who issued the export/transport permit within 40 days of the expiry of period of permit. If the licensee fails to do so, the amount prescribed by the EC shall be recovered from the security bond executed.

Test check of records in M/s Gwalior Distillers Ltd. (Gwalior district) in January 2009 revealed that the licensee transported 21,825 PL of rectified spirit (RS) on two permits between October and November 2008 involving excise duty of Rs. 30.55 lakh without payment of duty or executing a bond in form D-2 with adequate solvent sureties. However, while issuing the permits no action was taken by the DEO (Distillery) to send the case to EC for fixation of the amount for execution of bond. It was further seen that though the verification reports from the destination units were not obtained and submitted to the permit issuing authority within the prescribed period of 40 days, yet no amount was recovered from the licensee. This resulted in non-realisation of revenue of Rs. 30.55 lakh.

The matter was reported to the department and the Government in April 2009. The EC stated (August 2009) that the verification reports of the transported liquor had been received in April/May 2009. However, the fact remains that the department failed to take any action to recover the duty for non-receipt of the verification reports within the prescribed time limit. Besides, the Rules do not permit acceptance of reports after expiry of prescribed timeframe. The reply from the Government has not been received (October 2009).

## 3.4 Incorrect fixation of reserve price

As per provisions of the Madhya Pradesh Excise Act, 1915 and executive instructions issued by the EC for settlement of retail liquor shops for the year 2007-08 and 2008-09, the reserve price of a shop shall be calculated by adding 20 *per cent* of annual value (basic licence fee + annual licence fee) of the shops received in the previous year. Further, if the shop was settled for a part of the year during the previous year, the value of the shop for the whole year is to be determined on pro rata basis and then enhanced by 20 *per cent* to arrive at the reserve price.

Test check of records of three DEOs[4] between October and December 2008 revealed that reserve price of 48 foreign liquor shops for two years between April 2007 and March 2009 was fixed by the department at Rs. 29.94 crore. But as per instructions, it should have been Rs. 32.93 crore after adding 20 *per cent* in the value received for shops for the previous year.

Besides, in Badwani district, the value of Rs. 2.25 crore was obtained for two foreign liquor and one country liquor shops for the period from 27 April 2006

[4] Badwani, Burhanpur and Khandwa.

to 31 March 2007 (339 days). The reserve price of Rs. 2.70 crore for 2007-08 and Rs. 3.24 crore for 2008-09 was to be arrived at by increasing 20 *per cent* in the value of shops by taking into account the proportionate value for the entire previous year. It was however, seen that the reserve price was fixed by the department at Rs. 2.68 crore and Rs. 3.22 crore for the respective years.

Thus, there was short realisation of revenue of Rs. 3.03 crore due to incorrect fixation of reserve price.

The matter was reported to the department and the Government in February 2009. The EC stated (August 2009) that the reserve price was fixed after addition of 20 *per cent* in the price fixed for previous year. The fact remains that the reserve price of shop had to be calculated by adding 20 *per cent* of annual value of the shops received in the previous year, which was not done. However, the EC did not offer any comments in respect of fixation of reserve price on pro rata basis in case of a shop of Badwani district. The reply from the Government has not been received (October 2009).

## 3.5 Non-realisation of excise duty due to non-disposal of spirit/ foreign liquor

According to MP Country Spirit Rules, country spirit shall be subjected to chemical analysis and if found substandard or unfit for human consumption, it shall be redistilled or rejected and destroyed as the case may be, under the orders of the EC or an officer authorised by him in this behalf. Further, as per *MP Foreign Liquor Rules*, the EC may order cancellation of registration of a label, if liquor sold under any such registered label is found substandard or if he is convinced that the label is obscene, outrageous or hurtful. Consequent upon such cancellation, the EC may also pass suitable orders regarding disposal of stock of the cancelled label held by the licensee. The rules also provide that the licensee shall place the entire stock of spirit and bottled foreign liquor under the control of AEC/DEO after the expiry or cancellation of the licence in form FL-9/FL-9A. However, he can be permitted to dispose of such balances to any other licensee within 30 days of such expiry or cancellation, failing which the EC may ask any other licensee of the state to purchase such stock or may give necessary direction for the disposal of the stock.

Test check of records in four District Excise offices [5] including one FL-9 licensee[6] between June and November 2008 revealed the following:

| Name of Unit | Nature of liquor Sprit/Foreign liquor | Audit observations | Revenue involved (Rs. in lakh) |
|---|---|---|---|
| M/s Gold water breweries Ltd., Bhind (FL-9) | Foreign liquor and Spirit | A stock of 36,269.0 PL of bottled foreign liquor which was not saleable after 31 March 2007 was received from different foreign liquor warehouses between May and June 2007. Besides, 3,720.1 PL of foreign liquor in vat and 15,703.94 PL of spirit were also lying undisposed as on 30 June 2007. | 70.89 |
| M/s Surya Bottling Ltd., Sagar (FL-9) | Foreign liquor and spirit | | 40.44 |
| M/s Oasis distillery, Borali district Dhar (FL-9) | Foreign liquor | Consequent upon the provision introduced from the year 2007-08 for manufacture of Indian made foreign liquor from extra neutral alcohol (ENA) only, 4,116.36 PL of bottled foreign liquor of different labels made from RS was returned to the FL-9 licensee of Dhar district by different foreign liquor warehouses during May and June 2007. | 7.41 |
| Country liquor warehouse, Mandla | Spirit | In Mandla district, 6,544.0 PL of spirit was lying undisposed in the manufacturing country liquor warehouse. | 9.16 |
| **Total** | | | **127.90 lakh or 1.28 crore** |

Audit observed that in all these cases the department had not taken any step for cancellation of registration of the labels containing foreign liquor made from RS and to dispose of the stock even after lapse of one to three years. This resulted in non-realisation of revenue of Rs. 1.28 crore.

After the cases were pointed out, the DEO, Mandla stated (October 2008) that audit would be intimated after taking action for disposal of spirit. The DEO (distillery), Dhar stated (June 2008) that action for redistillation of foreign liquor manufactured from RS was being taken. The DEOs, Bhind and Sagar stated (September and November 2008) that the renewal of licences were under consideration in the office of the EC and the action for disposal of stock would be taken as per rule. The fact remains that action for disposal of the stock had not been taken till it was pointed out in audit. Further report has not been received (October 2009).

The cases were reported to the EC and the Government in February 2009; their replies have not been received (October 2009).

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5 Bhind, Dhar, Mandla and Sagar.

6 FL-9 Licence-manufacturing and bottling of foreign liquor by blending.

## 3.6 Non-maintenance of minimum stock of spirit at distillery

The Madhya Pradesh Distillery Rules require the licensee to maintain the prescribed minimum stock of spirit at the distillery. In the event of failure, the EC may impose a penalty not exceeding Rs. five per PL on the quantity found short of the minimum prescribed stock. The penalty shall be payable by the licensee irrespective of the fact whether any loss has actually been caused to the Government.

Test check of records in two distilleries[7] in District Dhar in June 2008 revealed that the distillers did not maintain the prescribed minimum stock of spirit on 23 occasions between January and February 2008. The DEOs, however, failed to initiate any action to take up the matter with the EC. The EC may impose maximum penalty of Rs. 1.16 crore on 23.23 lakh PL of spirit found short of the minimum prescribed stock.

The matter was reported to the department and the Government in February 2009. The EC stated (August 2009) that supply of country liquor to shops was not affected due to non-maintenance of minimum stock. EC further stated that the cases were under process. Further development is awaited. The reply from the Government has not been received (October 2009).

## 3.7 Non-recovery of excise duty/non-imposition of penalty on inadmissible wastage in transport and export of foreign liquor/beer

The Madhya Pradesh Foreign liquor Rules provide that the maximum wastage allowance for all exports of bottled foreign liquor/beer shall be 0.25 *per cent* irrespective of the distance and for all transports it shall be 0.1 *per cent* if the selling licensee and the purchasing licensee belong to the same district and 0.25 *per cent* if they belong to different districts. If wastages/losses during the export or transport of bottled foreign liquor/beer exceed the permissible limit, the prescribed duty on such excess wastage shall be recovered from the licensee. Further, as per amendment made by the State Government vide notification dated 3 October 2008, on all deficiencies in excess of the limits allowed under rules, licensee shall be liable to pay penalty at the rate exceeding three times but not exceeding four times the maximum duty payable per PL of foreign liquor at that time, as may be imposed by the EC or any officer authorised by him.

Test check of records in five foreign liquor manufacturing units and one brewery in four districts[8] between May 2008 and March 2009 revealed that during export and transport of foreign liquor, 7,603.985 PL of spirit and 60,556.19 BL of beer was shown as wastage in excess of the admissible limit by the licensees in 1,718 cases during the period between April 2007 and February 2009. As such, duty of Rs. 28.12 lakh on excess wastage of 4,746.995 PL of spirit and 55,211.69 BL of beer upto 2 October 2008 was recoverable from the licensees and on remaining wastage of 2,856.99 PL of spirit and 5,344.5 BL of beer, even the minimum penalty of Rs. 56.24 lakh

[7] M/s Oasis Distilleries, Borali, Dhar.
M/s Great Galleon, Sejwaya, Dhar.

[8] Dhar, Gwalior, Khargone and Morena.

was not imposed on the licensees. It was, however, seen that only an amount of Rs. 6.23 lakh was recovered from the licensee in Gwalior district and no action was taken to recover the remaining amount of duty of Rs. 21.89 lakh and to impose the minimum penalty of Rs. 56.24 lakh. This resulted in non-realisation of revenue of Rs. 78.13 lakh.

After this was pointed out, the EC stated in October 2009 that an amount of Rs. 11.49 lakh had been recovered in case of units of Dhar and Gwalior districts and that action for recovery of the remaining amount was in progress.

The matter was reported to the Government between January and April 2009; the reply has not been received (October 2009).

## 3.8 Non-realisation of revenue due to resale of liquor shops

The conditions of sale of liquor shops through tendering process during 2007-08 provide that if any highest bidder withdraws his offer, fails to pay the basic licence fee/security deposit in time or breaches any condition of sale, shop will be resold. In case of any loss suffered by the Government due to resale, such loss will be recoverable from the defaulter.

Test check of records of DEO, Damoh in August 2008 revealed that a successful bidder failed to pay the prescribed amount of basic licence fee and security deposit of three liquor shops for the year 2007-08. As a result, the shops had to be resold. The Government suffered a loss of Rs. 64.57 lakh due to the resale after taking into account the forfeiture of earnest money deposit (EMD) of Rs. 3.43 lakh. However, no action was taken by the department for recovery of this amount from the defaulter resulting in non-realisation of revenue of Rs. 64.57 lakh.

After the case was pointed out, the EC stated in October 2009 that action for recovery was in progress.

The matter was reported to the Government in January 2009; the reply has not been received (October 2009).

## 3.9 Short levy of transport fee on poppy straw due to incorrect application of rates

Rule 37-H (2) of Narcotic Drugs & Psychotropic substances (Madhya Pradesh) Rules, 1985 provides for levy of transport fee at the rate of Rs. five per kg for transport of poppy straw from a PS-2[9] licensee to another PS-2 licensee. Further, transport fee at the rate of Rs. 25 per permit is chargeable when poppy straw is transported from farmers to wholesale licensee or transported from one godown to another godown of the same licensee.

Test check of records of DEOs, Neemuch and Shajapur in June 2008 revealed that 10,05,359 kgs of poppy straw was transported from 22 wholesale licensees to other licensees. It was seen that transport fee of Rs. 9,600 at the rate of Rs. 25 per permit was levied as against Rs. 50.27 lakh leviable at the rate of Rs. five per kg. The incorrect application of rates resulted in short levy of transport fee of Rs. 50.17 lakh.

[9] Wholesale licensee of poppy straw.

The matter was reported to the department and the Government in January and February 2009. The EC stated (July 2009) that transport fee at Rs. five per kg was leviable for transport of poppy straw from PS-2 production district to any other PS-2/PS-3 licensees. The transport fee in these cases was levied at the rate of Rs. 25 per permit which was chargeable in case of transportation from one godown to other godown of the licensee. The reply is not acceptable as separate licence was issued to each shop of poppy straw and thus it was transported from one PS-2 to another PS-2 licensee. Hence, transport fee was leviable at the rate of Rs. five per kg as per rule 37 (H) of the above rules. The reply from the Government has not been received (October 2009).

## 3.10 Incorrect allowance of wastage of spirit in re-distillation

Madhya Pradesh Distillery Rules do not provide for any allowance for wastage of rectified spirit (RS) during re-distillation for manufacturing extra neutral alcohol (ENA).

Test check of records of one distillery of Dhar district in June 2008 revealed that 16.28 lakh BL of RS of 66 degree over proof[10] (OP) was redistilled to produce ENA between April 2007 and April 2008 and wastage of 19,100 BL/31,707.6 PL of RS was allowed which was not admissible. This resulted in non-realisation of excise duty of Rs. 44.39 lakh.

The matter was reported to the department and the Government in February 2009. The EC stated (July 2009) that the loss was less than two *per cent* prescribed under the rules. The reply is not acceptable as the provision of wastage of two *per cent* is applicable in the case of re-distillation of liquor not fit for human consumption but it is not applicable in the case of re-distillation of RS for manufacture of ENA. The reply from the Government has not been received (October 2009).

## 3.11 Incorrect allowance of loss of molasses

The Madhya Pradesh Excise Act and Rules made thereunder do not provide any allowance on wastage of molasses in transit, storage or otherwise.

**3.11.1** Test check of records of one distillery[11] of Khargone district in May 2008 revealed that the distillery used 4,950 quintals of molasses containing 2,135.43 quintals of fermentable sugar in five setups in May 2008 which according to the norms, was capable to yield 1,96,032 PL of alcohol. However, only 1,76,594.7 PL of alcohol was obtained on account of wastage of 495 quintals molasses used in setup number 32. This resulted is short recovery of alcohol of 19,437.3 PL involving excise duty of Rs. 27.21 lakh at the rate of Rs. 140 per PL of country spirit. The department had not initiated any action to levy/recover duty from the distiller.

The matter was reported to the department and the Government in February 2009. The EC stated (July 2009) that the *panchanama* was prepared on the spot and the case is under consideration. The reply, however, does not explain why proposal for levy of duty was not sent along with the

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10 Means the strength of proof as ascertained by *sikes hydrometer* or by any other instrument approved by the Excise Commissioner.

11 M/s Associated Alcohol and Brewery, Khodigram district Khargone.

*panchanama* in the case. The reply from the Government has not been received (October 2009).

**3.11.2** Test check of records of District Excise Officer (distillery), Chhatarpur in March 2009 revealed that 258 quintals of molasses was shown to have been used in the stock register of molasses (D-5) during 4 to 6 November 2008 by the distiller for production of alcohol. But, the distiller neither recorded the process of production of alcohol from this stock of molasses in the fermentation and distillation register (D-9), nor accounted for any quantity of alcohol produced therefrom. This resulted in non-accountal/production of 10,006 PL alcohol involving excise duty of Rs. 14 lakh. Thus the Government was deprived of the revenue of Rs. 14 lakh.

After the case was pointed out, the DEO (distillery) stated (March 2009) that the entry of molasses was recorded twice in the records due to clerical mistake, which has been rectified. The reply is not acceptable as with each entry shown in the consumption of molasses column in register D-5, the corresponding figures showing closing balance were reduced which were duly authenticated by the DEO at periodic intervals. Hence question of double entry does not arise.

The matter was reported to the EC and the Government in April 2009; their reply has not been received (October 2009).

## 3.12 Inadmissible wastage of spirit/country liquor

The Madhya Pradesh Distillery Rules allow wastage of 0.1 to 0.2 *per cent* on account of leakage or evaporation of spirit transported or exported in tankers from a distillery/warehouse to another distillery/warehouse. The rules also allow wastage of 1.5 *per cent* per quarter for racking, storage, evaporation and others during the process of distillation and bottling of country liquor in manufacturing warehouse. In case of wastage beyond permissible limit, the EC or the officer authorised for the purpose may impose penalty at Rs. 30 per PL. Further, the MP Country Spirit Rules provide that in case of wastage of bottled country liquor beyond permissible limit of 0.5 *per cent* during transport, duty at the prescribed rates shall be recovered from the licensee.

Test check of records of 10 excise offices[12] between December 2007 and December 2008 revealed that penalty of Rs. 16.17 lakh was leviable on wastage of 53,890.2 PL of spirit beyond the permissible limit during export and transport on 326 permits from the distilleries to manufacturing warehouses of five districts during the period between November 2004 and April 2008. Further, penalty of Rs. 3.33 lakh was also leviable on the distiller on excess wastage of 11,114.26 PL of spirit in racking, storage, evaporation and others during the quarter from October to December 2007 in country liquor warehouse, Bhopal.

Further, in 239 cases of five districts, duty of Rs. three lakh was recoverable for excess wastage of 2,510.833 PL of country liquor beyond the permissible limit during transport of bottled country liquor from manufacturing

[12] Badwani, Bhopal, Burhanpur, Chhindwara, Dhar, Harda, Khargone, Panna, Tikamgarh and Vidisha.

warehouses to storage warehouses during the period between September 2004 to May 2008. It was, however, seen that only an amount of Rs. 9,315 out of Rs. 1.08 lakh was recovered by the department in Panna district and no action was taken for recovery of duty and to impose penalty in the remaining cases.

This resulted in non-realisation of duty/penalty of Rs. 22.41 lakh.

After the cases were pointed out, the EC intimated (October 2009) that an amount of Rs. 2.19 lakh had been recovered in respect of three offices and action was in progress in remaining cases.

The matter was reported to the Government in February 2009; the reply has not been received (October 2009).

## 3.13 Loss of revenue due to failure in timely disposal of foreign liquor

Madhya Pradesh Excise Act and rules made thereunder provide that bottling shall be done when liquor is required for sale. Further, the samples of every batch of foreign liquor manufactured and ready for bottling shall be analysed in the laboratory before it is bottled. The officer-in-charge of the manufacturing or bottling unit may stop the issue of foreign liquor which he considers not of good quality and may, on every such occasion, take samples at the cost of the licensee for sending them for chemical analysis/test to the departmental laboratory or any other authorised laboratory.

Test check of records of AEC, Bhopal in September 2008 revealed that 11,002.5 PL of foreign liquor involving duty of Rs. 19.80 lakh was bottled in a foreign liquor bottling plant (Raj Breweries Ltd., Bhopal) between February 2001 and November 2006 and was kept in the plant even after lapse of currency of the licence (March 2007). No efforts were made by the licensee/department to dispose of this liquor bottled in excess of requirement during the currency of licence even after a lapse of 4 to 74 months. However, the liquor was destroyed by the department in July 2008 at the request of the licensee on the basis of analysis report of his own laboratory without conducting chemical analysis in the departmental or any other authorised laboratory. As such, bottling of liquor in excess of requirement and failure of the department in timely disposal and irregular destruction thereof, resulted in loss of excise duty of Rs. 19.80 lakh.

The matter was reported to the department and the Government in February 2009. The EC stated (July 2009) that the liquor was destroyed after carrying out chemical analysis which revealed that it was unfit for human consumption. The reply is not in consonance with the provisions of the rules which provide that the destruction should not be carried out without conducting chemical analysis in the departmental or any other authorised laboratory. Besides, the liquor was manufactured long back between February 2001 and November 2006 and the department failed to take any action to dispose of the liquor for more than six years, which ultimately led to the loss of revenue. The reply from the Government has not been received (October 2009).

## 3.14 Non-levy of penalty on short production of alcohol

Madhya Pradesh Distillery Rules, 1995 require the distillers to maintain minimum fermentable and distillation efficiencies at 84 and 97 *per cent* respectively. Every quintal of fermentable sugar present in molasses as per departmental laboratory reports should yield 91.8 PL of alcohol. For this purpose, composite samples of the molasses are required to be drawn by the officer-in-charge of the distillery and sent for examination to the departmental laboratory. In case the distiller fails to maintain the prescribed efficiencies and recovery of alcohol, the EC may impose maximum penalty of Rs. 30 per PL. Further, as per Indian Standard Specification (ISS) there shall be three grades of molasses with minimum sugar contents of 50, 44 and 40 *per cent*.

**3.14.1** Test check of records of one distillery[13] of Chhatarpur district in March 2008 revealed that the distiller used 4,395.9 quintals of grade-I molasses in eight setups in the months of April 2007 and February 2008, but the composite samples were not sent to the departmental laboratory for examination of fermentable sugar present in molasses. As per ISS norms, 4,395.9 quintals of molasses should yield 1,91,683 PL of alcohol whereas only 1,61,819 PL of alcohol was obtained. The shortfall in recovery of 29,864 PL of alcohol involved duty of Rs. 41.81 lakh. Besides, the DEO (distillery) did not refer these cases to the EC for levy of penalty. This resulted in non-realisation of penalty of Rs. 8.96 lakh.

The matter was reported to the department and the Government in February 2009.The EC stated (July 2009) that the hearing of the case was pending in his court. The reply from the Government has not been received (October 2009).

**3.14.2** Test check of records of two distilleries[14] in May and June 2008 revealed that as per analysis reports of departmental laboratory, the production of alcohol should have been 9,91,300.7 PL from 29,700 quintals of molasses used between September 2004 and January 2008 whereas the actual production was 9,69,664.6 PL. Thus, short production of alcohol of 21,636.1 PL due to non-maintenance of minimum efficiency of distillation by the distillers resulted in loss of revenue of Rs. 24.64 lakh in absence of any provision in the rules to recover the same. Besides, the DEO (distillery) did not refer these cases to the EC for levy of penalty. This resulted in non-realisation of penalty of Rs. 6.49 lakh.

After this was pointed out in audit, in case of M/s AABL distillery, the DEO, Khargone stated (May 2008) that show cause notice had been issued to the distiller whereas in case of M/s Agrawal distillery, it was stated (June 2008) that case was under consideration in the EC office and action would be taken after decision of the case. Further report in the matter has not been received (October 2009).

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13 M/s Cox India Ltd., Nowgaon district Chhatarpur.

14 M/s Agrawal Distillery, Sabalpura district Khargone.
M/s Associated Alcohol and Brewery, Khodigram district Khargone.

It can be seen from the above cases that the penal measure prescribed by the Government *i.e.* Rs. 30 per PL is not sufficient to cover the revenue loss occuring due to short production of alcohol. Thus, Government needs to revisit the penal measures in the interest of revenue.

The matter was reported to the EC and the Government in January 2009; their replies have not been received (October 2009).

## 3.15 Non-recovery of Government dues

According to the provisions of the Madhya Pradesh Excise Act and rules made thereunder, any licenced vendor of intoxicants may be required to purchase the intoxicants left by an outgoing licensee after the expiration, suspension or cancellation of his licence, on payment of such price of intoxicant as the excise officer may determine. Further, in the event of enhancement of rates of duty by the Government on intoxicants covered by various licences, the licensees are liable to pay the differential duty within 30 days in respect of the stock held by them at the close of the day immediately preceding the day from which such enhancement was applicable. Government increased the rate of excise duty on country liquor and foreign liquor by Rs. 10 per PL with effect from 1 April 2006.

Test check of records of DEOs, Datia and Damoh in August and November 2008 revealed that 18 country liquor and six foreign liquor shops of Datia district were disposed of in favour of retail vendors after being run departmentally from April to May 2004. Intoxicants valued at Rs. 9.37 lakh were transferred to the new vendors without effecting recovery of the value from them. The department however, failed to take any action against the officers responsible for non-recovery of the revenue.

Further, there was a balance stock of 46,152.5 PL of country liquor and 2,352.7 PL of foreign liquor in possession of licensees of seven retail shops of Damoh district at the close of 31 March 2006 on which the differential duty of Rs. 4.85 lakh was payable by the licensees. It was however, seen that Rs. 38,563 against Rs. 4.85 lakh was paid by the licensees and Rs. 4.46 lakh remained un-recovered. No action was taken by the department to realise the balance amount. This resulted in non-realisation of Government dues of Rs. 13.83 lakh.

After this was pointed out, DEO, Datia stated (November 2008) that required information would be collected from the concerned officers and would be submitted to audit while DEO, Damoh stated (August 2008) that action to recover the balance amount of Rs. 4.46 lakh was being taken. Further replies have not been received (October 2009).

The matter was reported to the EC and the Government in January and February 2009; their replies have not been received (October 2009).

## 3.16 Absence of provision for recovery of losses suffered during resale of shops under the lottery system

The condition of sale of liquor shops through tendering process provides that if the highest bidder takes back his offer and fails to pay basic licence fee/security deposit in time or breaches any condition of sale, the shop

shall be resold. In case of any loss suffered by the Government due to resale, such loss shall be recoverable from the defaulter. As per conditions for sale of retail liquor shops through lottery system for the year 2005-06, the shop which could not be sold under the lottery system is to be sold through tendering process. Conditions for sale notified by the Government under the lottery system do not provide for such recovery of losses suffered by the Government during resale of shops.

Test check of records of DEO, Tikamgarh in July 2008 revealed that an applicant was declared successful under the lottery system for allotment of three liquor shops at annual value of Rs. 28.90 lakh. The successful bidder subsequently failed to deposit the basic licence fee and security deposit within the prescribed date and shops had to be resold for Rs. 18.83 lakh. In this process of resale of shops, Government suffered loss of Rs. 9.84 lakh, after taking into account the forfeiture of earnest money deposit of Rs. 23,000. As there was no provision for recovery of loss suffered by the Government due to resale of shops under the lottery system, no action could be taken against the defaulter to recover the differential amount of Rs. 9.84 lakh.

The matter was reported to the department and the Government in January 2009. The EC stated (July 2009) that there was no provision for recovery of such amount. The reply does not throw any light on the reasons for inaction of the department/Government to take remedial action on this issue due to which there is recurring loss of revenue despite the fact being highlighted repeatedly by audit in consecutive Audit Reports for the year 2006-07 and 2007-08. The reply from the Government has not been received (October 2009).

## 3.17 Non-recovery of penalty imposed for breach of rules

The Madhya Pradesh Excise Act provides that the EC or the Collector, in the event of any breach or contravention of the rules or conditions of the licence may impose penalty. Further, the penalty imposed is recoverable from the licensee and in case of non-deposit, it may be recovered from the security amount deposited by him.

Test check of records of DEO, Damoh in August 2008 revealed that penalty of Rs. 7.81 lakh was imposed by the Collector in 1,041 cases of breach of rules or conditions of licence by different licensees during the period 2005-06 to 2007-08. This amount of penalty was not recovered from the licensees even after the expiry of their licences. The scope of recovery is remote as the security amount deposited by them was also refunded.

The matter was reported to the department and the Government in February 2009. The EC stated (July 2009) that Rs. 49,250 had been recovered and action for recovery of the remaining amount is in progress. Report on recovery of balance amount and reply from the Government have not been received (October 2009).

## 3.18 Short recovery of basic licence fee

As per notification issued by the State Government dated 8 January 2007, the liquor shops for the year 2007-08 were to be renewed by increasing 20 *per cent* in the annual value of shops for the year 2006-07.

The remaining shops after renewal were to be disposed of through tenders but the reserve price was not to be changed. The basic licence fee at the rate of eight *per cent* of the reserve price was to be deposited by the licensee.

Test check of records of DEO, Vidisha in December 2008 revealed that the reserve price of Rs. 14.21 crore was fixed for disposal of 16 country liquor and five foreign liquor shops of 12 groups for the year 2007-08. Against the basic licence fee of Rs. 1.13 crore to be deposited by the successful bidders, an amount of Rs. 1.06 crore was deposited. This resulted in short realisation of revenue of Rs. 7.73 lakh.

After the case was pointed out, the DEO stated (December 2008) that the basic licence fee was deposited at the rate of eight *per cent* on the basis of floor value of shops. The reply is not acceptable as the basic licence fee at the rate of eight *per cent* of the reserve price was to be deposited. Further reply has not been received (October 2009).

The matter was reported to the EC and the Government in February 2009; their reply has not been received (October 2009).

## 3.19 Non-imposition of penalty in case of failure to supply country liquor in warehouses

Madhya Pradesh Country Spirit Rules provide that the licensee shall maintain at each "manufacturing and storage warehouse" a minimum stock of bottled liquor/rectified spirit as required in the rules. He shall also maintain such minimum stock of empty bottles as may be fixed by the DEO of the concerned district. Rules also provide that the EC may impose a penalty not exceeding Rs. 50,000 for any breach or contravention of any of these rules and may further impose in the case of continued contravention, an additional penalty not exceeding Rs. 1,000 for every day during which the breach or contravention is continued.

Test check of records of five excise offices[15] between July and December 2008 revealed that the minimum stock of spirit, bottled liquor and empty bottles was not maintained at the country liquor warehouses as per rules by the licensees during the period between April and November 2008. As a result, the supply of bottled country liquor could be made to the retail vendors only in the succeeding fortnight/month. However, no action to purchase the rectified spirit and/or country liquor in sealed bottles at the prevalent open market rate was taken, nor penalty amounting to Rs. 7.63 lakh for breach and continued contravention of rules was imposed on the licensees. This resulted in non-levy of penalty of Rs. 7.63 lakh.

After the cases were pointed out, the DEO, Harda stated (October 2008) that the issue was made in succeeding fortnights due to non-availability of new empty bottles. The DEO, Burhanpur stated (December 2008) that the situation was intimated to the EC from time to time. The DEOs, Damoh and Khandwa stated (July and October 2008) that the supply did not fail and issue was made in succeeding fortnights due to administrative reasons. The DEO, Tikamgarh stated (July 2008) that the notices had been issued to the distiller for which the reply was awaited. The replies are not acceptable as

[15] Buhanpur, Damoh, Harda, Khandwa and Tikamgarh.

no action was initiated to forward the cases to the EC proposing penalty for not maintaining the prescribed stock of liquor/bottled liquor and empty bottles as per rule.

The matter was reported to the EC and the Government in February 2009; their reply has not been received (October 2009).

## 3.20 Non/short levy of transport/import fee

Madhya Pradesh Foreign Liquor Rules provide for levy of transport/import fee on foreign liquor/beer, RS and ENA transported/imported to bottling unit of foreign liquor at the rates prescribed from time to time.

Test check of records of DEO, Khargone in May and June 2008 revealed that transportation of 1.68 lakh BL of ENA/RS from two distilleries to a bottling unit of foreign liquor was permitted between April and June 2006 without realising transport fee of Rs. 4.20 lakh. Besides, import fee of Rs. 2.33 lakh was also not realised on 7,753.5 PL of foreign liquor brought from Uttrakhand in March 2008. This resulted in non-realisation of revenue of Rs. 6.53 lakh.

The matter was reported to the department and the Government in January 2009. The EC in case of M/s AABL distillery, Khargone stated (August 2009) that the spirit was transferred through pipe line, therefore the fee was not leviable. Reply is not acceptable because the rules do not provide for any concession from transport fee in case of transportation/transfer of the goods through pipe line. In another case of M/s Agrawal distillery, he stated that transport fee was not leviable on the RS transported for manufacturing country liquor. The reply is not acceptable as the EC himself vide his orders dated 17 April 2006 had granted permission for manufacture of foreign liquor from the RS so transported whereas the distiller used the RS in the manufacture of country liquor. The reply from the Government has not been received (October 2009).

# CHAPTER IV: TAXES ON VEHICLES

## 4.1 Results of audit

Test check of the records relating to taxes on vehicles during the year 2008-09 revealed non-assessment of tax and loss of revenue amounting to Rs. 21.88 crore in 5,962 cases which can be categorised as under:

(Rupees in crore)

| Sl. no. | Category | Number of cases | Amount |
|---|---|---|---|
| 1. | Non/short levy of vehicle tax, penalty and composition fee on public service vehicles | 1,820 | 13.33 |
| 2. | Non/short levy of vehicle tax and penalty on goods vehicles | 2,948 | 6.37 |
| 3. | Other irregularities | 1,194 | 2.18 |
| **Total** | | **5,962** | **21.88** |

The department accepted under assessment/loss in 4,851 cases involving Rs. 19.09 crore which were pointed out in audit during 2008-09. An amount of Rs. 64.12 lakh had been recovered in 311 cases.

A few illustrative audit observations involving Rs. 20.22 crore highlighting important audit findings are mentioned in the following paragraphs.

## 4.2 Audit observations

*Scrutiny of records of various Transport Offices revealed several cases of non-compliance of the provisions of the Motor Vehicles Act 1988 (MV Act) and Madhya Pradesh Motoryan Karadhan Adhiniyam, 1991 (Adhiniyam), and Government notifications and other cases as mentioned in the succeeding pargaraphs in this chapter. These cases are illustrative and are based on a test check carried out in audit. Such omissions on the part of the Regional Transport Officers (RTO) are pointed out in audit each year but not only the irregularities persist; these remain undetected till an audit is conducted. There is need for the Government to improve the internal control system.*

## 4.3 Non-compliance of provisions of Acts/Rules

*The provisions of the MV Act and Adhniyam and Rules made thereunder provide for:*

*i) collection of tax/fees at prescribed rates on various classes of vehicles within the due dates; and*

*ii) levy of penalty for various offences.*

*It was noticed that the RTOs did not observe some of the above provisions which resulted in non/short levy of tax/fee/fine of Rs. 20.22 crore as mentioned in paragraphs 4.3.1 to 4.3.7.*

### 4.3.1 Non-realisation of vehicle tax and penalty on vehicles

According to provisions of the *Adhiniyam*, tax shall be levied on every motor vehicle used or kept for use in the State at the rates specified in the first schedule to the *Adhiniyam*. If the owner of the vehicle defaults in payment of tax, he/she shall be liable to pay penalty at the rate of one third of the unpaid amount of tax for the default of each month upto February 2003 and thereafter two *per cent* per month upto three months and four *per cent* thereafter but not exceeding twice the unpaid amount of tax upto September 2004; thereafter, rate of penalty has been four *per cent* per month. In case of non-payment, the taxation authority (TA) is required to issue a demand notice and recover the dues as arrears of land revenue.

Test check of records of 30 transport offices between April 2008 and March 2009 revealed that vehicle tax amounting to Rs. 11.13 crore in respect of 4,851 vehicles for the period between November 2002 and March 2008 was neither paid by the vehicle owners, nor was any action taken by the TAs to realise the tax. Besides, penalty of Rs. 7.46 crore though leviable was not levied.

This resulted in non-realisation of revenue of Rs. 18.59 crore as mentioned below:

**(Rupees in crore)**

| Sl. no. | No. of offices | Category of vehicles<br>No. of vehicles | Period involved | Tax not paid | Penalty leviable | Total |
|---|---|---|---|---|---|---|
| 1. | 30[1] | Public service vehicles kept as reserve<br>1,111 | 11/02 to 3/08 | 4.58 | 3.20 | 7.78 |
| 2. | 30[2] | Goods vehicles<br>2,939 | 4/03 to 3/08 | 3.61 | 2.52 | 6.13 |
| 3. | 28[3] | Public service vehicles plying on regular stage carriage permits<br>397 | 4/03 to 3/08 | 2.23 | 1.32 | 3.55 |
| 4. | 15[4] | Maxi cabs<br>404 | 4/04 to 3/08 | 0.71 | 0.42 | 1.13 |
| **Total** | | **4,851** | | **11.13** | **7.46** | **18.59** |

After this was pointed out, 10 TAs[5] intimated (between December 2008 and July 2009) that an amount of Rs. 64 lakh had been recovered in 311 cases. In the remaining cases, all the TAs stated (between April 2008 and March 2009) that action for recovery would be/was being taken/show cause notices were being issued/demand notices had been issued to the defaulting vehicle owners. Further development has not been reported (October 2009).

The matter was reported to the Transport Commissioner (TC) and the Government between May 2008 and April 2009; reply has not been received (October 2009).

1 Regional Transport Office (RTO)- Bhopal, Gwalior, Hoshangabad, Indore, Jabalpur, Morena, Rewa, Sagar and Ujjain.
Additional Regional Transport Office (ARTO)- Chhatarpur, Chhindwara, Guna, Katni, Khandwa, Mandsaur, Satna and Seoni.
District Transport Office (DTO)- Balaghat, Badwani, Betul, Damoh, Dewas, Jhabua, Neemuch, Panna, Raisen, Ratlam, Shivpuri, Sidhi and Tikamgarh.

2 RTO- Bhopal, Gwalior, Hoshangabad, Indore, Jabalpur, Morena, Rewa, Sagar and Ujjain, ARTO-Chhatarpur, Chhindwara, Guna, Katni, Khandwa, Mandsaur, Satna and Seoni, DTO-Balaghat, Badwani, Betul, Damoh, Dewas, Jhabua, Neemuch, Panna, Raisen, Ratlam, Shivpuri, Sidhi and Tikamgarh.

3 RTO, Bhopal, Gwalior, Hoshangabad, Indore, Jabalpur, Morena, Rewa, Sagar and Ujjain, ARTO, Chhatarpur, Chhindwara, Guna, Katni, Khandwa, Mandsaur, Satna and Seoni and DTO, Balaghat, Badwani, Betul, Damoh, Jhabua, Neemuch, Panna, Ratlam, Shivpuri, Sidhi and Tikamgarh.

4 RTO, Bhopal, Gwalior, Hoshangabad and Rewa, ARTO, Chhindwara, Guna, Khandwa, Mandsaur, Satna and Seoni and DTO, Betul, Jhabua, Neemuch, Shivpuri and Sidhi.

5 RTO, Gwalior, Rewa, ARTO, Chhatarpur, Chhindwara, Guna, Mandsaur and Satna and DTO, Badwani, Neemuch and Panna.

### 4.3.2 Non-realisation of vehicle tax and non-levy of penalty on public service vehicles plying on all India tourist permits

All India tourist permit is granted by the State Transport Authority (STA) under section 88 (9) of the Motor Vehicles Act, 1988. Tax is payable at the rates prescribed in the first schedule to the *Adhiniyam*. If the tax due has not been paid within the prescribed period, penalty is also leviable.

Test check of records of five offices[6] between April and December 2008 revealed that 16 operators did not pay vehicle tax in respect of 30 public service vehicles plying on all India tourist permits for the period between February 2006 and March 2008 nor was it demanded by the TAs. This resulted in non-realisation of tax of Rs. 47.22 lakh. Besides, penalty of Rs. 25.65 lakh was also leviable.

After this was pointed out, the RTO, Gwalior stated (December 2008) that show cause notices were being issued to the defaulting vehicle owners whereas the RTO, Jabalpur, ARTO, Chhatarpur and DTOs, Balaghat and Dewas stated (between April and October 2008) that action would be taken after scrutiny of the cases. Further development has not been reported (October 2009).

The matter was reported to the TC and the Government between May 2008 and February 2009; reply has not been received (October 2009).

### 4.3.3 Non-realisation of vehicle tax and penalty on private service vehicles

According to section 3 (1) of the *Adhiniyam*, tax shall be levied on every motor vehicle used or kept for use in the state. Tax on private service vehicles is payable at the rate prescribed in item No. VII of first schedule to the *Adhiniyam*. If the tax due has not been paid within the prescribed period, penalty is also leviable.

Test check of records of RTOs, Gwalior and Indore between December 2008 and February 2009 revealed that vehicle tax on 44 private service vehicles for the period between April 2007 and March 2008 was neither paid by the vehicle owners nor was it demanded by the TAs. This resulted in non-realisation of tax of Rs. 25.81 lakh. Besides, a penalty of Rs. 16.94 lakh was also leviable.

After this was pointed out, the TA, Gwalior stated (January 2009) that show cause notices were being issued to the vehicle owners whereas the TA, Indore stated (February 2009) that action would be taken after scrutiny of the cases. Further development has not been reported (October 2009).

The matter was reported to the TC and the Government between February 2009 and March 2009; their reply has not been received (October 2009).

[6] RTO, Gwalior and Jabalpur, ARTO, Chhatarpur and DTO, Balaghat and Dewas.

### 4.3.4 Short realisation of vehicle tax and non-levy of penalty on motor vehicles

According to section 3 (1) of the *Adhiniyam*, tax shall be levied on every motor vehicle used or kept for use in the state at the rates specified in the first schedule. In case of public service vehicles, tax will be calculated on the basis of the seating capacity of the vehicle and distance of the route allowed and for goods vehicles, tax will be levied on the basis of registered laden weight of the vehicle. If the tax due has not been paid within the prescribed period, penalty is also leviable at the rate specified under section 13 of the *Adhiniyam*.

Test check of records of eight offices[7] between June 2008 and January 2009 revealed that vehicle tax of 57 motor vehicles for the period between April 2004 and March 2008 was short deposited by the vehicle owners due to application of incorrect rate of tax. Failure of the TAs to detect the default resulted in short realisation of vehicle tax of Rs. 9.59 lakh. The TAs also failed to levy penalty of Rs. 5.99 lakh on unpaid amount of tax.

After this was pointed out, the RTOs, Jabalpur and Sagar, ARTOs, Satna and Seoni and DTOs, Ratlam, Shivpuri and Sidhi stated (between June 2008 and January 2009) that action would be taken after scrutiny of the cases whereas ARTO, Mandsaur stated that demand notices had been issued (December 2008) to the defaulting vehicle owners. Further developments have not been reported (October 2009).

The matter was reported to the TC and the Government between July 2008 and March 2009; their reply has not been received (October 2009).

### 4.3.5 Non-levy of penalty on belated payment of vehicle tax

According to the provisions under section 13 of the *Adhiniyam,* if the tax in respect of any motor vehicle is not paid on due date as specified in section 5, the owner shall, in addition to the payment of tax due, be liable to pay penalty at the rate of four *per cent* per month on the unpaid amount of tax. Rule 10 (1) of Madhya Pradesh *Motoryan Karadhan Niyam,* 1991, (*Niyam*) further specifies that the penalty shall be paid by the owner of the vehicle alongwith the amount of tax.

Test check of records of 12 offices[8] between June 2008 and January 2009 revealed that vehicle tax in respect of 413 motor vehicles for the period between April 2003 and March 2008 was paid by the owners after delay ranging from 1 to 59 months. However, penalty was not levied and demanded by the TAs. This resulted in non-levy of penalty of Rs. 13.96 lakh.

After this was pointed out, the ARTOs, Chhatarpur and Mandsaur and DTO, Panna stated (between December 2008 and March 2009) that demand notices had been issued to the defaulting vehicle owners, of which, an amount of Rs. 12,729 was recovered in five cases. In case of remaining offices,

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7 RTO, Jabalpur and Sagar, ARTO, Mandsaur, Satna and Seoni and DTO, Ratlam, Shivpuri and Sidhi.

8 RTO, Jabalpur and Rewa, ARTO, Chhatarpur, Khandwa, Mandsaur and Seoni and DTO, Betul, Damoh, Jhabua, Panna, Raisen and Shivpuri.

it was stated (between June 2008 and January 2009) that action for recovery would be taken after scrutiny of the cases. Further developments have not been reported (October 2009).

The matter was reported to the TC and the Government between July 2008 and February 2009; their reply has not been received (October 2009).

### 4.3.6 Non-realisation of vehicle tax and penalty on public service vehicles of other states plying on inter-State routes

Under the *Adhiniyam*, motor vehicles of other States permitted to ply in the State under reciprocal transport agreement, shall pay tax to the designated authority at the rate specified in the first schedule to the *Adhiniyam*, failing which the owner shall be liable to pay a penalty at the rate specified in the *Adhiniyam*.

Test-check of records of four offices[9] between June and December 2008 revealed that 27 operators did not pay vehicle tax in respect of 29 public service vehicles which were allowed to ply on inter-State routes under reciprocal transport agreement during the period between June 2005 and March 2008, nor was it demanded by the TAs. This resulted in non-realisation of vehicle tax of Rs. 7.36 lakh and penalty of Rs. 4.02 lakh.

After this was pointed out, the RTO, Gwalior stated (December 2008) that show cause notices were being issued to the vehicle owners. The RTO, Sagar and ARTO, Mandsaur stated (December 2008) that demand notices had been issued (December 2008) to the defaulting vehicle owners whereas DTO, Tikamgarh stated (September 2008) that action would be taken after scrutiny of the cases. Further development has not been reported (October 2009).

The matter was reported to the TC and the Government between July 2008 and March 2009; their reply has not been received (October 2009).

### 4.3.7 Non-realisation of vehicle tax due to surrender of vehicles without permission

Under rule 11 of the *Niyam* and Government of Madhya Pradesh, Transport Department notification dated 30 September 2004, no vehicle shall be allowed to be surrendered for a period exceeding 45 days (at a time or in part) in a calendar year. In case of surrender exceeding the said period, the permission can only be granted under special circumstances by the TC by passing an order in writing with reasons and if any vehicle is found surrendered for more than the said period without such permission, then the permit and the registration certificate shall stand revoked and the owner shall have to obtain permit and get the vehicle registered again. Further, as per rule 11 (12), the owner shall be liable to pay tax for the period commencing after the last day of the period for which the intimation of non-use was acknowledged irrespective of whether he has taken possession of the documents deposited with the TA after the expiry of such period or not.

[9] RTO, Gwalior and Sagar, ARTO, Mandsaur and DTO, Tikamgarh.

Test check of records of DTOs, Panna and Tikamgarh between June and September 2008 revealed that the registration certificates of 15 public service vehicles were allowed to be surrendered for 2 to 12 months in a calendar year, by the TAs without permission of the TC. Since the vehicle owners did not apply for extension of surrender period beyond the initial period of 45 days, they were liable to pay tax at prescribed rates. However, the TAs did not demand the tax of Rs. 6.40 lakh.

After this was pointed out, the DTO, Panna stated (December 2008) that demand notices had been issued to the vehicles owners whereas DTO, Tikamgarh stated (September 2008) that action would be taken after scrutiny of the cases. Further development has not been reported (October 2009).

The matter was reported to the TC and the Government between August and November 2008; their reply has not been received (October 2009).

## 5.1 Results of audit

Test check of the records relating to stamp duty, registration fee, entertainment duty, assessment and collection of land revenue during the year 2008-09 revealed non-assessment/underassessment of revenue and non-raising of demand amounting to Rs. 328.07 crore in 48,521 cases which can be categorised as under:

**(Rupees in crore)**

| Sl. no. | Category | Number of cases | Amount |
|---|---|---|---|
| **A : STAMP DUTY & REGISTRATION FEE** | | | |
| 1. | Short realisation of stamp duty and registration fee due to under valuation of properties | 1,298 | 18.66 |
| 2. | Inordinate delay in finalisation of cases | 2,429 | 11.98 |
| 3. | Loss of revenue due to misclassification of documents | 312 | 5.95 |
| 4. | Loss of revenue due to execution of instruments in favour of co-operative housing societies | 3,506 | 2.41 |
| 5. | Others | 2,568 | 13.42 |
| | **Total** | **10,113** | **52.42** |
| **B : ENTERTAINMENT DUTY** | | | |
| 1. | Non/short deposit of entertainment duty by the proprietors of VCRs | 1,237 | 0.59 |
| 2. | Non-realisation of entertainment duty | 1,014 | 0.26 |
| 3. | Incorrect exemption from payment of entertainment duty | 878 | 0.12 |
| 4. | Evasion of entertainment duty due to non-accountal of tickets | 55 | 0.06 |
| 5 | Others | 1,417 | 0.40 |
| | **Total** | **4,601** | **1.43** |
| **C : LAND REVENUE** | | | |
| 1. | Non-levy of stamp duty on partition/gift deed of the building on *nazul* ground | 174 | 91.78 |
| 2. | Non-registration of revenue recovery certificates | 9,651 | 50.90 |
| 3. | Short assessment of diversion rent and premium | 451 | 30.42 |
| 4. | Loss of revenue due to application of incorrect rates of premium and ground rent of the land | 1,062 | 19.02 |

| | | | |
|---|---|---|---|
| 5. | Loss of revenue due to short assessment of premium and ground rent | 3,411 | 18.39 |
| 6. | Non-execution and non-registration of lease deeds | 33 | 12.02 |
| 7. | Non-recovery of collection charges | 7,673 | 8.03 |
| 8. | Non-raising of demand of diversion rent, premium and fines | 642 | 5.41 |
| 9. | Non-levy/recovery of process expenses | 8,861 | 3.17 |
| 10. | Non-renewal of lease of *nazul* plots | 271 | 1.08 |
| 11. | Others | 1,578 | 34.00 |
| **Total** | | **33,807** | **274.22** |
| **Grand total (A+B+C)** | | **48,521** | **328.07** |

During the year 2008-09, the departments accepted underassessment of tax of Rs. 304.33 crore involving 45,709 cases. An amount of Rs. 8.49 crore had been recovered in 765 cases.

Few illustrative audit observations involving Rs. 22.74 crore are mentioned in the following paragraphs.

## 5.2 Audit observations

*Scrutiny of records of various tahsil offices, Sub-Registrars, Assistant Excise Commissioners/District Excise Officers revealed several cases of non-compliance of the provisions of the Indian Stamp Act, Registration Act, Madhya Pradesh Entertainment Duty and Advertisement Tax Act and Madhya Pradesh Lokdhan Shodhya Rashiyon Ki Vasuli Adhiniyam etc. and Government orders as mentioned in the succeeding pargaraphs in this chapter. These cases are illustrative and are based on a test check carried out in audit. Such omissions on the part of the departmental officers are pointed out in audit each year but not only the irregularities persist; these remain undetected till an audit is conducted. There is need for Government to improve the internal control system so that such errors can be detected, avoided and prevented in future.*

## A - STAMP DUTY AND REGISTRATION FEE

### 5.3 Loss of revenue on instruments submitted before public officer

**5.3.1** Under Section 33 read with section 38 of Indian Stamp Act, 1899, (IS Act) every public officer before whom, any instrument chargeable to duty is produced, shall, if it appears to him that such instrument is not duly stamped, impound the same. He shall admit the instrument in evidence upon payment of penalty/duty leviable under the Act or send it to the Collector for determination of proper duty leviable thereon.

Test check of records of *tahsil*, Ujjain in September 2008 revealed that sale deed valued at Rs. 21.71 crore was produced before *tahsildar* during mutation/diversion case of a land. The recital of the sale deed executed in April 2006 revealed that the market value of the immovable property as per guidelines was Rs. 55.27 crore and the leviable stamp duty and registration fee was Rs. 6.19 crore. However, stamp duty and registration fee of Rs. 2.43 crore was levied on the sale value of Rs. 21.71 crore mentioned in the instrument. The instrument was not referred to the Collector for determination of proper duty leviable thereon. This resulted in short levy/realisation of stamp duty and registration fee of Rs. 3.76 crore.

After the case was pointed out, the *tahsildar* stated in September 2008 that the case would be referred to the District Registrar (DR), Ujjain for necessary action. Further report in the matter has not been received (October 2009).

The matter was reported to the Inspector General, Registration (IGR) and the Government in March 2009; their reply has not been received (October 2009).

**5.3.2** The instruments of lease deeds having lease period of more than 12 months are to be compulsorily registered under section 17 of the Registration Act, 1908, and three fourth of the stamp duty is chargeable as registration fee. Further, stamp duty is charged on such instruments at the rate prescribed in article 33 of schedule 1-A of the IS Act. As per instructions issued by the IGR (March 2005), stamp duty at the rate of eight *per cent* of consideration/advance royalty is payable on quarry lease.

**5.3.2.1** Test check of records of Mining Officer (MO), Gwalior in November 2008 revealed that Madhya Pradesh State Mining Corporation (MPSMC) sub-leased the right of extraction and sale of sand to a contractor for the period from 17 August 2007 to 16 August 2008 for Rs. 13.79 crore. It was, however, seen that the agreement to this effect was executed on stamp paper of Rs. 100 against the leviable stamp duty of Rs. 1.10 crore. The MO did not initiate any action for levy of correct stamp duty. This resulted in short levy/realisation of stamp duty of Rs. 1.10 crore.

After this was pointed out, the IGR intimated (August 2009) that action was in progress.

The matter was reported to the Director of Geology and Mining (DGM), IGR and the Government in February 2009; their reply has not been received (October 2009).

**5.3.2.2** Test check of records of *tahsil*, Huzur in January 2009 revealed that the Government granted (May 2008) permanent lease on land measuring 78.661 hectares to a society in consideration of premium of Rs. 4 crore and ground rent of Rs. 8 lakh per annum. The agreement was executed on 13 October 2008. It was, however, seen that the *tahsildar* did not initiate any action to get the agreement of lease registered. This resulted in non-realisation of revenue of Rs. 59.40 lakh (stamp duty of Rs. 34.65 lakh and registration fee of Rs. 24.75 lakh).

After the case was pointed out, the *tahsildar*, Huzur stated (January 2009) that letter had been issued to the society about the registration of lease deed. Further report has not been received (October 2009).

The matter was reported to the Commissioner, Bhopal division, IGR and the Government in March and April 2009; their reply has not been received (October 2009).

**5.3.2.3** Test check of records of MOs, Dewas and Morena between October and December 2008 revealed that 30 quarry leases for extraction of sand were granted to MPSMC by the Government between June 2004 and May 2006 in consideration of Rs. 3.57 crore. However, the department did not take any action for execution and registration of agreement of quarry lease. This resulted in non-levy/realisation of stamp duty and registration fee of Rs. 50.05 lakh.

After the cases were pointed out, the IGR intimated (August 2009) that action was in progress.

The matter was reported to the DGM and the Government between December 2008 and March 2009; their reply has not been received (October 2009).

## 5.4 Delay in disposal of cases referred by Sub-Registrars

As per departmental instructions of July 2004, a maximum period of three months has been prescribed for disposal of cases referred to the Collector by the Sub-Registrar (SR) offices for determination of correct market value of properties and duty leviable thereon.

Test check of five SR offices[1] between February and August 2008 revealed that 294 cases referred by the registering authorities between April 2004 and March 2008 for determination of market value of properties had not been finalised though the period of three months had already elapsed. Such inordinate delay resulted in non-realisation of Rs. 4.85 crore being difference of stamp duty worked out by the SRs.

After the cases were pointed out, the IGR intimated (August 2009) that an amount of Rs. 57.88 lakh had been recovered in 162 cases and that action was in progress in remaining cases. Further report has not been received (October 2009).

The matter was reported to the Government between March 2008 and January 2009; the reply has not been received (October 2009).

## 5.5 Loss of revenue due to inconsistency in rules

Article 33 of schedule 1-A to the IS Act provides for levy of duty as on conveyance an amount equal to five times the average annual rent reserved plus premium where a lease purports to be for a term exceeding 20 years but not exceeding 30 years. Where the lease purports to be for a period exceeding 30 years or does not purport to be for a definite period, the same duty as on a conveyance on market value of property leased out, is leviable. The rent would be disregarded in case of a lease of more than 30 years. As per the explanation below section 47-A of the IS Act, market value of any property shall be the price which would have been fetched if it is sold in the open market on the date of execution of the instrument. Further, Rule 3-A of MP Prevention of Undervaluation of Instruments Rules, 1975, provides that in case of any property which is subject matter of a lease by State Government or any undertaking of the State Government, the market value of the property shall be the amount or value of such fine, or premium or advance as setforth in the instrument. This implies that duty on lease deed for a period of more than 30 years would be lesser than that on a lease of 30 years. Treating the premium setforth in the document as market value is also contrary to the explanation below section 47-A of the Act. Thus, there is inconsistency in rules.

Test check of records of SR, Bhopal in July 2008 revealed that two lease deeds were registered in August 2007 and March 2008 respectively, in which the lease period exceeded 30 years. In one case, the Government leased out land to MP Housing Board (MPHB) while in the other case MPHB leased out land and sold building to a private party. In these cases, stamp duty and registration fee of Rs. 1.94 crore was levied by the SR on the basis of value setforth in the documents. However, in accordance with the market value guidelines, the market value of above properties worked out at Rs. 40.13 crore and accordingly stamp duty and registration fee of Rs. 5.65 crore was leviable on these documents. Thus, inconsistency of rules resulted in loss of revenue of Rs. 3.71 crore.

[1] Bhind, Bhopal, Jabalpur, Panna and Raisen.

After the cases were pointed out, the IGR stated (August 2009) that a proposal for deletion of rule 3-A and 3-B of MP Prevention of Undervaluation of Instruments Rules, 1975 had been sent to the Government. Further development has not been reported (October 2009).

The matter was reported to the Government between September 2008 and May 2009; the reply has not been received (October 2009).

## 5.6 Short levy of stamp duty and registration fee on instruments of power of attorney

Schedule 1-A of the IS Act provides that when power of attorney is given without consideration and authorising the agent to sell, gift, exchange or permanently alienate any immovable property situated in Madhya Pradesh for a period not exceeding one year, duty of Rs. 100 is chargeable on such instruments. Further, when such rights are given with or without consideration for a period exceeding one year or when it is irrevocable or when it does not purport to be for any definite term, the same duty as a conveyance on the market value of the property is chargeable on such instruments.

Test check of records of 23 SR offices[2] between February 2008 and February 2009 revealed that out of 214 instruments of power of attorney registered between February 2006 and March 2008, in 138 documents, though the power to sell, gift, exchange or permanent alienation of immovable property was given, but there was no mention in the documents whether the power of attorney was without consideration for a period not exceeding one year and in 71 instruments, the power of attorney was irrevocable, while in five instruments power of attorney was with consideration. In these cases, stamp duty and registration fee of Rs. 2.05 crore was leviable in accordance with the above provisions. However, it was noticed that in 209 cases, the instruments were treated as power of attorney to sell without consideration for a period not exceeding one year and duty was levied at the rate of Rs. 100 in each case while in remaining five cases duty was levied at the rate of two *per cent* against the duty as a conveyance on market value of the property. This resulted in short levy of duty and registration fee of Rs. 2.05 crore.

After the cases were pointed out, the IGR intimated (August 2009) that action was in progress.

The matter was reported to the Government between May 2008 and May 2009; the reply has not been received (October 2009).

## 5.7 Incorrect determination of market value

Under Section 47-A of IS Act, if the registering officer, while registering any instrument finds that the market value of any property set forth was less than the market value shown in the market value guidelines, he should, before registering such instrument, refer the same to the Collector for determination of the correct market value of such property and duty leviable thereon.

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2 Anuppur, Ashoknagar, Bhind, Bhopal, Dhar, Dindori, Gwalior, Guna, Ichhawar (Sehore), Kolaras (Shivpuri), Lakhanadon (Seoni), Mhow (Indore), Multai (Betul), Nateran (Vidisha), Panna, Raghogarh (Guna), Raisen, Sagar, Sanawad (Khargone), Sonser (Chhindwara), Sehore, Seoni and Shahdol.

Test check of 15 SR offices[3] between December 2005 to December 2008 revealed that in 129 instruments registered between December 2004 and March 2008, the market value as per guidelines was Rs. 61.59 crore against registered value of Rs. 41.07 crore. The SR did not refer these instruments to the concerned Collector for determination of correct value of properties and duty leviable thereon. This resulted in short levy of stamp duty and registration fee of Rs. 1.49 crore.

After the cases were pointed out, the IGR intimated (August 2009) that action was in progress.

The matter was reported to the Government between January 2006 and April 2009; the reply has not been received (October 2009).

## 5.8 Short levy of stamp duty and registration fee on lease deeds

Article 33 of schedule 1-A of the IS Act provides for levy of stamp duty on lease deeds at the rates prescribed therein. Further, as per article 2 of the registration table under the Registration Act, registration fee at three fourth of the stamp duty is chargeable on such instruments.

Test check of records of 10 SR Offices[4] between October 2007 and February 2009 revealed that stamp duty and registration fee of Rs. 2.95 crore as against Rs. 4.15 crore was levied on 65 documents of lease deeds registered between April 2005 and March 2008 by treating lesser period of lease in six cases and due to computation mistake in 59 cases. This resulted in short levy/realisation of stamp duty and registration fee of Rs. 1.20 crore.

After the cases were pointed out, the IGR intimated (August 2009) that action was in progress.

The matter was reported to the Government between December 2007 and May 2009; the reply has not been received (October 2009).

## 5.9 Non-imposition of penalty on delayed presentation of instruments

According to section 23 of Registration Act, no document except will deed, shall be accepted for registration unless presented for that purpose to the proper officer within four months from the date of execution. If the delay in presentation is more than three months of the initial grace period of four months, but less than four months, penalty of 10 times of the registration fee shall be chargeable according to article XV (d) of table of registration fee.

Test check of records of SR, Narsinghpur in February 2009 revealed that an instrument was executed on 10 August 2007, but was presented before the SR for registration on 19 March 2008. Though the instrument was presented for registration after lapse of period beyond three months, yet the registering authority did not levy penalty of Rs. 45.61 lakh.

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3 Ashta (Sehore), Badnagar (Ujjain), Betul, Bhind, Bhopal, Gohad (Bhind), Gwalior, Indore, Jabalpur, Khargone, Kolaras (Shivpuri), Mhow (Indore), Nagda (Ujjain), Raisen and Seoni.

4 Anuppur, Badnagar (Ujjain), Betul, Dindori, Gohad (Bhind), Gwalior, Karera (Shivpuri), Mehgaon (Bhind), Sidhi and Sonsar (Chhindwara).

After this was pointed out, the SR replied (February 2009) that both the parties signed the instrument on 19 March 2008. Reply is not acceptable because the instrument was executed on 10 August 2007 and the vendee applied for high-tension electricity connection on 1 September 2007 on the basis of this instrument. Besides, vendee also applied for the exemption from the payment of duty on this instrument on 14 August 2007. Further report in the matter has not been received (October 2009).

The matter was reported to the IGR and the Government in February 2009; their reply has not been received (October 2009).

## 5.10 Non-reimbursement of duty and fee

According to the Government notification dated 12 July 2002, stamp duty and registration fee leviable on lease/sale deeds executed to acquire land in favour of member of a family displaced on account of Narmada Valley Development Projects (NVDP) is to be reimbursed by the Narmada Valley Development Authority (NVDA) to the Government on the basis of the demand letter produced by the respective SR.

Test check of records in four SR offices[5] between July 2007 and August 2008 revealed that 61 documents were executed/registered between April 2003 and March 2008 in favour of persons displaced due to NVD project. It was further observed that on account of execution of above documents, stamp duty and registration fee of Rs. 25.90 lakh was reimbursable to the Government by the NDVA, but the same was not reimbursed, though the demand in all cases except 12 of Bhopal and Mhow was raised by the respective SRs against NVDA. This resulted in non-realisation of revenue of Rs. 25.90 lakh.

After the cases were pointed out, the IGR intimated (August 2009) that action to recover the dues from NVDA was in progress. Further development has not been reported (October 2009).

The matter was reported to the Government between August 2007 and April 2009; the reply has not been received (October 2009).

## 5.11 Short levy of stamp duty and registration fee due to misclassification

Under the IS Act, stamp duty is leviable on instruments as per their recital at the rates specified in schedule 1-A or prescribed by the Government through notifications.

[5] Sub Registrar Dhar, Bhopal, Budhni (Sehore) and Mhow (Indore).

Test check of records of five SR Offices[6] between May and December 2008 revealed that there was misclassification of documents in 18 cases resulting in short levy of stamp duty and registration fee of Rs. 20.64 lakh as mentioned below:

(Rupees in lakh)

| Sl. no. | No. of cases Registered between | Nature of irregularities | Stamp duty and registration fee leviable/ levied | Stamp duty and registration fee levied short |
|---|---|---|---|---|
| 1. | 01<br>December 2006 | Partition with sale treated as sale. | 3.99<br>1.53 | 2.46 |
| 2. | 01<br>March 2008 | Partition with agreement to sell with possession treated as agreement to sell without possession | 1.22<br>0.16 | 1.06 |
| 3. | 08<br>between August 2005 and March 2008 | Gift treated as release | 4.58<br>2.17 | 2.41 |
| 4. | 04<br>between August 2006 and January 2008 | Agreement to sell with possession treated as agreement to sell without possession | 6.24<br>1.00 | 5.24 |
| 5. | 02<br>June and July 2007 | Builder agreement treated as power of attorney | 1.83<br>0.004 | 1.83 |
| 6. | 01<br>July 2006 | Gift treated as partition | 2.80<br>0.006 | 2.79 |
| 7. | 01<br>June 2007 | Conveyance treated as builder agreement | 7.42<br>2.57 | 4.85 |
| **Total** | **18** | | **28.08**<br>**7.44** | **20.64** |

After the cases were pointed out, the IGR intimated (August 2009) that action was in progress. Further development has not been reported (October 2009).

The matter was reported to the Government between June 2008 and May 2009; the reply has not been received (October 2009).

## 5.12 Irregular exemption of stamp duty

The Government in its notification dated 25 September 2006 exempted documents of mortgage deeds from payment of duty which are executed by agriculture land holders for obtaining loans not exceeding Rs. 10 lakh from banks for agriculture purpose, irrespective of their holding. Prior to it, the exemptions were available to land holders belonging to Schedule Caste/Schedule Tribe or possessing land not exceeding 10 hectares. Further, agriculture purpose was also defined by the Government in its notification of September 2006 and the specific purpose for which loan was to be obtained was required to be mentioned in the documents.

[6] Betul, Gwalior, Jabalpur, Mehgaon, (Bhind) and Raisen.

Test check of records of nine SR offices[7] between February and September 2008 revealed that exemption from payment of duty of Rs. 17.92 lakh was granted on 138 documents of mortgage deeds executed by the land holders for obtaining loans of Rs. 4.24 crore from banks between April 2004 and February 2008. During scrutiny of these documents, it was seen that specific purpose of loan was not mentioned in 81 documents, while in 42 documents, the purpose of loan was other than agriculture and in six cases, holding of land was more than 10 hectares (cases pertaining to the period prior to 25 September 2006). Besides, in nine documents executed between May and December 2007, the loan amount in each case was more than Rs. 10 lakh. This resulted in irregular grant of exemption from payment of duty of Rs. 17.92 lakh.

After this was pointed out, the IGR intimated (August 2009) that action was in progress. Further development has not been reported (October 2009).

The matter was reported to the Government between April 2008 and April 2009; the reply has not been received (October 2009).

## 5.13 Non-realisation of revenue on instruments executed in favour of co-operative housing societies

As per Government notification of 24 October 1980, instruments executed by or in favour of primary co-operative housing societies for acquisition of land for housing purpose of its members were exempted from payment of stamp duty and registration fee. The exemption was available up to 5 September 2004.

Test check of records of two SR offices Jabalpur and Gwalior, between May 2008 and January 2009 revealed that land valued at Rs. 1.38 crore purchased between September 1996 and August 2003 for housing purpose through seven instruments by four societies was not utilised for housing purpose of the members of the societies and was subsequently disposed of between April 2007 and February 2008 to persons other than members of societies such as builders, individuals etc. Thus, stamp duty and registration fee of Rs. 16.18 lakh was recoverable on these instruments but no action was taken by the registering officer to recover the same.

After the cases were pointed out, the IGR intimated (August 2009) that action was in progress. Further development has not been reported (October 2009).

The matter was reported to the Government between January and May 2009; the reply has not been received (October 2009).

[7] Bhind, Dewas, Jabalpur, Manawar (Dhar), Mhow (Indore), Nagda (Ujjain), Nawgaon (Chhatarpur), Panna and Dhar.

## B - ENTERTAINMENT DUTY

### 5.14 Non-realisation of entertainment duty from cable operators

The Madhya Pradesh Entertainment Duty and Advertisement Tax (MPEDAT) Act, 1936 and Madhya Pradesh Cable Television network (Exhibition) Rules, 1999, provide that every proprietor of cable television network and hotel or lodging houses providing entertainment through cable service shall pay entertainment duty (ED) at the prescribed rates.

Test check of records of three AECs[8] and 11 DEOs[9] between February and December 2008 revealed that ED of Rs. 47.27 lakh was not deposited by 549 cable operators and four proprietors of hotel or lodging houses providing entertainment through cable service during March 2004 to November 2008. The department also did not take any action for recovery the dues. This resulted in non-realisation of duty of Rs. 47.27 lakh.

After the cases were pointed out, AECs Jabalpur, Bhopal and DEOs, Datia, Dewas, Betul, Burhanpur, Vidisha, Badwani, Damoh and Tikamgarh stated between February and December 2008 that action for recovery was being taken. The AEC, Sagar and DEOs, Harda and Shivpuri stated between September and December 2008 that necessary action would be taken after investigation and intimated to audit. The DEO, Rajgarh stated (March 2008) that entire amount had been deposited. However, documentary proof of deposit of amount and further developments in other cases have not been received (October 2009).

The matter was reported to the Excise Commissioner (EC) and the Government in January and February 2009; their reply has not been received (October 2009).

### 5.15 Non-levy of penalty for breach of rules

MP Cable Television Network (exhibition) Rules, 1999 lays down that a proprietor of Cable Television Network (cable operator) shall, within last three days of every month, submit a monthly statement on the basis of a prescribed register maintained by him along with treasury challan for verification to the DEO. It further stipulates that cable operator committing breach of rules shall be punishable with fine up to Rs. 5,000.

Test check of records of three DEOs[10] and AEC, Ujjain between February and October 2008 revealed that 312 cable operators failed to submit the monthly statements during April 2005 to September 2008. Consequently, account of the ED payable by the cable operators remained unverified/unreconciled with the challans. The departmental authorities, however, did not take any action to realise penalty of Rs. 15.60 lakh from cable operators responsible for non-submission of the monthly statements. This resulted in non-realisation of revenue of Rs. 15.60 lakh.

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8 Assistant Excise Commissioners: Bhopal, Jabalpur and Sagar.

9 District Excise Officers: Badwani, Betul, Burhanpur, Damoh, Datia, Dewas, Harda, Rajgarh, Shivpuri, Tikamgarh and Vidisha.

10 Badwani, Katni and Sehore.

After this was pointed out, the DEO, Badwani stated (October 2008) that the amount of duty was being paid by the cable operators on time and DEOs, Katni, Sehore and AEC, Ujjain stated (between February and September 2008) that instructions for submission of monthly statements had been/would be issued. Reply is not acceptable because submission of monthly return is a mandatory provision and accuracy of the accounts of the ED Register can not be verified in the absence of submission of the monthly statements on due dates. Besides, the replies do not explain why action to levy penalty was not taken. Further replies have not been received (October 2009).

The matter was reported to the EC and the Government in February 2009; their reply has not been received (October 2009).

## 5.16 Non-levy/recovery of advertisement tax

The MPEDAT Act provides that every proprietor of an entertainment shall pay advertisement tax on every advertisement exhibited at a rate not exceeding Rs. 50 per month.

Test check of records of AEC, Bhopal and 14 DEOs[11] between March and December 2008 revealed that though 991 cable operators during April 2004 to November 2008 did not pay advertisement tax for the period ranging from 6 to 52 months, yet the department did not take any action to realise the same. This resulted in non-realisation of advertisement tax Rs. 12.37 lakh considering minimum of one advertisement per operation per month.

After the cases were pointed out, the AEC/DEOs stated between March and December 2008 that under the rules there was no provision for recovery of advertisement tax from the cable operators. However, fact remains that advertisement tax is leviable under Section 3-C and 2-1 (aa) of the Act ibid.

The matter was reported to the EC and the Government in January and February 2009; their reply has not been received (October 2009).

## 5.17 Non-levy of entertainment duty on cinema houses

The MPEDAT Act provides that where cinematographic exhibitions are carried out in a cinema hall, no duty shall be levied on an amount not exceeding Rs. 2 per ticket charged on account of facilities provided to persons admitted in the cinema hall. The details of facilities provided and the amount spent thereon certified by the chartered accountant (CA) shall be presented by the proprietor of the cinema hall to the collector of the district through the AEC/DEO latest by 30th June of the following financial year. If the collector is not satisfied with the facilities provided, he may recover the duty in respect of the amount allowed for facilities from the proprietor of the cinema house.

Test check of records of six DEOs[12] between February and November 2008 revealed that 24 proprietors of cinema houses collected Rs. 38.39 lakh between April 2004 and March 2008 on sale of tickets for providing facilities to spectators in the cinema houses. The details of facilities provided in cinema halls and accounts of expenditure thereof duly certified by the CA were not

[11] Badwani, Bhind, Burhanpur, Chhindwara, Damoh, Datia, Harda, Katni, Khandwa, Rajgarh, Sehore, Shivpuri, Tikamgarh and Vidisha.

[12] Betul, Harda, Khandwa, Morena, Rajgarh and Tikamgarh.

submitted by the proprietors to the Collectors, but no action was taken by the DEOs for levy of ED on this amount. Thus, ED of Rs. 10.97 lakh leviable on collected amount was not levied.

After the cases were pointed out, the DEO, Tikamgarh stated (July 2008) that there was no provision in the rules for levy of duty on such amount collected by proprietors. The reply is factually incorrect. In remaining cases, the DEOs stated between February and November 2008 that necessary action would be taken and intimated to audit. Further report has not been received (October 2009).

The matter was reported to the EC and the Government in January and February 2009; their reply has not been received (October 2009).

## C - LAND REVENUE

### 5.18 Non-levy/recovery of process expenses

As per Section 4 of the Madhya Pradesh *Lokdhan Shodhya Rashiyon Ki Vasuli Adhiniyam,* 1987, process expenses at the rate of three *per cent* of principal amount shall be recovered from the defaulters and deposited in the treasury.

Test check of records of 28 *tahsils*[13] between April 2008 and January 2009 revealed that process expenses of Rs. 1.53 crore was recoverable from the defaulters in 3,259 cases, but the *tahsildar* did not include the same in the relevant demand notices of the principal amount of Rs. 51.14 crore. This resulted in non-levy/realisation of process expenses of Rs. 1.53 crore.

After the cases were pointed out, the Government intimated (September 2009) that in case of *Tahsildar*, Sendhwa an amount of Rs. 30,007 had been recovered. The *Tahsildars*, Bhitarwar, Tonk khurd, Gwalior, Pipariya, Shajapur, Sehore, Ashta and Nateran (Vidisha) stated (October 2008) that action would be taken to recover the process expenses. The *Tahsildars*, Begumganj, Dabra, Huzur, Mandla, Pichhore, Shivpuri, Khargone and Ujjain stated (September 2008) that matter will be taken up with banks for demanding process expenses. *Tahsildar*, Datia stated (December 2008) that action would be taken after apprising the district office of the position. Further developments have not been reported (October 2009).

The *Tahsildar*, Bhawara (Jhabua) and Amla (Betul) stated (September 2008) that the Banks had mistaken in not depositing the money of process expenses. *Tahsildar*, Bandhavgarh stated (September 2008) that the amount relating to process expenses was received through cheques. However, the fact remains that there was nothing on record to prove that the amount has been deposited under proper heads.

[13] Ambah (Morena), Amla (Betul), Ashta (Sehore), Bhawara (Jhabua), Bhind, Bhitarwar (Gwalior), Bandhavgarh (Umaria), Begumganj (Raisen), Chachoda (Guna), Dabra (Gwalior), Datia, Gwalior, Huzur (Bhopal), Itarsi (Hoshangabad), Khargone, Mandla, Mehgaon (Bhind), Nateran (Vidisha), Pipariya (Hoshangabad), Pichhore (Shivpuri), Pushparajgarh (Anuppur), Sagar, Sehore, Shivpuri, Shajapur, Sendhwa (Badwani), Tonk khurd (Dewas) and Ujjain.

*Tahsildar*, Pushparajgarh (Anuppur) stated (September 2008) that there was no such instruction of the Government. The reply is contrary to the provisions of the *Vasuli Adhiniyam* ibid.

Replies from the remaining six[14] *Tahsildars* have not been received (October 2009).

The matter was reported to the Government between April and December 2008; their reply has not been received (October 2009).

## 5.19 Non-raising of demand of premium, diversion rent and fines

According to Madhya Pradesh Revenue Book Circular (RBC) issued under the MP Land Revenue Code (MPLRC), 1959, the sub divisional officer (SDO) (Revenue) shall intimate to the concerned *tahsildar*, the demand for re-assessed rent on diverted land used for purposes other than agriculture to incorporate the change in the *tahsil* record. Further, demand of premium, diversion rent and fine imposed under the penal provisions of MPLR Code and RBC is to be noted in the demand and collection register of the concerned *tahsil*.

Test check of records of three *tahsils*[15] between September 2008 and January 2009 revealed that diversion rent, premium and fine of Rs. 1.27 crore in respect of 245 cases for the period from October 2003 to September 2008 was not noted in the demand and collection register of the concerned *tahsils*. Hence, no demand could be raised for the same. This resulted in non-realisation of revenue of Rs. 1.27 crore.

After the cases were pointed out, the Government stated (April 2009) that the *tahsildar* Ujjain had raised the demand of diversion rent and premium. The SDO (revenue), *tahsil* Shajapur stated (September 2008) that B-1[16] was not prepared due to the death of the Revenue Inspector. *Tahsildar*, Huzur (Bhopal) stated (January 2009) that the recovery of diversion rent, premium and fine was under process. Further developments have not been reported (October 2009).

The matter was reported to the Commissioner, Revenue and the Government between January and March 2009; reply of the Government in remaining two cases has not been received (October 2009).

## 5.20 Non-assessment/short realisation of diversion rent and premium

According to the MPLRC, where land assessed for one purpose is diverted for any other purpose, then revenue payable on such land shall be revised and re-assessed in accordance with the purpose for which it has been diverted from the date of such diversion at the prevailing rates fixed by the Government from time to time. Besides, premium at prescribed rates is also leviable.

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14 Ambah, Bhind, Chachoda, Itarsi, Mehgaon and Sagar.

15 *Tahsil* Huzur (Bhopal), Shajapur, Ujjain.

16 B-1 is a *Kistbandi, Khatoni* of diversion rent and premium prepared by assessing officer in triplicate.

**5.20.1** Test check of records between April 2007 and October 2008 revealed that there was short realisation of diversion rent and premium of Rs. 54.64 lakh due to underassessment as per details mentioned below:

**(Rupees in lakh)**

| Sl. no. | Name of Unit | No. of cases | Land (in hect.) | Audit observations | Amount of Diversion rent and premium | | Short realisation |
|---|---|---|---|---|---|---|---|
| | | | | | Realisable | Realised | |
| 1. | 2. | 3. | 4. | 5. | 6. | 7. | 8. |
| 01 | Collectorate, Indore | 07 | 15.932 | Application of incorrect rates of diversion rent and premium resulted in short assessment. | | | |
| | | | | (1) Short levy of premium of Rs. 7.40 lakh (four cases).<br>(2) Short levy of diversion rent of Rs. 5.60 lakh (1 case).<br>(3) Short levy of premium and Diversion rent of Rs. 74,000 and Rs. 6.90 lakh respectively (two cases). | 27.20 | 6.56 | 20.64 |
| 02. | *Tahsildar*, Morena | 03 | 30.361 | (1) Short levy of Diversion rent of Rs. 1.70 lakh (one case).<br>(2) Short levy of Premium and Diversion rent of Rs. 1.01 lakh and Rs. 1.86 lakh respectively (two cases). | 14.37 | 9.80 | 4.57 |
| 03 | Collectorate, Khandwa | 03 | 1.540 | Short levy of premium and Diversion Rent of Rs. 1.69 lakh and Rs. 1.40 lakh respectively | 3.44 | 0.35 | 3.09 |

| 1. | 2. | 3. | 4. | 5. | 6. | 7. | 8. |
|---|---|---|---|---|---|---|---|
| 04. | SDO (Revenue) Indore *Tahsil* | 01 | 15.896 | Incorrect calculation by the SDO resulted in short assessment of diversion rent and premium of Rs. 6.08 lakh and Rs. 12.64 lakh respectively. | 23.53 | 8.59 | 14.94 |
| 05. | Collecto-rate, Bhopal | 02 | 8.822 | | 6.98 | 3.20 | 3.78 |
| 06. | -do- | 03 | 10.146 | The land was assessed incorrectly at residential rates in place of commercial rates resulting in short assessment of diversion rent and premium of Rs. 1.54 lakh and Rs. 6.08 lakh respectively. | 15.83 | 8.21 | 7.62 |
| **Total** | | **19** | | | **91.35** | **36.71** | **54.64** |

After the cases were pointed out, the SLR (Diversion), Collectorate Indore stated (September 2008) that necessary action would be taken after examining the cases while SDO (revenue), *tahsil* Morena stated (October 2008) that demand notice would be issued and necessary action will be taken. Further developments have not been received (October 2009).

The SLR (Diversion), Collectorate Khandwa stated (August 2008) that since the rates for the village were not available, the rates for adjoining village had been applied. Moreover, the applicant had demanded diversion of 625 square meters of land. It was observed that Malipura village is situated towards Khandwa city, nearest to Mali village. Hence the rate of Mali village should have been applied. Besides, 0.74 acre land (2,995 square meter) was sanctioned by the Deputy Director of Town and Country Planning, Khandwa vide order dated 19 September 2005 while diversion was admitted only for 625 square meters.

The SDO (Revenue), Indore reassessed the case and raised a demand of Rs. 10.69 lakh (April 2007). Collector (Diversion), Bhopal intimated (June 2009) that the case of Bawadiya Kalan had been reassessed (December 2008) and demand was raised for Rs. 4.88 lakh. In the case of Koluan Kalan it was stated that diversion was allowed for residential purposes and was assessed accordingly. The reply does not explain the constraints in allowing commercial diversion despite applicants request for the same.

The SDO, Bhopal stated (January 2008) that the land was assessed at residential rates as the same had to be used for college building in public interest. Reply is not acceptable because college buildings are not used for residential purposes, instead they are commercial buildings.

**5.20.2** Test check of records of Collectorate, Bhopal (Diversion section) in January 2008 revealed that land measuring 31.08 lakh square feet was purchased by the Madhya Pradesh Housing Board (MPHB), Bhopal

for construction of residential colonies at five[17] localities of Bhopal during the period 2001-02 to 2005-06, but neither any survey was conducted by the department, nor was the diversion rent and premium assessed by the department for the land upto January 2008. This resulted in non-assessment of revenue of Rs. 46.80 lakh (diversion rent Rs. 19.18 lakh and premium Rs. 27.62 lakh).

After the cases were pointed out, the SDO (Diversion), Bhopal stated (January 2008) that MPHB had not given any application for diversion of such land. He further added that matter would be referred to the Government. Further development has not been reported (October 2009).

**5.20.3** Test check of records of Collectorate, Khandwa (Diversion Section) and SDO, *tahsil* Morena between July and October 2008 revealed that agricultural land measuring 52.727 hectare was purchased by MPHB for construction of residential colonies in village Malipura of Khandwa district and Morena *tahsil* during the year 2002-03. However, diversion of the land was neither carried out, nor diversion rent and premium was assessed for this diverted land. This resulted in non-assessment of diversion rent and premium of Rs. 43.21 lakh (Premium Rs. 24.33 lakh and diversion rent Rs. 18.88 lakh).

After the cases were pointed out, the SDO, Morena *tahsil* and Superintendent of Land Record (SLR), Khandwa (Diversion) stated between July and October 2008 that necessary action would be taken after spot verification. Further developments have not been reported (October 2009).

The cases were reported to the Commissioner, Land Record and Settlement and the Government between April and December 2008; their reply has not been received (October 2009).

## 5.21 Non-recovery of collection charges

According to the *Panchayat Raj Adhiniyam,* 1993 and instructions (June 1999) issued thereunder, the amount collected by the Government on account of land revenue cess, fee and other taxes shall be credited to the *'Panchayat Raj Nidhi'* after deducting 10 *per cent* of the amount as collection charges.

Test check of records of 24 *tahsils*[18] between April 2008 and January 2009 revealed that revenue of Rs. 3.85 crore was collected and credited to *Panchayat Raj Nidhi.* However, the *tahsildars* concerned failed to deduct collection charges of Rs. 38.50 lakh. This resulted in non-recovery of revenue of Rs. 38.50 lakh.

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17 Arera Hills, Dharampuri; Shyamala Hills; Hinotiya Alam (Rural huzur); Kohefizan Bairagarh and Nishatpura Arif Nagar.

18 Ashoknagar, Ashta (Sehore), Ambah (Morena), Ater (Bhind), Badwani, Begumganj, Bhind, Bhawara (Jhabua), Datia, Ganjbasoda (Vidisha), Hatta (Damoh), Huzur (Bhopal), Itarsi, Khargone, Lahar (Bhind), Mehgaon (Bhind), Morena, Nateran (Vidisha), Pichhore (Shivpuri), Sagar, Sehore, Shivpuri, Sendhwa (Badwani) and Tonk khurd (Dewas).

After the cases were pointed out, the Government intimated (between June and September 2009) that in case of eight[19] *tahsils* an amount of Rs. 15.66 lakh had been recovered. However, *tahsildars*, Ater (Bhind), Ashoknagar, Begumganj and Khargone stated between June and December 2008 that necessary action would be taken to deposit the charges under proper major head. *Tahsildars*, Bhind, Datia and Mehgaon stated (October and December 2008) that matter would be taken up with the banks towards recovery of collection charges. *Tahsildars*, Ambah, Bhawra, Ashta and Huzur, stated between June and December 2008 that no such order had been received. Reply is not acceptable because it is laid down in the *Adhiniyam* itself and no further orders are required to be issued. *Tahsildars*, Itarsi and Lahar stated (September and October 2008) that it was related to district *panchayat* and therefore, had been deposited in the account of *Zila Panchayat*. Their replies are not acceptable because 10 *per cent* collection charges were not deducted and deposited under proper major head. *Tahsildar*, Sehore stated (October 2008) that collection charges were being deposited separately. Reply is not acceptable because no evidence was produced to audit.

The matter was reported to the Government in February 2009; the reply has not been received (October 2009).

## 5.22 Short/non-recovery of premium and ground rent in respect of *Nazul* land and non-levy of interest on unpaid amount

As per instructions of the State Government (Department of Revenue) dated 21 January 1987, if the premium and ground rent is not paid within the stipulated period, interest at the rate of 15 *per cent* per annum is required to be levied.

Test check of records of *tahsil*, Indore (*nazul* branch) in April 2007 revealed that although premium was due in 21 cases, but it was not paid by the lessees within the stipulated period. However, the departmental authorities did not recover the unpaid amount of premium and interest leviable thereon. This resulted in non-realisation of revenue of Rs. 24.69 lakh (premium Rs. 4.20 lakh and interest Rs. 20.49 lakh).

After the cases were pointed out, the *Nazul* officer stated (April 2007) that the renewal of cases were under process and audit would be intimated after these are completed. Further developments have not been reported (October 2009).

The matter was reported to the Commissioner, Land Record and Settlement and the Government in May 2008; their reply has not been received (October 2009).

## 5.23 Non-assessment and levy of *panchayat* cess on diversion rent

*Panchayat Raj Adhiniyam*, 1993 provides that *Panchayat cess* is leviable for each revenue year on every land holder and the Government lessee in respect of land held by him in the '*gram Panchayat*' area at the rate of 50 paise per rupee of land revenue or rent assessed for each piece of land.

[19] Badwani, Ganjbasoda, Hatta, Nateran, Pichhore, Sagar, Sendhwa and Tonk khurd.

The cess is leviable in addition to the land revenue or rent. Under section 58 (2) of MPLRC, diversion rent is included in the definition of land revenue, hence *Panchayat cess* is leviable on diversion rent also.

Test check of records in four *tahsils*[20] and Collectorate, Guna (diversion section) between August and October 2008 revealed that in 525 cases, *panchayat cess* amounting to Rs. 20.52 lakh was not levied on diversion rent of Rs. 41.04 lakh in respect of land pertaining to *gram panchayat* areas. This resulted in non-levy of *panchayat* cess of Rs. 20.52 lakh.

After this was pointed out, *tahsildar*, Gwalior did not offer any specific reply and in the remaining cases, the assessing authorities stated between August and October 2008) that demand would be raised as per rules. Further developments have not been received (October 2009).

The matter was reported to Commissioner, Revenue and the Government between October and December 2008; their reply has not been received (October 2009).

## 5.24 Non-renewal of permanent lease of *Nazul* plots

Under MPLRC, rent payable for a plot in an urban area (*nazul* plot) held on lease, shall be deemed to be due for revision when the lease becomes due for revision. The revised rent is fixed on the basis of standard rates notified and prevalent at the time of renewal and shall not exceed six times of the rent payable immediately before the revision.

Test check of records of Collectorate, Indore (*nazul* section) in June 2008 revealed that 17 permanent leases granted for 30 years which fell due for renewal between 2003-04 and 2006-07 were not taken up by the department for renewal. This resulted in non-realisation of revenue of Rs. 13.91 lakh.

After the cases were pointed out, the *nazul* officer stated (June 2008) that action for renewal of leases would be taken after scrutiny of the cases. Further development has not been reported (October 2009).

The matter was reported to the Commissioner, Revenue and the Government in July 2008; their reply has not been received (October 2009).

[20] Gwalior, Gohad, Shajapur and Sehore.

# CHAPTER VI: FOREST RECEIPTS

## 6.1 Results of audit

Test check of the records of forest receipts during the year 2008-09 revealed non/short realisation of revenue due to non-exploitation of bamboo/timber, low yield of timber/bamboo, shortage of forest produce, loss of revenue etc, amounting to Rs. 426.09 crore in 118 cases which can be categorised as under:

**(Rupees in crore)**

| Sl. No. | Category | Number of cases | Amount |
|---|---|---|---|
| 1 | **Forest Receipts in Madhya Pradesh (A Review)** | 1 | 222.67 |
| 2. | Non-realisation of revenue due to non-exploitation of bamboo/timber coupes. | 16 | 10.29 |
| 3. | Short realisation due to low yield of timber/bamboo against estimated yield. | 17 | 4.48 |
| 4. | Non-realisation due to deterioration/shortage of forest produce. | 09 | 1.37 |
| 5. | Loss of revenue due to non accounting of forest produce. | 03 | 0.62 |
| 6. | Short realisation of revenue due to re-measurement of timber. | 03 | 0.60 |
| 7. | Short realisation due to sale below upset price. | 03 | 0.48 |
| 8 | Other irregularities | 66 | 185.58 |
| **Total** | | **118** | **426.09** |

During the year 2008-09, the department accepted loss of Rs. 42.72 crore in 14 cases pointed out during 2008-09. An amount of Rs. 43,000 was recovered in one case.

A performance review of **'Forest receipts in Madhya Pradesh'** involving deferment/loss of revenue of Rs. 222.67 crore is mentioned in the following paragraphs.

## 6.2 Forest Receipts in Madhya Pradesh

### Highlights

- Due to incorrect classification of Commercial tax/VAT receipts under forest head, receipts of Forest Department were overstated by Rs. 270.67 crore.

**(Paragraph 6.2.6)**

- Due to absence of any system to monitor timely preparation of working plan, revenue of Rs. 185.84 crore remained deferred.

**(Paragraph 6.2.7.1)**

- Lack of any system to monitor timely preparation and submission of coupe records resulted in deferring and non-realisation of revenue of Rs. 143.80 crore.

**(Paragraph 6.2.8.1)**

- Non-exploitation of bamboo as per the working plan resulted in loss/deferring of revenue of Rs. 11.06 crore.

**(Paragraph 6.2.8.3)**

- Delay in communication of sanction of bids resulted in blocking of revenue of Rs. 9.38 crore.

**(Paragraph 6.2.9)**

- Delay in remittance of revenue in government account resulted in late accounting of Rs. 13.40 crore.

**(Paragraph 6.2.10)**

- Lack of uniform procedure for working out the cost of illicitly felled trees and seized material resulted in under reporting of revenue loss of Rs. 76 lakh.

**(Paragraph 6.2.11.2)**

- Large variation in the estimated and actual yields of forest produce resulted in loss of revenue of Rs. 4.80 crore.

**(Paragraph 6.2.12)**

- Sale of timber below upset price resulted in loss of revenue of Rs. 1.52 crore.

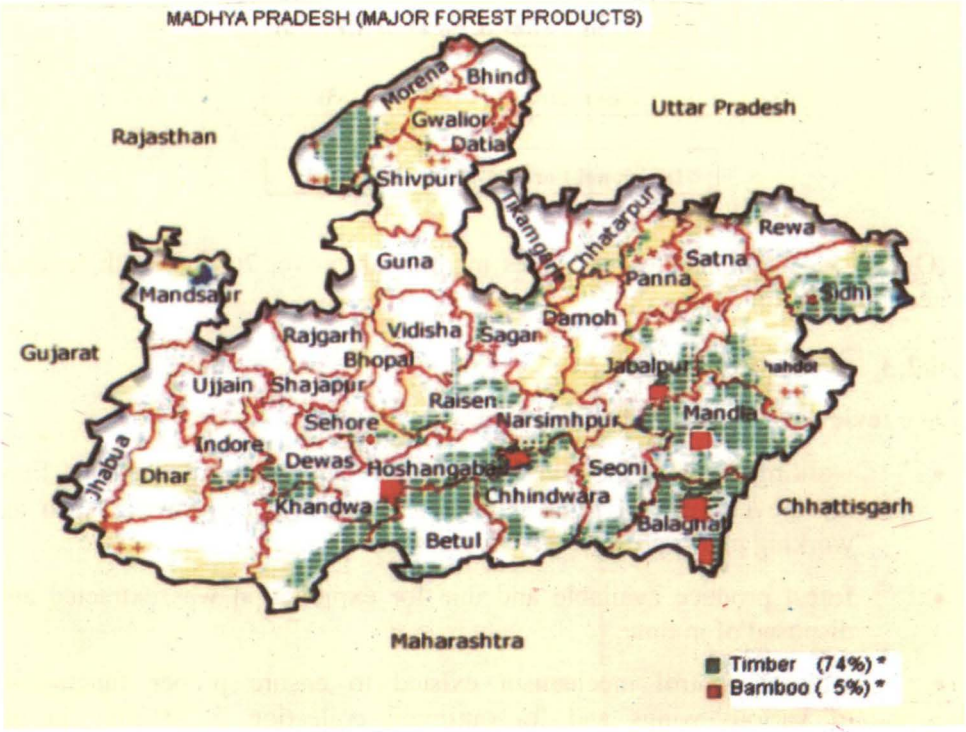
**(Paragraph 6.2.13)**

### 6.2.1 Introduction

Forests of Madhya Pradesh constitute 30.71 per cent of the geographical area of the state and 12.44 per cent of the forest area of the country. The forest cover is concentrated in the central, eastern and southern part of the state. The main forest products which generate revenue are timber, bamboo, fuel wood (wood) & tendu patta, sal seed, harra, gums, chironji, flowers and seeds of mahua etc. (non-wood). In addition, compensation including fine is imposed for unauthorised use of forestland and illicit felling of trees. Trade of non-wood produce is done by MP Minor Forest Produce Federation while trade in wood produce is done departmentally through auction and by *nistari*[1] sale to consumers.

For the purposes of harvesting of forest produce and treatment of forestland, the forest area is divided into 'coupes[2]' and 'compartments[3]'.

The concentration of timber and bamboo in various parts of the State is shown in the map below.




* Contribution to forest revenue

**Collection of forest receipts[4] in Madhya Pradesh for the period from 2004-05 to 2008-09 was reviewed in audit, which revealed a number of system and compliance deficiencies as discussed in the succeeding paragraphs.**

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1 *Nistari* sale means forest produce i.e., poles, bamboo and fuel wood sold to farmers, forest dwellers etc. for domestic use at concessional rates.

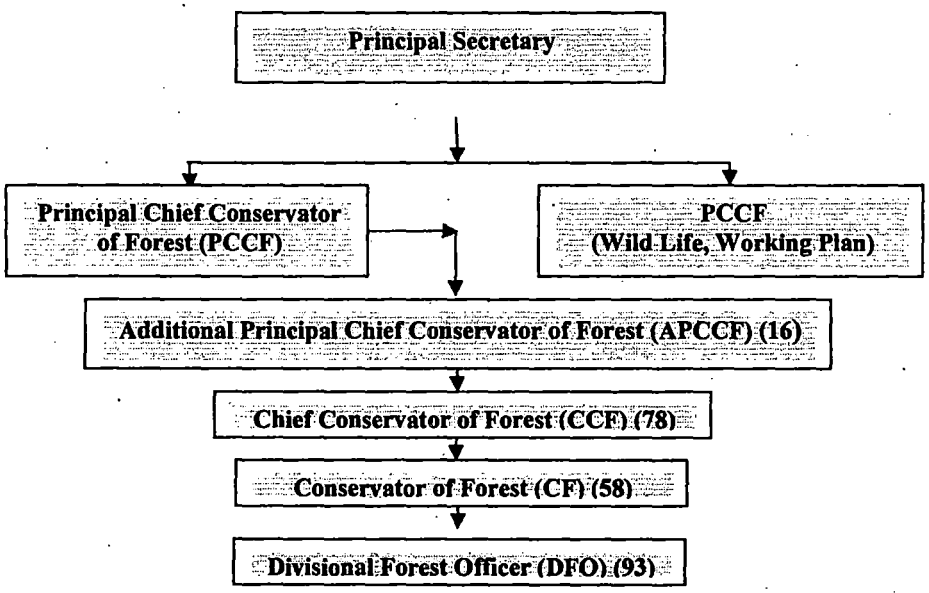
2 Coupe is a demarcated forest area where the exploitation is to be carried out.

3 Compartment is the smallest unit of management of forest.

4 Trade in wood forest produce (Timber, fuel wood and bamboo).

### 6.2.2 Organisational set up

The Department functions under the overall control of the Principal Secretary at the Government level while the Principal Chief Conservator of Forests (PCCF) is responsible for the overall administration of the department. The following chart shows the organisational set up upto the divisional level.




(Out of 93 divisional forest offices mentioned above, 76 deal with revenue generating activities).

### 6.2.3 Audit objectives

The review was conducted to ascertain whether:

- working plans of the divisions were prepared and got approved from the Government of India in time and the activities envisaged in the working plan were executed as per schedule;
- forest produce available and due for exploitation was extracted and disposed of in time;
- internal control mechanism existed to ensure proper functioning of various wings and for optimum collection of revenue in the department.

### 6.2.4 Scope of audit

The review of collection of forest receipts was conducted during October 2008 and April 2009. The records of five years from 2004-05 to 2008-09 were test checked in the office of the PCCF and in 16 divisions[5]. Besides, information

[5] Balaghat South {(General)(G)}, Balaghat West {(Production)(P)}, Chhindwara (P), Chhindwara West (G), Dewas (G), Dindori (G), Dindori (P), Harda (P), Hoshangabad (G), Indore (G), Khandwa (G), Khandwa (P), Mandla (P), Mandla West (G), Seoni North (P) and Seoni South (G).

was collected from eight divisions[6]. The divisions were selected on the basis of simple random sampling without replacement method.

### 6.2.5 Acknowledgement

The Indian Audit and Accounts Department acknowledges the cooperation of the Forest Department for providing information and records to audit. An entry conference to discuss the audit objectives and scope of audit was held in February 2009 in which the PCCF and Additional PCCFs along with CCF (Budget) were present. The findings of the review were communicated to the department/Government in June 2009. Replies of the department has been received and incorporated in the respective paragraphs. The department did not arrange any conference to discuss the results of audit and recommendations despite request (June 2009). Reply of the Government has not been received (October 2009).

### Audit findings

### 6.2.6 Trend of revenue

The average contribution of forest receipts to the non tax revenue of the state during the last five years has been 18.69 per cent.

The annual budget estimates of the divisions are prepared by the DFOs based on the estimated yield for the year. These are submitted to the PCCF through the CF of the circle and finally sent to the Finance Department in October for approval.

The trend of revenue for the last five years ending 31 March 2009 is as shown in the table below.

**(Rupees in crore)**

| Year | Budget estimates | Total Receipts | Surplus (+)/ shortfall (-) | Percentage of variation |
|---|---|---|---|---|
| 2004-05 | 500 | 559.11 | 59.11 | 11.82 |
| 2005-06 | 422 | 490.40 | 68.40 | 16.21 |
| 2006-07 | 450 | 536.50 | 86.50 | 19.22 |
| 2007-08 | 543 | 608.89 | 65.89 | 12.13 |
| 2008-09 | 600 | 685.60 | 85.60 | 14.27 |

As a general rule, the classification of transactions in Government accounts shall have closer reference to the function, programme and activity of the Government and the object of the revenue or expenditure, rather than the department in which the revenue or expenditure occurs (Rule 308 of the MP Financial Code; Rule 29 of Government Accounting Rules, 1990).

In all the production divisions, it was noticed that commercial tax/Value Added Tax recovered from the sale of forest produce was included in the forest receipts (Major Head (MH) 0406 'Forestry and Wild life') by the department on the basis of a letter of the Finance Department

[6] Betul (P), Jabalpur (G), Sehore (P), Shahdol North (G), Shahdol South (G), Sidhi East (G), Sidhi West (G) and Vidisha (G).

dated 28 February 1987[7], mentioned in Madhya Pradesh Forest Financial Rule (MPFFR). Thus, the actual receipts for the five years also included Rs. 270.67 crore (9.4 per cent of the total receipts) received on account of commercial tax/VAT during these years.

The practice of depositing sales tax receipts in the forest head has the effect of not only overstating the actual receipts of the department, but the amount accruing on account of commercial tax/VAT also not being reflected as receipts of Commercial Tax Department (MH 0040 'Tax on sales, trade') in Government Account, leading to understatement of its commercial tax/VAT receipts. This practice is contrary to the principles of classification of transactions in Government Accounts.

After this was pointed out, the department stated (September 2009) that this was done in accordance with the MP Forest Financial Code. It was also stated that a note had been sent (August 2009) to the State Government to consider it as a policy matter.

**The Government should consider taking suitable steps to correct this anomaly in classification of transactions as per the MP Financial Code and Government Accounting Rules.**

## System deficiencies

### 6.2.7 Preparation of Working Plan

Forests are managed according to provisions of approved working plans[8] (WP), which are generally prepared for a period of 10 years for each division and revised from time to time. The forest produce resulting from these operations generate revenue for the Forest Department. Non-existence of WP has a major impact on the growth and regeneration of the forests. It also leads to halting of all activities relating to extraction of forest produce from the forests, which affects the revenue of the department. Thus, it is imperative that the WPs should be prepared and approved well in advance in the interest of the environment as well as revenue. As per prescribed procedure, the marking of trees in due compartments as per working plan is done by the general division and handed over to the production division for exploitation with estimates of obtainable timber.

**Audit scrutiny revealed a number of deficiencies in the preparation as well as implementation of the WPs, which are mentioned below:**

#### 6.2.7.1 Deferment and non-realisation of revenue due to lack of monitoring of working plan

Conservator of Forest of WP divisions are required to take up the work of revision of WP before three years of the expiry of the existing plan so as to allow sufficient time for obtaining the sanction of Government of India (GOI) through the PCCF.

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7 Government of Madhya Pradesh, forest department letter No. 197/J/17-11/4/B-1/87 dated 28.02.1987.

8 Working Plan is a written scheme of management aiming at continuity of policy and action and controlling the treatment of forest.

Information collected from the PCCF office revealed that out of 62 general divisions, 18 divisions[9] did not have continuous WP for one to eight years during 2000-01 to 2008-09, due to delay in submission of WP to the GOI. **It was, however, observed that due to the absence of any system to monitor the timely preparation of WP, substantial revenue remained deferred and unrealised as mentioned below.**

- In West Mandla Division, it was noticed that though the existing WP expired in 2002-03, the subsequent WP could be implemented from 2006-07 only due to delay in submission of WP for approval of GOI. Consequently, exploitation of 16 compartments, which was due in 2003-04, was made during 2005-06[10] and 2006-07. This resulted in deferring of revenue of Rs. 31.53 crore.

- In Hoshangabad Division, 3,924.01 hectares of workable bamboo area, though included in the previous WP (1984-1999) was not included in the newly approved WP of the division for the period 2000-01 to 2009-10. After the physical visit by the CF, Hoshangabad circle, the matter was reported to the PCCF in January 2007, who permitted to exploit this area as per proposal of the CF w.e.f. 2007-08. Thus, the bamboo area remained untreated during 2000-2001 to 2006-07, resulting in non-realisation of revenue of Rs. 1.19 crore.

- In case of seven divisions[11], 510 compartments having 53,736.13 hectares area due for exploitation (from 2004-05 to 2008-09) were not exploited till March 2009 due to non-existence of WP, which resulted in non-extraction of estimated 99,146.299 cum timber and 95,838 fuel stacks. This resulted in non-realisation of revenue of Rs.153.12 crore.

After this was pointed out, all the DFOs stated between December 2008 and April 2009 that the coupes could not be exploited due to non-approval of WP and non-receipt of permission for exploitation from GOI. As regards non-inclusion of bamboo area in Hoshangabad division, the PCCF (WP) stated (May 2009) that final reply would be sent after receiving the report from CCF, Hoshangabad. The replies were silent regarding the reasons for delayed submission of WPs. The department stated (September 2009) that chances of delay could not be ruled out in a large state like MP where as many as 62 WP were regularly revised and implemented. It was also stated that an elaborate monthly monitoring system had recently been put in place, which regulated the process of revision and approval of WP more efficiently. The APCCF (Finance and Budget) accepted that the WP of West Mandla was delayed. In the case of Hoshangabad division, he stated that the bamboo area was not included in current WP due to insufficient bamboo stock. The reply is not correct as the result of exploitation for the year 2007-08 shows that newly approved coupes had average production of 0.581 NT per hectare, which is much higher (2.5 times) than regularly treated coupes.

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9 Anuppur, Badwani, Balaghat South, Burhanpur, Chhindwara East, Indore, Jabalpur, Khandwa, Khargone, Mandla West, Rajgarh, Sagar South, Sendhwa, Shahdol North, Shahdol South, Sheopur, Sidhi East and Vidisha.

10 Under special permission of GOI subject to approval of WP.

11 Balaghat South, Burhanpur, Indore, Jabalpur, Mandla West, Shahdol South and Sidhi East.

**The Government may consider prescribing periodic report/return to be submitted by the divisions for effectively monitoring the status of WPs in the State.**

### 6.2.8 Implementation of WP

As per provisions of the WP and instructions issued by Supreme Court (September 2000) and the department (March and June 2002), timely execution of work is mandatory. As per WP, forest area is divided into various working circles and circles are divided into coupes. Marking of the coupes due for exploitation in a particular year is to be done in the year preceding the year in which respective coupe is due for exploitation as per prescription in the WPs. Non-exploitation of coupes as per the prescription of WPs leads to deferment of revenue realisable from the extracted timber and other forest produce and also blocks regeneration activities affecting future revenue adversely.

As per provision of WP, Coupe Control Book (CCB) should be maintained to compare the actual exploitation in the year with the prescription of the WP and to record the other regeneration activities executed in a particular coupe. Similarly, Compartment History (CH) for each compartment should be maintained and updated showing the details of rootstock, production, physical and financial details of works executed. After completion of five years of felling/treatment as per WP, the DFO and other higher authorities should inspect the compartments to assess the result of works executed and record an analytical report in the CH.

**(Timber)**

#### 6.2.8.1 Non-maintenance of records

**Audit scrutiny revealed that, in eight[12] general divisions, the CCBs were not maintained properly. Actual exploitation and any balance thereon and other silvicultural activities were not found mentioned in the control book. Compartment history was also not found updated. It was also observed that most of the divisions did not maintain the records to monitor timely preparation and submission of CCB and CH to ensure that the exploitation activities were being carried out as per prescriptions of the WP. No analytical report was found recorded in CH after completion of five year of works executed. It was further observed that no return is prescribed by the PCCF office to monitor the timely preparation of these vital records.**

- Scrutiny of records revealed that, in 10 General Divisions[13], 1,116 compartments due as per WP during the years 2003-04 to 2008-09 were exploited after delay of one to two years resulting in deferring of revenue of Rs. 93.22 crore for one to two years.

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12 Chhindwara West, Dewas, Dindori, Jabalpur, Khandwa, Mandla West, Shahdol North and Vidisha.

13 Burhanpur, Chhindwara East, Dewas, Dindori, Indore, Khandwa, West Mandla, North Shahdol, South Shahdol and Vidisha.

Further, in four divisions[14], 332 compartments due for exploitation between 2004-05 to 2008-09 as per their WP, were not exploited resulting in non-realisation of revenue of Rs. 44.92 crore.

After this was pointed out, the DFOs, Dindori and Chhindwara (West) stated between January and April 2009, that the coupes could not be exploited being unprofitable and inaccessible area; The DFOs, North Balaghat and Rewa stated in October 2008 and March 2009, that the coupes could not be exploited due to naxalite and dacoit problem, while the remaining DFOs stated (between October 2008 and April 2009) that coupes could not be exploited in time due to late approval of WP and delay in transfer by the General division. The reply of DFOs are not in consonance with departmental instructions issued in November 2004 which envisaged that all due work as per the WP, even though non profitable, should invariably be carried out.

- Scrutiny of records of three divisions revealed that only 33,169 trees were felled against 60,004 trees marked in 17 coupes. Non-felling of 26,835 trees resulted in non-realisation of revenue of Rs. 5.66 crore as mentioned in table given below:

| Name of division | Due Year | No. of coupes | No. of trees not felled | Estimated yield | | Estimated revenue (Rs. in lakh) |
|---|---|---|---|---|---|---|
| | | | | Timber (cum) | Fuel (Stacks) | |
| Mandla (P) | 2007-08 | 15 | 16,634 | 2,848.000 | 1,203 | 518.43 |
| Dindori (P) | 2007-08 | 01 | 473 | 319.520 | 99 | 44.43 |
| South Shahdol | 2005-06 | 01 | 9,728 | 17.291 | 256 | 2.97 |
| **Total** | | | | | | **565.83** |

After this was pointed out, the DFO (P), Mandla stated (November 2008) that the remaining trees would be felled in the next year 2008-09; DFO (P), Dindori stated (December 2008) that felling could not be completed due to protest of villagers and it would be completed in the next year; DFO, South Shahdol (G) stated (April 2009) that felling could not be done due to non-availability of labour. Non-felling of trees as per prescriptions of the WP not only affects regeneration of forests but also leads to deferment of revenue.

The department accepted (September 2009) that maintenance of CCB and CH has not been done at some places. It was stated that monitoring would be done to ensure compliance in this regard and instructions have been issued to work all the coupes even if they are unprofitable. Regarding short felling of trees the department accepted (September 2009) the observation and agreed to take necessary action to ensure complete exploitation of marked trees.

### 6.2.8.2 Irregular exploitation in timber coupes

As per provisions of WP, any exploitation outside the prescription of WP will be treated as irregular. During the scrutiny of records of North Balaghat (P) division for the period 2007-08, it was noticed that in seven coupes of selection cum improvement working circle, 8,195 trees were marked

[14] Balaghat North (G), Dindori (G), Chhindwara West (G) and Rewa (G).

by General division for exploitation as per provisions for treatment of the working circle in WP and handed over to the production division for exploitation. But as per completion report (June 2008) of the production division, 19,356 trees were felled resulting in unauthorised removal of 11,161 trees and extraction of 3,119.596 cum timber and 4,983 fuel stacks.

After this was pointed out, the DFO in his reply only accounted for a difference of 82 trees, which were exploited as they had already fallen during a storm. The reply does not account for extra removal of the remaining 11,079 trees. The department stated (September 2009) that the reported extra removal was due to clerical error and 19,274 trees were found marked instead of 8195 trees as reported by the DFO in his earlier letter dated 20th August 2009. The reply is not substantiated by the marking records of the General division. The DFO (G), Balaghat communicated 8,195 marked trees due for felling to the DFO (P) in August 2007. The same figures were furnished to audit by the DFO (G) in February 2009. The department needs to further investigate the excess removal and take appropriate action.

Similarly, in South Shahdol division, an area of 1,621.505 hectares was exploited against permission of 1,247.645 hectares. Exploitation of excess area of 373.86 hectares resulted in unauthorised removal of 700.628 cum timber and 729 fuel stacks.

After this was pointed out, the DFO stated (April 2009) that coupe no. III due in 2007-08 was exploited as per provisions of WP for the period 2005-06 to 2014-15 and permission of GOI for felling was under process. The reply is not acceptable as the permission from GOI was not received before felling.

The department accepted (September 2009) the audit observation and stated that appropriate disciplinary action would be taken against the erring staff and officials.

**(Bamboo)**

### 6.2.8.3 Loss/deferment of revenue due to non-exploitation of bamboo as per WP

In the WP, the bamboo coupes are divided into four felling series and each felling series becomes due for harvesting after every four years. Non-exploitation of bamboo coupes results in loss of revenue and also blocks regeneration of new shoots. The PCCF directed (November 2004) that no due coupe should remain unexploited/untreated even if exploitation of coupe is found to be unprofitable and various silvicultural operations should be done for further regeneration.

**Audit scrutiny revealed that bamboo coupes available as per the approved WPs were not fully operated. Also, there was lack of monitoring on working of bamboo coupes as per the approved WPs, due to which the department/Government remained unaware about such non-working of bamboo coupes. The following irregularities were noticed as regards working of bamboo coupes.**

- In six divisions[15] bamboo area of 20,586.477 hectares as prescribed in the WP was not exploited/treated during the period 2005-06 to 2007-08, which could have generated revenue of Rs. 8.62 crore.

After this was pointed out, the DFOs Harda, Hoshangabad and Jabalpur stated (April, October and November 2008) that exploitation was not done due to unprofitable production; DFO, Jabalpur stated (April 2009) that reply would be sent later on and the DFO, South Balaghat stated (April 2009) that exploitation was not done due to non-receipt of haulage[16] tender. The DFOs, North Balaghat (G) and Rewa (G) stated that coupes could not be exploited due to *naxalite* and dacoit problems respectively. The replies contradict the instructions issued by the department (November 2004).

- During scrutiny of records in West Balaghat (P) division, it was noticed that 1,418.130 hectares bamboo area was exploited in the year 2007-08 and 1,417.829 notional ton (NT) commercial and 2,104.964 NT industrial bamboo was extracted against 2,554.012 hectares bamboo area consisting of nine compartments to be exploited as shown in the approved 'Vidohan Yojna'[17] for the year 2007-08. Non-exploitation of remaining 1,135.882 hectares bamboo area resulted in non-extraction of 998.791 NT commercial bamboos and 4,786.505 NT of industrial bamboo leading to loss of revenue of Rs 1.83 crore as well as adverse effects on regeneration of forests.

After this was pointed out, the DFO stated (March 2009) that all workable area due as per WP had been exploited in four coupes. In the progress report, less area has been mentioned due to clerical mistake. The reply is not in conformity with the approved *vidohan yojna* as the workable area of compartments mentioned by the DFO is much less than that mentioned in the approved vidohan yojna.

- In North Balaghat (P) Division, it was observed that five coupes due in 2005-06 and 2006-07 were exploited in 2007-08 resulting in deferment of revenue of Rs. 60.92 lakh from actual yield of 1,357.354 NT bamboos for one to two years.

After this was pointed out, the DFO stated in February 2009 that coupes could not be exploited due to late transfer by general division and lack of sufficient time. The department stated (September 2009) that the reason for non-exploitation in Balaghat and Rewa district was law and order problem; in Harda division, reasons for non-inclusion of some area in WP were being investigated; in Jabalpur division work could not be done due to non-availability of funds; in case of Balaghat division all workable area had been treated and workable area of some coupes was wrongly reported due to clerical mistake. The reply regarding Harda division is not relevant as the loss worked out by audit was for the workable bamboo area due for felling in WP and comments of the department regarding Balaghat division require

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15 North Balaghat (G), South Balaghat (P), Harda (G), Hoshangabad (G), Jabalpur (G) and Rewa (G).

16 Transportation of forest produce from coupe to depots by engaging private transporters.

17 An approved plan for exploitation and transportation of forest produce in respect of each due coupe.

further substantiation with the records. In the case of Rewa and Jabalpur divisions, the aspect of law and order problem and lack of funds should have been addressed in the respective WP.

### 6.2.8.4 Short treatment of rehabilitation of degraded bamboo forest coupes

Test check of records revealed that in DFO (G), West Mandla, though 7,494.41 hectares of bamboo area under rehabilitation of degraded bamboo forest working circle of WP was due for treatment during the years 2006-07 to 2008-09, yet no treatment was done. Non-adherence to prescriptions in the WP adversely affected treatment of degraded bamboo forest and future receipts of revenue.

After this was pointed out, the DFO, West Mandla stated (December 2008) that the treatment could not be carried out due to paucity of funds. The department (September 2009) also reiterated the same reason.

**The Government may make it mandatory for the divisions to prepare the CCBs and CHs and update them regularly. Besides, reports/returns may be prescribed to be furnished by the divisions for effective monitoring by higher authorities.**

### 6.2.9 Blockage of revenue due to delay in communication of sanction of bids

As per clause 2(a) and (b) of *Sthapit* Depot *se Imarati Lakdi ke Vikray ki Sharto ka Viniyaman karne wale Niyam*, 1976 (Rules), the successful bidder in an auction is required to pay 25 per cent of the bid amount within seven days from the date of auction and the balance 75 per cent of the bid amount shall be paid by him within 45 days from the date of sanction of the bid, which is communicated to him in writing. **However, the Rules do not prescribe any time limit for communication of sanction of the bids.**

Test check of records revealed that in seven production divisions[18] for the period from 2005-06 to 2008-09, the sanction of bids in 218 cases were communicated to bidders on different dates for paying the balance 75 per cent of bid amount after delay ranging from 31 to 106 days. **Non-prescription of time limit to communicate the sanction of bids resulted in blockage of revenue of Rs.9.38 crore during the aforesaid period as well as unauthorised aid to the purchasers.**

After this was pointed out, the department stated (September 2009) that delays occurred as the sanction of bids are issued at different levels. It was also stated that prescription of time limit for issue of sanction at various levels was being contemplated.

**The Government may prescribe time bound mechanism for issue of sanction and communication of the sanction.**

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[18] Chhindwara, Dewas, Dindori, Harda, Khandwa, Mandla and North Seoni.

### 6.2.10 Delay in remittance of revenue into government account

Rule 11.v.b of Madhya Pradesh Forest Financial Rules provides that any cheque or bank draft received from private person in lieu of government revenue should be entered in the cashbook and should be remitted into bank/treasury without any delay. As per sub rule 505 of Madhya Pradesh Treasury Code Part-I, The DFO shall ensure that money remitted in treasury is actually credited into government account.

**Audit scrutiny revealed that there was substantial delay in depositing bank drafts received in the divisions on auction of forest produces resulting in deferment of revenue in Government accounts. Due to lack of monitoring, the department remained unaware about such undue delay in remittance of Government dues as mentioned below.**

Scrutiny of records revealed that in 1,120 cases of 12 Divisions[19] bank draft of Rs. 13.35 crore received as a result of auction of timber, registration fee of purchasers etc. during the period from 2004-05 to 2008-09 was remitted/ accounted for in Government account after the delay of 7 to 128 days as detailed below:

| Period | No. of cases | Amount (Rs. in lakh) |
|---|---|---|
| 7 to 30 days | 543 | 696.61 |
| 31 to 90 days | 218 | 199.88 |
| 91 to 128 days | 359 | 438.95 |
| **Total** | **1,120** | **1,335.44** |

Besides, in Jabalpur Division, 708 bank drafts of Rs 5.07 lakh were not remitted even within the validity period (six months). It was also observed that in most of the cases work orders for lifting the purchased material from depot were issued before adjustment of bank drafts.

After this was pointed out, DFO Harda (P) stated (October 2008) that bank had been requested to adjust the draft in time in future; DFO, Jabalpur stated (April 2009) that disciplinary action against responsible person had been taken, while the rest of the DFOs stated (between October 2008 and March 2009) that delay was due to completion of necessary formalities after auction and recording the entries in the bank draft register. The department stated (September 2009) that instructions were being issued by the PCCF office to deposit the bank drafts within the stipulated time.

**The Government may consider prescribing periodic report/return to be submitted by the divisions for monitoring the status of receipt and remittance of bank drafts and other revenues into Government accounts to avoid possible fraud and temporary misappropriation.**

[19] Balaghat West (P), Chhindwara (P), Dewas (G), Dewas (P), Dindori (P), Harda (P), Indore (G), Jabalpur (G), Khandwa (G), Sehore (P), North Seoni (P) and Vidisha (G).

### 6.2.11 Weaknesses in reporting and accountability

#### 6.2.11.1 Non-preparation of Timber Account

Rule 217 of the MP Forest Financial Rules (FFR) prescribes that monthly timber account in Form 20A is to be prepared in the ranges and sale depots to be submitted to the DFOs. It contains information such as the opening balance of forest produce, time when it was received, quantity disposed during the month, balance quantity pending etc., which is vital for monitoring the receipt and disposal of harvested as well as confiscated forest produce by the DFO.

This would also enable detection of any shortage of timber between the coupe and the depot. The DFO submits a monthly report on timely preparation of this account to the CF by 25th of the next month and the report of the circle is further submitted to the CCF.

**Audit scrutiny revealed severe deficiencies in preparation of timber account by the divisions.** It was observed that in 15 divisions[20], timber account was not prepared for various periods between January 1984 and March 2008. Indore and Khandwa general divisions did not mention the period up to which timber account had been prepared. In Mandla (G) Division timber account was not prepared since 1984. Despite non-preparation of timber account for such a considerable period, no effective steps were taken either by the CFs or the CCFs to ensure timely preparation and submission of timber accounts. Thus, due to lack of monitoring on timely preparation of timber account, the department remained unaware of the periodic position of timber felled/seized, disposed of and stock remaining undisposed.

After this was pointed out, DFO, Mandla (P) stated (November 2008) that preparation of timber account was under process while other DFOs stated (between October 2008 to April 2009) that accounts could not be prepared due to non-receipt of account from the ranges. The replies are not acceptable as no control mechanism was in existence at various levels regarding timely submission of timber account. The department accepted (September 2009) that the work of preparation of timber accounts has been lagging behind and concerned DFOs have been instructed to expedite the preparation of timber account.

**The Government may consider making it mandatory for the ranges/ divisions to prepare the timber accounts and submit them within the prescribed timeframe. They may also take steps to ensure monitoring by the CFs and CCFs over timely preparation and submission of the timber accounts.**

#### 6.2.11.2 Under reporting of revenue loss in cases of illicit felling

**The MP Forest Manual does not prescribe the procedure for working out the loss on account of illicit felling.** As per the practice followed by the Forest Department, the loss of revenue due to illicit felling is worked out by deducting the value of seized material from estimated value of

[20] Betul (P), Chhindwara (P), Dewas (G), Dewas (P), Dindori (G), Harda (G), Hoshangabad (G), Indore (G), Jabalpur (G), Khandwa (G), Mandla (P), Mandla West (G), North Shahdol (G), South Shahdol (G) and Vidisha (G).

illicitly felled trees. The cost of illicitly felled trees is based on the schedule of rate (SOR), approved by the CCF/CF for each year, while value of seized material is worked out at sale depot rate (SDR). The SDR is always higher than the SOR as transportation and other departmental expenditure is included in SDR.

It was observed that in five general divisions,[21] 4,660.113 cum of estimated timber was illicitly extracted during 2004-05 to 2008-09 and was valued as Rs. 1.92 crore on the basis of SOR approved by the CCF/CF. During the same period, the divisions seized 2,582.349 cum timber valued as Rs. 2.03 crore on the basis of SDR, which was adjusted from the loss due to illicitly cut trees, calculated as per the SOR and thus net loss worked out to nil. The actual loss should have been worked out by considering SOR in respect of both seized and other material. Considering the SOR in seized timber, the actual loss of revenue worked out to Rs. 76 lakh instead of nil as reported. DFOs, General Division Dewas and Khandwa did not furnish the required information.

After this was pointed out, the DFOs, East and West Mandla, Indore and East Chhindwara stated (December 2008 and March 2009) that value was worked out on the basis of girth class of illicitly cut trees, while in the seized material the value was worked out at SDR. The DFO (G), Dindori stated (January 2009) that the information would be updated after receiving the same from the ranges. The replies are not acceptable, as same rates should have been applied in both cases for correct reporting of losses due to illicit felling. The department stated (September 2009) that calculation of value of illicitly felled trees was based upon "*Vriksha Mulya*" for that girth class while calculation of seized timber was based on sale rate obtained in depot sale. The reply does not explain why uniform rates are not applied for illicit removal and seized timber. Application of uniform rates would enable the department to assess the actual loss due to illicit felling.

**The Government may consider prescribing uniform basis for reporting loss in cases of illicitly felled timber.**

### 6.2.11.3 Internal audit

Internal audit is a vital component of the internal control mechanism which enables an organisation to assure itself that the prescribed systems are functioning reasonably well.

Information furnished by the department revealed that though there was no short fall in its manpower; the Internal Audit Wing (IAW) had inspected 147 out of 180 units (68 per cent) due for inspection during the year 2006-07 to 2008-09. Year wise details of Inspection Reports (IRs) issued and cleared revealed that at the end of August 2008, 157 IRs with 1,651 audit objections were pending for settlement due to non-pursuance with the respective divisions. It was also observed that the percentage of clearance of IRs and audit objections remained nil.

After this was pointed out, the department stated (September 2009) that special efforts would be made for settlement of pending paragraphs. Besides, a roster for IA had also been approved.

[21] Chhindwara East, Dindori, Indore, Mandla East and Mandla West.

**The Government may consider putting in place a strict monitoring mechanism for the functioning of the IAW and also prescribing a time frame for taking remedial measures on its observations.**

## Compliance issues

### 6.2.12 Loss of revenue due to low yield of forest produces

**Low yield of timber**

Marking of coupes due for exploitation and estimation of timber/fuel wood to be obtained is done by the general division. As per instructions issued by the CCF (P) in January 1984, 10 per cent variation between estimated and actual yield of timber and fuel wood is permissible. The PCCF further clarified (March 2004) that the reason for high variation might be investigated and reconciled by joint inspection during exploitation by the authorities of both divisions.

Scrutiny of records revealed that in five divisions,[22] though there was shortfall in the yield of forest produce which ranged between 19 to 100 per cent against the estimated yield, no joint inspection was carried out by the general and production divisions. Such huge variation resulted in loss of revenue of Rs. 91.68 lakh (after deducting 10 per cent permissible variation) as detailed below.

| Name of Division | Year | No. of Coupes | Timber/ fuel wood | Estimated yield (In cum) | Actual yield (In cum) | Short fall | Per centage of shortfall | Loss of Revenue (Rs. in Lakh) |
|---|---|---|---|---|---|---|---|---|
| Hoshangabad (G) | 2007-08 | 16 | Timber | 1,542.835 | 1,197.613 | 345.222 | 22 | 36.62 |
| Mandla (P) | 2006-07 | 09 | Timber | 1,115.000 | 751.641 | 363.359 | 39 | 19.93 |
| | | | Fuel wood | 1,344.000 | 1,094.000 | 250.000 | 19 | |
| | 2007-08 | 02 | Timber | 516.000 | 414.943 | 101.057 | 20 | 9.69 |
| | | | Fuel wood | 270.000 | 146.000 | 124.000 | 46 | |
| Chhindwara (P) | 2006-07 | 02 | Timber | 310.966 | 168.249 | 142.717 | 46 | 16.87 |
| | | | Fuel wood | 190.000 | ----- | 190.000 | 100 | |
| South Shahdol (G) | 2007-08 | 02 | Timber | 175.000 | 98.301 | 76.699 | 45 | 7.38 |
| | | | Fuel. wood | 575.000 | 436.000 | 139.000 | 24 | |
| Indore (G) | 2007-08 | 01 | Timber | 58.124 | 38.050 | 20.074 | 35 | 1.19 |
| | | | Fuel wood | 86.000 | 86.000 | --- | --- | |
| **Total** | | | | | | | | **91.68** |

After this was pointed out, all the DFOs stated between November 2008 to April 2009, that action was in progress to prepare a revised estimate. As a matter of fact, revised estimate can not be prepared prospectively after exploitation and disposal of the timber. As specified in the PCCF's order

[22] Chhindwara (P), Hoshangabad (G), Indore (G), Mandla (P) and South Shahdol (G).

referred to above, this should have been done at the time of exploitation. The department stated that (September 2009) the instructions of APCCF (P) had been reiterated to the DFOs and suitable disciplinary action would be initiated against the staff and officials for such lapses. The SFRI, Jabalpur had also been instructed to examine and revise the form factors for every site quality in different forest divisions.

**Low yield of bamboo**

The CCF (P) clarified (June 1995) that no variation is permissible between estimated and actual yield in case of bamboo exploitation.

Scrutiny of records revealed that in eight divisions, the shortfall in the actual yield of bamboo ranged between 16 to 100 per cent against the estimated yield, which resulted in loss of revenue of Rs. 3.88 crore as detailed below:

| Name of Division | Year | No. of comptts. | Area in Hectare | Estimated yield (NT) | Actual yield (NT) | Short fall (NT) | Per centage of shortfall | Loss of Revenue (Rs. in lakh) |
|---|---|---|---|---|---|---|---|---|
| North Balaghat (P) | 2007-08 (Arrear coupes) | 05 | 1,115.00 | 4,400.000 | 1,357.354 | 3,042.646 | 50 to 100 | 181.74 |
| | 2007-08 | 09 | 1,256.45 | 1,718.000 | 625.133 | 1,092.867 | 34 to 96 | 39.40 |
| West Balaghat (P) | 2007-08 | 08 | 2,147.970 | 2,686.000 | 1,726.163 | 959.837 | 20 to 100 | 56.11 |
| Betul (P) | 2007-08 | 11 | 3,210.166 | 1,833.342 | 943.275 | 890.067 | 16 to 97 | 37.58 |
| Sehore (P) | 2006-07 | 05 | 795.036 | 1,498.000 | 407.745 | 1,090.255 | 63 to 84 | 26.91 |
| | 2007-08 | 05 | 841.083 | 136.42 | 67.011 | 69.409 | 46 to 69 | 3.33 |
| Harda (P) | 2007-08 | 04 | 1,639.80 | 279.986 | 79.402 | 200.584 | 67 to 80 | 17.68 |
| Dewas (G) | 2005-06 | 05 | 1,015.53 | 464.780 | 194.270 | 270.510 | 44 to 92 | 13.53 |
| West Sidhi (G) | 2007-08 | 03 | 1,204.611 | 619.293 | 441.015 | 178.278 | 15 to 84 | 6.68 |
| Khandwa (G) | 2007-08 | 16 | 2,707.73 | 548.000 | 166.350 | 381.650 | 34 to 93 | 4.97 |
| **Total** | | | | | | | | **387.93** |

After this was pointed out, all the DFOs stated (between October 2008 to March 2009) that estimation was done on the basis of sample plots, therefore variation could not be ruled out. However, the fact remains that no variation is permissible as per departmental instructions (June 1995). The department agreed (September 2009) to initiate appropriate disciplinary action against erring staff and officials after conducting thorough scrutiny.

## 6.2.13 Auction of timber

### Loss of revenue due to sale of timber below upset price

As per instructions issued by the Government of MP, Forest Department (September 2003), the upset price of timber is fixed on the basis of average rate of sale of last six months. Optimum receipt from sale depends upon proper logging of timber, correct fixation of upset price and timely disposal of the timber.

Scrutiny of records in seven divisions[23] for the period 2007-08 and 2008-09, revealed that 1,515 lots of timber were auctioned below upset price, resulting in loss of revenue of Rs. 1.52 crore.

Further scrutiny revealed that in Chhindwara (P) division 649 lots (52 *per cent*) out of 1,248 lots (between June and September 2008), in Indore division 429 lots (57 *per cent*) out of 749 lots (between February and December 2008) and in Dewas (P) division 675 lots (55 *per cent*) out of 1,222 lots (between January and September 2008) were sold below upset price ranging from 11 to 81 *per cent*.

After this was pointed out, all the DFOs stated (between October 2008 to March 2009) that timber was auctioned in government interest under the sanction of the competent authority to avoid deterioration in the quality of timber. However, audit observed that no investigation was made for the failure to sell the timber at least on the upset price. The question of deterioration does not arise as the timber was disposed of in first year itself after felling. The department stated (September 2009) that sale below upset price was done within the powers of competent authorities which were exercised as per their discretion in good faith and Government interest. Various reasons such as extraordinary high rates in previous auctions, dispute between the depot authorities and buyers regarding grading of lots etc., were offered to explain rates below the upset price.

**Bidding on Power of Attorney**

It was observed that in Khandwa (P) and Betul (P) divisions during the period 2006-07 to 2008-09, the bids of two bidders in 583 lots were accepted for Rs. 10.48 crore on behalf of 54 firms on the basis of Power of Attorney. This practice encourages collusive bidding and also does not serve the purpose of fair competition.

After this was pointed out, both the DFOs stated (February and March 2009) that bids were accepted on the basis of Power of Attorney of purchasers.

Further, scrutiny of records revealed that in West Balaghat (P) Division, bid sheets of 58 lots for sale of timber through auction during 2008-09 involving sale price of Rs. 66.83 lakh, upset price and signature of second bidder was not found recorded for confirmation of the accepted bid amount.

After this was pointed out, the DFO stated (March 2009) that upset price was not mentioned to increase the chances of obtaining higher sale price and second bidders refused to record their signature. The reply is not in conformity with the instructions of Additional PCCF (Production) (May 2003) regarding recording of signature of second bidder on the bid sheets. The department stated (September 2009) that there was no restriction at present for bidding on behalf of third party on the basis of power of attorney. However, a suitable amendment in the sale conditions would be considered in future. It was also stated that fresh instructions were being issued for strict compliance to the order for recording signature of the second bidder on bid sheets.

[23] Chhindwara (P), Dewas (P), Dindori (P), Harda (P), Indore (G), Khandwa (P) and North Seoni (P).

### 6.2.14 Loss of revenue due to non-disposal of forest produce on time

As per Section 114A of the Forest Manual, useful life of cut timber and bamboo is five years and two years respectively. Therefore, timber and bamboo stored in depots should be disposed of in time to avoid deterioration in quality and to obtain optimum sale value.

Scrutiny of records revealed that in six divisions[24] for the period 2006-07 to 2008-09, forest produce was lying undisposed for more than one to five years, thereby reducing the value of these forest produce by Rs. 19.76 lakh due to deterioration in the quality.

After this was pointed out, the DFO, Hoshangabad stated (November 2008) that auction would be done after seeking permission of the Court and for other lots auction would be done shortly while rest of the DFOs stated (between December 2008 and February 2009) that the forest produce would be disposed of shortly. The department stated (September 2009) that action was in progress to dispose the forest produce. Further development has not been received (October 2009).

### 6.2.15 Loss due to shortage of forest produce found in physical verification

As per Rule 22 (1) of the Madhya Pradesh Financial Code, any loss should be reported to the Head of the Department (HOD) as well as the Accountant General (AG) and after enquiry, action for recovery should be initiated.

During the scrutiny of records, it was observed that in five general divisions[25], for the period 2005-06 to 2007-08 shortage of forest produce of Rs. 7.35 lakh was noticed during physical verification of depots conducted by the forest authorities. Except Khandwa Division, no action for recovery of the loss was initiated. Cases were also not found reported to the HOD/AG.

After this was pointed out, all the DFOs stated (between November 2008 to March 2009) that action for recovery was under process. The department stated (September 2009) that accounts would be corrected in depot verification and in case of any shortage, recovery would be ensured from the concerned staff. Further development has not been reported (October 2009).

### 6.2.16 Conclusion

The review revealed that the systems instituted by the department for realisation of forest receipts in the state were deficient. The WP of some divisions were not in continuous existence while there were delays in approval of the WP, the activities prescribed in the WP were not carried out as per schedule leading to deferment and non-realisation of revenue. The receipts of the department were inflated due to incorrect classification of commercial tax/VAT receipts under the departmental head. Substantial revenue remained blocked due to lack of any provision in the Rules to prescribe time limit

[24] Hoshangabad (G), Mandla (P), West Mandla (G), Dindori (G), Dewas (G) and North Seoni (P)

[25] Hoshangabad, West Mandla, Dindori, Dewas and Khandwa.

for communication of sanctions to successful bidders. Vital control records like CCB, CH and timber accounts were either not maintained or not updated. There was substantial loss of revenue due to huge variation between the estimated and actual yield.

### 6.2.17 Recommendations

The Government may consider implementation of the following recommendations to rectify the system and compliance deficiencies.

- Issue necessary orders for depositing sales tax/VAT under proper head of account;
- prescribe monthly returns to monitor timely preparation of WP and its implementation;
- make it mandatory to prepare and update the CCBs, CHs and timber accounts and submit to the competent authority within the prescribed timeframe;
- prescribe time limit for sanction and communication of sanctions;
- adopt uniform basis for reporting loss in cases of illicit felling;
- prescribe time bound mechanism for timely remittance of Government revenue;
- consider range wise form factor for estimation of forest produce to obviate inordinate variation between estimated and actual produce; and
- strengthen internal audit and pursuance of its observations.

# CHAPTER VII: MINING RECEIPTS

## 7.1 Results of audit

Test check of the records relating to assessment and collection of mining receipts during the year 2008-09 revealed non/short levy of royalty, dead rent, non-recovery of contract money, royalty, mineral area development cess and short levy of interest on belated payment of royalty etc. amounting to Rs. 333.73 crore in 433 cases which can be categorised as under:

**(Rupees in crore)**

| Sl. no. | Category | Number of cases | Amount |
|---|---|---|---|
| 1. | Short realisation/evasion of interest and royalty | 183 | 227.21 |
| 2. | Non/short levy of royalty | 29 | 30.11 |
| 3. | Loss of interest | 107 | 2.06 |
| 4. | Non-levy of dead rent | 77 | 1.18 |
| 5. | Others | 37 | 73.17 |
| **Total** | | **433** | **333.73** |

During the year 2008-09, the department accepted underassessment of royalty and dead rent of Rs. 240.07 crore involved in 368 cases. During the year an amount of Rs. 7.40 crore had been recovered in 27 cases.

Few illustrative audit observations involving Rs. 102.93 crore are mentioned in the following paragraphs.

## 7.2 Audit observations

*Scrutiny of records of various mining offices revealed several cases of non-compliance of the provisions of the Mines and Minerals (Development and Regulation) Act, Madhya Pradesh Minor Mineral Rules etc., and Government notifications and other cases as mentioned in the succeeding pargaraphs in this chapter. These cases are illustrative and are based on a test check carried out in audit. Such omissions on the part of the Mining Officers are pointed out in audit each year but not only the irregularities persist; these remain undetected till an audit is conducted. There is need for the Government to improve the internal control system and internal audit.*

## 7.3 Non-realisation of rural infrastructure and road development tax

According to the provisions of the Madhya Pradesh *Gramin Avasanrachana Tatha Sadak Vikas Adhiniyam*, 2005 and notification of September 2005, rural infrastructure and road development tax at the rate of five *per cent* per annum of the market value of major minerals produced after deducting amount of royalty actually paid by the lessee and Rs. 4,000 per hectare per year in case of idle mines is to be levied from the lessees holding mining leases. The Act further provides that competent authority shall assess the sale value of minerals on the basis of returns/accounts submitted by the lessees and shall assess and demand the tax by the end of May each year.

Scrutiny of records of nine District Mining (DM) offices[1] between October 2008 and March 2009 revealed that the assessment of road development tax in respect of 65 mining leases for the year 2007-08 had not been done, resulting in non-realisation of tax of Rs. 93.56 crore.

After this was pointed out, all the District Mining Officers (DMOs) except Jhabua, Neemuch and Tikamgarh stated (between October 2008 and March 2009) that action would be taken as per rule after scrutiny. The DMOs, Jhabua, Neemuch and Tikamgarh stated (between November 2008 and January 2009) that as per Supreme Court's order communicated by Madhya Pradesh Mining Resources Department's order dated 27 November 2006, such amount could not be recovered by force. It may be noted that the above order does not restrict assessment and issue of demand to the lessees. It only states that recovery of the tax under this *Adhiniyam* cannot be made coercively.

The matter was reported to the Director, Geology & Mining (DGM) and the Government in February 2009; their reply has not been received (October 2009).

## 7.4 Non-realisation of revenue due to irregular reduction of stock

According to section 9 (1) of the Mines and Minerals (Development and Regulation) Act, 1957, every lessee of mining lease has to pay royalty in respect of minerals removed/consumed from leased area, at the rates specified in the second schedule of the Act.

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1 Anuppur, Badwani, Betul, Gwalior, Jhabua, Katni, Neemuch, Panna and Tikamgarh.

Scrutiny of records of the DMO, Anuppur in March 2009 revealed that South Eastern Coalfields Limited (SECL) Somana, Jamuna Kotma, Govinda and Mira and Bhadra areas had incorrectly shown closing stock in the monthly statements of B, C and D grades of coal between April 2007 and March 2008 as 1.59 lakh tons instead of 3.01 lakh tons. Thus, the lessee had irregularly reduced the stock by 1.42 lakh tons, on which royalty of Rs. 2.76 crore was payable. Though the returns were available in the office of DM, the DMO failed to detect these errors. This resulted in non-realisation of revenue of Rs. 2.76 crore.

After this was pointed out, the DMO stated (March 2009) that action for recovery would be taken after scrutiny. Further development has not been reported (October 2009).

The case was reported to the DGM and the Government in May 2009; their reply has not been received (October 2009).

## 7.5 Non-imposition of penalty due to non-submission of returns by the lessees

According to rule 30(20)(a)(b)(c) of the Madhya Pradesh Minor Mineral Rules, 1996, every lessee of quarry lease shall furnish monthly, six monthly and annual returns to the DMO in the prescribed forms on specified dates, failing which the lease sanctioning authority may impose penalty not exceeding double the amount of annual dead rent.

Scrutiny of records of nine DM Offices[2] between October 2008 and January 2009 revealed that out of 1,037 lessees, 15 lessees had not submitted any monthly, six monthly and annual returns and 35 lessees had partly submitted these returns for the period January 2000 to March 2008. In the absence of prescribed periodical returns, accuracy of the royalty/dead rent paid by the lessees could not be verified. Therefore, the lessees responsible for non-submission of periodical returns were liable for penalty. However, the department did not initiate any action to impose and realise the penalty from the lessees which would have resulted in realisation of revenue of Rs. 2.22 crore in the form of penalty calculated at double the amount of annual dead rent.

After this was pointed out, all the DMOs stated (between October 2008 and January 2009) that action would be taken against the lessees under the rules. Further development has not been received (October 2009).

The matter was reported to the DGM and the Government between November 2008 and March 2009; their reply has not been received (October 2009).

## 7.6 Non-levy of interest on belated payment

According to the Mineral Concession Rules, 1960, a lessee is liable to pay royalty by the prescribed date, failing which he is liable to pay simple interest at the rate of 24 *per cent* per annum from the sixtieth day of the expiry of the

[2] Ashoknagar, Bhopal, Gwalior, Hoshangabad, Jhabua, Neemuch, Tikamgarh, Ujjain and Vidisha.

stipulated date until the payment of royalty. Under the MPMM Rules and conditions of contract agreement, contractors of trade quarries are required to pay contract money on or before the dates indicated in their contract agreement, failing which the contractor is liable to pay, in addition to the contract money, interest at the rate of 24 *per cent* per annum till the default continues.

Scrutiny of records of 10 DM offices[3] during 2008-09 revealed that four lessees of mining leases, 27 quarry lessees and 148 contractors of trade quarries had delayed payment. The delay ranged between 2 to 1,917 days. The department did not levy any interest on these belated payments which resulted in non-levy of interest of Rs. 1.98 crore.

After this was pointed out, the DMO, Bhind stated (October 2008) that action would be taken as per rule after receiving information from Madhya Pradesh State Mining Corporation. Other DMOs stated (between October 2008 and February 2009) that action would be taken for recovery as per rule. Further developments have not been reported (October 2009).

The cases were reported to the DGM and the Government between February-March 2009; their reply has not been received (October 2009).

## 7.7 Short realisation of revenue due to irregular issue of temporary permits

According to rule 68(1) of the Madhya Pradesh Minor Mineral Rules, the Collector shall grant permission for extraction, removal and transportation of any minor mineral from any specific quarry or land which may be required for the works of any department and undertaking of the Central Government or the State Government. Sub-rule (3) further provides that such permission shall only be granted on payment of advance royalty calculated at the rates specified in Schedule III.

Scrutiny of records of five DM Offices[4] between February and December 2008 revealed that 26 temporary permits were issued to 15 contractors for construction of roads and buildings involving 8.10 lakh cubic meter (cum) road metal, 1.20 lakh cum *murrum*, 19,650 cum boulder and 55,850 cum sand between December 2005 and March 2008. The department had not realised advance royalty leviable on the quantity of minerals shown in the permits. The contractors paid Rs. 50.78 lakh only against payable royalty of Rs. 2.39 crore which resulted in short realisation of revenue of Rs. 1.88 crore.

After this was pointed out, the DMO, Shivpuri stated (September 2009) that an amount of Rs. 1.01 crore had been recovered. Remaining DMOs except Hoshangabad stated between February and December 2008 that action for recovery would be taken. The DMO, Hoshangabad stated (December 2008) that temporary permits for Government work were given for which transit passes were issued against the royalty paid by the contractor for sanctioned quantity of mineral. However, the fact remains that as per

[3] Anuppur, Badwani, Bhind, Chhindwara, Jhabua, Katni, Morena, Neemuch, Ratlam and Shahdol.

[4] Bhopal, Hoshangabad, Sagar, Shivpuri and Vidisha.

Collector (Mining), Hoshangabad letter dated 29 March 2008, the advance royalty payable by the contractor was Rs. 14.85 lakh, whereas he deposited Rs. 4.31 lakh.

The cases were referred to the DGM and the Government in February and March 2009; their reply has not been received (October 2009).

## 7.8 Short realisation of contract money

According to the condition no. 5 (i) and 9 of the contract agreement for trade quarry, every contractor has to pay contract money[5] to the state Government on the scheduled dates. If the contractor fails to pay contract money for a period of three months, his contract will be cancelled and quarry will be re-auctioned. Consequent upon re-auction of the quarry, if the Government sustains any loss, the same will be recovered from the defaulting contractor as arrears of land revenue.

Scrutiny of records of 18 DM Offices[6] between October 2008 and March 2009 revealed that 164 contractors had paid contract money of Rs. 2.71 crore for the period April 2004 to March 2008 against the payable amount of Rs. 4.24 crore. Though the contractors had defaulted in making payment of contract money since beginning of the contracts, yet the department had not initiated any action against them under the term of the contract to cancel the contract and re-auction them. This resulted in short realisation of contract money of Rs. 1.53 crore.

After this was pointed out, all the DMOs stated (between October 2008 and February 2009) that action for recovery would be taken. Further development has not been reported (October 2009).

The cases were reported to the DGM and the Government between February-March 2009; their replies had not been received (October 2009).

## 7.9 Non/short realisation of dead rent

According to Madhya Pradesh Minor Mineral Rules, a lessee is liable to pay dead rent every year except the first year of the lease at the rates specified in Schedule IV, in advance for the whole year, on or before the twentieth day of the first month of the following year.

Test check of records of 21 DM Offices[7] between October 2008 and March 2009 revealed that 177 quarry lessees had paid dead rent of Rs. 28.16 lakh against the payable amount of Rs. 1.40 crore due from January 2002 to December 2008. This resulted in short realisation of dead rent of Rs. 1.12 crore.

After this was pointed out, all the DMOs except Katni stated (between October 2008 and March 2009) that action for recovery would be taken.

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5 A sum to be paid by the contractors in lieu of a contract.

6 Ashoknagar, Anuppur, Badwani, Chhindwara, Chhatarpur, Dewas, Hoshangabad, Jhabua, Katni, Morena, Neemuch, Panna, Ratlam, Raisen, Sagar, Sehore, Shahdol and Vidisha.

7 Ashoknagar, Badwani, Betul, Bhind, Bhopal, Chhatarpur, Chhindwara, Dewas, Gwalior, Indore, Jhabua, Katni, Morena, Neemuch, Panna, Raisen, Ratlam, Sagar, Shivpuri, Sehore and Ujjain.

DMO, Katni stated (February 2009) that proposal for declaring the lease as lapsed has been sent to the Government. The fact remains that no such document was found in the record of the concerned lessees.

The case was reported to the DGM and the Government between November 2008 and March 2009; their reply has not been received (October 2009).

## 7.10 Non-realisation of penalty against illegal extraction

Under the Mines & Minerals (Regulation and Development) Act, no person shall undertake any prospecting or mining operations in any area without a prospecting licence or mining lease granted under the Act. Further, as per section 247 (7) of the Madhya Pradesh Land Revenue Code, 1959, any person/firm who without lawful authority extracts or transports mineral shall be liable to pay penalty which would not exceed twice the market value of the mineral.

Scrutiny of records of DMOs, Panna and Raisen in October and November 2008 revealed that in nine cases of illegal extraction, the court imposed penalty of Rs. 3.68 lakh (between March 2007 and September 2008). Although demand notices were issued by the DMO at the instance of audit, recovery had not been made (August 2009). In other four cases of illegal extraction involving revenue of Rs. 5.83 lakh, neither any action was taken (till November 2008) by the DMO concerned to realise the penalty nor the cases were referred to the court. This resulted in non-realisation of revenue of Rs. 9.51 lakh.

After this was pointed out, the DMO, Panna stated (October 2008) that demand notices had been issued in seven cases and in two cases directives had been issued. In the remaining four cases, the DMO, Raisen stated (November 2008) that action had been proposed and would be intimated in due course. Further developments have not been reported (October 2009).

The cases were reported to the DGM and the Government in February 2009; their reply has not been received (October 2009).

# CHAPTER VIII: OTHER NON-TAX RECEIPTS

## 8.1 Results of audit

Test check of the records relating to Water Resources Department and Electricity Duty during the year 2008-09 revealed non/short realisation and loss of revenue of Rs. 936.34 crore in 2,27,988 cases which can be categorised as under:

**(Rupees in crore)**

| Sl. No. | Category | Number of cases | Amount |
|---|---|---|---|
| **A : WATER RESOURCES DEPARTMENT** | | | |
| 1 | **Assessment and collection of water rates (A Review)** | 1 | 927.98 |
| **Total** | | **1** | **927.98** |
| **B : ELECTRICITY DUTY** | | | |
| 1. | Loss of revenue due to non-inspection of electrical installations | 1,87,598 | 0.35 |
| 2. | Others | 40,389 | 8.01 |
| **Total** | | **2,27,987** | **8.36** |
| **Grand total (A+B)** | | **2,27,988** | **936.34** |

During the year 2008-09, the departments accepted underassessment of tax of Rs. 58.88 crore involved in 15,675 cases. An amount of Rs. 2 lakh had been recovered in 48 cases.

A performance review of "**Assessment and collection of water rates**" involving money value of Rs. 927.98 crore and few illustrative cases involving Rs. 1.80 crore are mentioned in the following paragraphs.

## A – Water Resources Department

### 8.2 Review on assessment and collection of water rates

#### Highlights

- Failure of the department to ensure execution of agreement before drawal of water, resulted in drawal of water without payment of water rates of Rs 586.64 crore.

**(Paragraph 8.2.7.2)**

- Failure of the department to optimally utilise the created irrigation potential resulted in loss of revenue of Rs. 160.85 crore.

**(Paragraph 8.2.8)**

- Incorrect application of water rates led to non/short realisation of revenue of Rs. 24.29 crore.

**(Paragraph 8.2.11)**

- Five users of water did not deposit security money of Rs. 2.21 crore.

**(Paragraph 8.2.13)**

- Loss of revenue of Rs. 10.14 crore due to non-levy of betterment contribution.

**(Paragraph 8.2.14)**

#### 8.2.1 Introduction

One of the major issues affecting water utilities in the developing world is the considerable difference between the amount of water put into the distribution system and the amount of water billed to consumers {also called "non revenue water" (NRW)}. High levels of NRW reflect huge volumes of water loss. It seriously affects the financial viability of water utilities through lost revenues and increased operational costs. A high NRW level normally reflects for poorly run water utility that lacks the governance, the accountability and the technical and managerial skills necessary to provide reliable service to their population.

The following map shows water supply by Water Resources Department for irrigation and non-irrigation purposes in Madhya Pradesh.


As per section 37 of the Madhya Pradesh Irrigation Act, 1931 (Irrigation Act), water may be supplied from a canal for irrigation under an irrigation agreement, on demand for the irrigation of specified areas, to supplement a village tank, irrigation of a compulsorily assessed area and industrial, urban or other purposes not connected with agriculture. The Water Resources Department (WRD) in Madhya Pradesh is entrusted with the responsibility of assessment and collection of water rates for irrigation and non-irrigation purposes. The Canal *Amins*[1] prepare *khasra*[2] which forms the basis for assessment of water rates. In addition to water rates, irrigation cess at the rate of Rs. 10 per acre is payable by every permanent holder of land in the irrigable command of the canal. As per Rule 193 of Madhya Pradesh Irrigation Rules (Rules), if any water rate (canal revenue) or any part thereof is not paid, the Canal Deputy Collector may impose penalty on such defaulters at prescribed rates i.e. at the rate of 10 per cent where payment is made within one year and 13 per cent where payment is made after one year. Revision in the rates is issued through Government notifications from time to time.

**A review of "assessment and collection of water rates" by WRD for irrigation and non-irrigation purposes was conducted which revealed a number of deficiencies that are mentioned in the subsequent paragraphs.**

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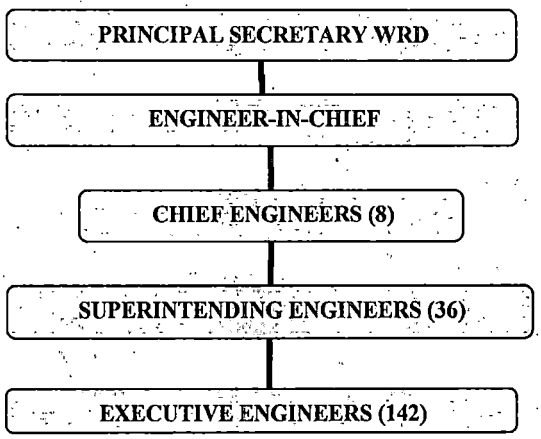
1 *Amins* are departmental officers responsible for maintaining land records.

2 Field measurement books.

### 8.2.2 Organisational set up

The WRD is headed by the Principal Secretary and Secretary at the Government level and the Engineer in Chief (E-in-C) at the departmental level. The organisational set up upto the district level is mentioned below:




### 8.2.3 Audit objectives

The review was conducted to ascertain whether:

- systems existed for optimum utilisation of created irrigation potential and water resources;
- the system of assessment and collection of water rates in respect of irrigation potential and water resources was efficient and effective; and
- there was an efficient and effective internal control mechanism within the department to check non/short levy and evasion of Government revenue.

### 8.2.4 Scope of audit

The records of five years from 2004-05 to 2008-09 in the office of the E-in-C and 11[3] out of 69 WR divisions dealing with revenue receipts were audited between October 2008 to April 2009. Besides, information was collected from nine WR divisions[4] and two offices of Chief Engineers[5] between January and April 2009. For selection of units, the WR divisions were first stratified into four categories of users of water (cultivators, power projects, local bodies and private industries) and thereafter, the divisions were selected randomly for audit.

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3 Executive Engineer, WR Division Anuppur, Bhopal, Chhindwara, Deosar, Ujjain, Vidisha, Dam safety Division. Gwalior, Gandhisagar Dam Division Gandhisagar, PBC Division Sohagpur, Tawa Project Division Itarsi, Wainganga Division Balaghat.

4 Executive Engineer, WR Division Bhind, Dewas, Khandwa, Ratlam, Satna, Kanhargaon Division Chhindwara, Masonary Dam Division Deoland, Survey Division Balaghat, TLBC Division Keolari.

5 Chief Engineer, Chambal Betwa Bhopal and CE, O&M Bhopal.

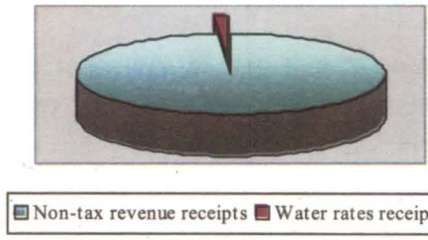
### 8.2.5 Acknowledgement

The Indian Audit and Accounts Department acknowledges the co-operation of the Water Resources Department for providing information and records to audit. An entry conference to discuss the audit objectives and scope of audit was held in February 2009 in which the Secretary and other officials of the Department participated. The review was sent to the department/Government in June 2009. The exit conference was held in August 2009 in which the E-in-C, WRD and Deputy Secretary, Finance and other officers of the department participated. Reply of the department/Government has not been received (October 2009).

## Audit findings

### 8.2.6 Trend of revenue

The average contribution of receipts from water rates (irrigation and non- irrigation purposes) to the non-tax receipts of the state during the last five years has been 1.36 *per cent*.




The Budget Manual provides that the estimates should take into account only such receipts and payments as the estimating officer expects to be actually realised or made during the budget year. The Budget Manual clearly states that if the test of accuracy is to be satisfied, not merely should all items that could have been foreseen be provided for, but also only so much, and no more should be provided for as is necessary. Budget estimates and actual revenue collected during the year from 2004-05 to 2008-09 as furnished by the department were as mentioned below:

**(Rupees in crore)**

| Year | Budget estimates | Actual receipts | Shortfall (-) excess (+) | Percentage of shortfall |
|---|---|---|---|---|
| 2004-05 | 181.97 | 42.94 | (-) 139.03 | 76 |
| 2005-06 | 302.92 | 35.02 | (-) 267.90 | 88 |
| 2006-07 | 420.00 | 36.15 | (-) 383.85 | 91 |
| 2007-08 | 321.85 | 47.62 | (-) 274.23 | 85 |
| 2008-09 | 42.94 | 39.65 | (-) 3.29 | 08 |

Thus, the actual receipts of the previous year were not taken into consideration except for the year 2008-09 while framing the estimates in the subsequent years. The percentage of shortfall in actual receipts against the budget estimates for the year 2004-05 to 2007-08 ranged from 76 to 91 *per cent* During 2008-09, the budget estimate was drastically reduced and

fixed at Rs. 42.94 crore. Reasons for such reduction has not been furnished (October 2009), though called for (August 2009).

After this was pointed out, the E-in-C stated (May 2009) that the budget estimates for revenue recovery were prepared on the basis of 90 *per cent* of current demand and 50 *per cent* of outstanding balances of revenue recovery. He also stated that there was no relation between actual receipts and the budget estimates. The reasons provided by the E-in-C for heavy shortfall between budget estimates and actual receipts were non-utilisation of water in *Kharif* crop, illegal water lifting, non-supply in tail reaches due to poor maintenance, shortage of *Amins*, change in cropping pattern and lack of co-ordination between the department and water user associations.

The reply of the E-in-C relating to preparation of budget estimates is factually incorrect. The figures of budget estimates for the last four years do not correspond to 90 *per cent* of current demand and 50 *per cent* of outstanding balance. If the above formula is applied, the budget estimates would have been Rs. 255.57 crore, Rs. 351.97 crore, Rs. 483.58 crore and Rs. 633.32 crore (2004-05 to 2007-08 respectively). It is reiterated that during preparation of budget estimates, the aim is to achieve as close an approximation to the probable actual, as possible.

**Thus, it can be inferred that the department kept on fixing budget estimates in an arbitrary manner without considering the factors highlighted by the E-in-C.**

**The Government may consider framing the budget more realistically by considering the amount recovered during the preceding year and also adhering to the principles of budget manual.**

## System deficiencies

### 8.2.7 Management and recovery of water rates

#### 8.2.7.1 Irrigation purpose

For effective management and recovery of arrears of canal revenue it is imperative that the department should have credible figures. In the absence of reliable and valid data, the department would be constrained to streamline and prioritise its efforts for recovery of arrears from various categories of users. Moreover, the receipts during the year should be more than the demand raised during the year to stem the mounting arrears. Section 60 of the Irrigation Act states that any sum payable as canal revenue, which remained unpaid on the day following the date in which it is due, is an arrear of canal revenue. Further, clause 61 provides that arrears of canal revenue shall be recoverable as arrears of land revenue.

The opening balance, demand raised during the year, total revenue realised during the year and outstanding revenue at the end of the year relating to

irrigation purpose as furnished by the department are as mentioned below:

(Rupees in crore)

| Year | Opening balance | Demand raised | Total demand | Receipts during the year | Outstanding balance | Percentage of (5) to (3) | Percentage of (5) to (4) |
|---|---|---|---|---|---|---|---|
| 1. | 2. | 3. | 3. | 4. | 5. | 6. | 7. |
| 2004-05 | 92.32 | 73.00 | 165.32 | 16.31 | 149.01 | 22.34 | 9.87 |
| 2005-06 | 101.53 | 59.35 | 160.88 | 17.05 | 143.83 | 28.72 | 10.60 |
| 2006-07 | 110.47 | 51.38 | 161.85 | 18.02 | 143.83 | 35.07 | 11.13 |
| 2007-08 | 117.30 | 50.85 | 168.15 | 18.53 | 149.62 | 36.44 | 11.02 |
| 2008-09 | Not furnished by the department | | | | | | |

Thus, the balance outstanding at the end of each year was never taken as the opening balance in the subsequent years. The percentage of recovery against the total demand during the last four years has been dismal ranging between 9.87 to 11.13 *per cent* leading to accumulation in the arrears every year. Besides, the receipts during the years ranged between 22.34 to 36.44 *per cent* of the demand raised during the year.

Further, the trend of low recovery of receipts was similar in the test checked divisions. The percentage of receipts to the total demand ranged between 9.7 and 15 *per cent*. It was observed in all the test checked divisions that though the Assistant Engineers and Canal Dy. Collectors were empowered to function as additional *Tahsildars,* no effort was made to recover the outstanding balance of canal revenue as arrears of land revenue.

After this was pointed out, the E-in-C replied (May 2009) that as per practice of districts, the interest on dues was calculated after the financial year, hence there was a difference in opening and closing balance. The reply is not borne out by the facts. If interest is added after the close of the financial year, the opening balance should be greater than the closing balance. However, it was observed that the opening balance of the subsequent year was always less than the closing balance of the previous year.

### 8.2.7.2 Non-Irrigation purpose

The opening balance, demand raised during the year, total revenue realised during the year and outstanding revenue at the end of the year relating to non-irrigation purposes[6] as furnished by the department are mentioned below:

(Rupees in crore)

| Year | Opening balance | Demand raised | Total demand | Receipts during the year | Outstanding balance | Percentage of (5) to (4) |
|---|---|---|---|---|---|---|
| 1. | 2. | 3. | 4. | 5. | 6. | 7. |
| 2004-05 | 261.17 | 14.58 | 275.75 | 14.84 | 260.91 | 5.38 |
| 2005-06 | 462.64 | 18.11 | 480.75 | 12.80 | 467.95 | 2.66 |
| 2006-07 | 710.06 | 30.08 | 740.14 | 12.49 | 727.65 | 1.69 |
| 2007-08 | 946.58 | 61.79 | 1,008.37 | 20.29 | 988.08 | 2.01 |
| 2008-09 | Not furnished by the department | | | | | |

[6] Revenue from non-irrigation purposes consists of recovery of water rates from MPSEB, PHED, Local Bodies and Industries.

In these cases too, there is no correlation between the outstanding balance and the opening balance figures. It would be seen from the above that the receipts as compared to the total demand has been decreasing over the years 2004-05 to 2006-07 which reflects that the gap between the total demand and actual receipts kept increasing during these years. The percentage of receipts to the total demand has been abysmal, ranging from 1.69 to 5.38 *per cent.* This is far lower than the percentage of receipts to total demand from the cultivators as shown in table under paragraph 8.2.7.1. Due to such low recovery of demand during the above years, the arrears had steeply increased from Rs. 260.91 crore in 2004-05 to Rs. 988.08 crore in 2007-08.

After this was pointed out, the E-in-C stated (May 2009) that the outstanding dues pertaining to various departments were not deposited by them despite continuous pursuance by the department. He further stated that some industries and local bodies had filed petitions in different courts resulting in non-realisation of revenue. The reply was silent regarding non-initiation of action to collect the dues as arrears of land revenue. Besides, no reply was furnished to explain the difference in closing and opening balance.

**Information furnished by the E-in-C relating to outstanding demand from various categories of users for non-irrigation purposes i.e. Madhya Pradesh State Electricity Board (MPSEB), Public Health Engineering Department (PHED), Local Bodies and Industries revealed similar discrepancy in figures and the trend of low recovery against the demand raised during the year as mentioned in the following paragraphs.**

## Madhya Pradesh State Electricity Board

- Madhya Pradesh State Electricity Board draws water from WRD sources for generation of electricity[7] (hydro and thermal power). The rate for recovery of water charges from Government sources (hydel power project) is 10 paise per unit which is to be increased by escalation charge at 0.50 paise per unit of electricity generated per year. Prior to November 2003, rates of water supply for thermal power projects was 30 paise per cum which had been revised five times since then and the present rate is 50 paise per cum.

The figures of opening balance, demand raised, receipt and outstanding balance of water rates against MPSEB as furnished by the department revealed that no payment was made by MPSEB during the last four years. **Audit scrutiny revealed that though MPSEB had not made any payment during the year 2004-05 to 2007-08, it was allowed to draw water despite non-recovery of water rates. Consequently, the outstanding dues kept spiraling.** It was also observed that against an opening balance of Rs. 185.08 crore in 2004-05, the outstanding balance at the end of 2007-08 was Rs. 744.98 crore (almost five times the amount outstanding from the cultivators of the entire State).

After this was pointed out, the E-in-C stated (May 2009) that reasons under which fresh demands were not raised against MPSEB were being called for from the field staff. Further reply has not been received (October 2009).

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[7] Bansagar dam on Sone river since October 2000 for hydroelectricity; Gandhisagar dam on Chambal river since 1961 for hydroelectricity; Chachai (Anuppur) drawing water from Sone river since 1965 for thermal power.

Section 40 of the MP Irrigation Act and Rule 71 of the MP Irrigation Rules, 1974 read along with notification issued by the Government of MP, WRD in April 1998 provide for execution of agreement in Form 7-A with the agencies before drawal of water. Further, note below clause 2 of the agreement also provides that 50 *per cent* additional rates are leviable in case of unauthorised drawal of water and clause 12 of the agreement provides 25 *per cent* interest for non-payment of water rates to WRD.

**Audit scrutiny, however, revealed that MPSEB had been drawing water from Gandhi Sagar Dam (since 1961) and from Bansagar Dam for generation of hydro electricity and from Sone river at Chachai (Anuppur) for generating thermal power (since 1965) without executing any agreement and without any payment of water charges. This led to non-realisation of revenue of Rs. 586.64 crore[8] including 50 *per cent* additional charges and 25 *per cent* interest till December 2008.**

After this was pointed out, the Executive Engineer (EE) stated (December 2008 and February 2009) that the matter was under consideration at Government level and action would be taken as per instructions. Further development has not been reported (October 2009).

## Public Health Engineering Department (PHED)

Public Health Engineering divisions draw water from WRD sources to provide drinking water to the residents of the area under their jurisdiction. The Government of MP fixed the rates for supply of water for domestic purpose at 20 paise per cum with escalation of 2 paise per year with effect from 1 April 2000.

The details of opening balance, demand raised, receipt and outstanding balance of water rates against PHED as furnished by the department are mentioned below.

**(Rupees in crore)**

| Year | Opening Balance | Demand raised | Total demand | Receipt during the year | Outstanding balance | Percentage of receipt |
|---|---|---|---|---|---|---|
| 2004-05 | 0.00 | 0.00 | 0.00 | 0.11 | 0.00 | - |
| 2005-06 | 0.00 | 0.00 | 0.00 | 0.85 | 0.00 | - |
| 2006-07 | 2.98 | 0.12 | 3.10 | 0.17 | 2.93 | 5.48 |
| 2007-08 | 2.07 | 0.14 | 2.21 | 0.05 | 2.16 | 2.26 |
| 2008-09 | Not furnished by the department | | | | | |

The veracity of figures is doubtful. There is no correlation between the opening balance and the outstanding balance while the percentage of receipts to total demand which also shows wide variation, could only be worked out for 2006-07 and 2007-08 as no reliable figures were furnished for the year 2004-05 and 2005-06. Though there was no opening balance or demand raised during 2004-05 and 2005-06, the department accepted receipts

[8] Bansagar Dam Rs. 270.75 crore, Gandhi Sagar Dam Rs. 221.17 crore and Sone river Rs. 94.72 crore

from the PHED. **This shows that PHED is paying as per its own whims while the department has no information about the amount to be recovered. The percentage of receipts has gone down from 5.48 *per cent* (2006-07) to 2.26 *per cent* (2007-08).**

No specific reply was furnished by the E-in-C for discrepancy in figures.

## Local Bodies

- As per section 26 of the Irrigation Act, the Government has all rights in the water of any river, natural stream or natural drainage channel, natural lake or other natural collection of water. As per information furnished by the department, 39 local bodies are drawing water from sources of the WRD in the State to provide drinking water to the residents of the area under their jurisdiction.

The details of opening balance, demand raised, receipt and outstanding balance of water rates against local bodies as furnished by the department are mentioned below:

**(Rupees in crore)**

| Year | Opening balance | Demand raised | Total demand | Receipt during the year | Outstanding balance | Percentage of receipt |
|---|---|---|---|---|---|---|
| 2004-05 | 12.88 | 3.64 | 16.52 | 0.61 | 15.91 | 3.69 |
| 2005-06 | 20.21 | 4.32 | 24.53 | 0.54 | 23.99 | 2.20 |
| 2006-07 | 22.92 | 4.26 | 27.18 | 0.47 | 26.71 | 1.73 |
| 2007-08 | 26.00 | 2.81 | 28.81 | 0.60 | 28.21 | 2.08 |
| 2008-09 | Not furnished by the department | | | | | |

Akin to above figures, here also the outstanding balance is not the opening balance for the subsequent year. The percentage of receipts to the total demand has been the lowest for all category of users (both irrigation and non-irrigation) and also shows that there is no correlation between these two and the gap has been increasing year after year. The department could not even collect the amount of current demand during any of the years under review. It ranged from a meagre 1.73 *per cent* to 3.69 *per cent*.

After this was pointed out, no specific reply was given by the E-in-C (September 2009).

**Audit scrutiny in test checked WR divisions revealed that though the local bodies have been charging water tariff from their consumers, yet these have been drawing water from WRD sources without executing any agreement and payment of water charges.**

- In Wainganga division, Balaghat it was noticed that the *Nagar Palika*, Balaghat has been drawing water from the river by constructing an intake well since 1970, without executing any agreement and without any payment

of water charges to the WRD. The division was not aware of the fact that the *Nagar Palika* was drawing water unauthorisedly (photograph below).

**INTAKE WELL ON WAINGANGA RIVER AT BALAGHAT**

Information collected from PHE Division, Balaghat revealed that 3.375 million litre per day water has been drawn by the *Nagar Nigam* since 1970. On this basis, the loss of revenue works out to Rs. 1.50 crore.

After this was pointed out, the EE stated (January 2009) that reasons under which agreement could not be executed and water charges were not recovered would be investigated and matter would now be brought to the notice of higher authorities for necessary instructions. Further progress has not been reported (October 2009).

- In WRD, Ujjain it was noticed that Municipal Corporation, Ujjain has been drawing water from Gambhir river by constructing a dam and intake well since 1991 without executing any agreement. Neither did the department insisted on execution of an agreement nor was any demand raised for such unauthorised drawal of water. On the basis of information collected from PHE division (responsible for maintenance of the dam) 21,265.804 mcft of water had been supplied to the Corporation up to August 2008, which resulted in loss of revenue of Rs. 28.60 crore.

After this was pointed out, the EE stated (March 2009) that action would be taken to ascertain the facts and figures of the case and further action to execute the agreement with Municipal corporation/PHE would be taken. Further progress has not been reported (October 2009).

- *Nagar Palika*, Junnardeo (WR division, Chhindwara) was drawing water regularly without any agreement and without any payment to WRD. The Sub Divisional officer (WRD), Junnardeo raised a demand of Rs. 1.31 lakh (November 2007) at the rate of 0.04 paise per cum against recoverable amount of Rs. 10.54 lakh (calculated at prevalent rate of 0.34 paise per cum). This led to short raising of demand of Rs. 9.23 lakh. It was also noticed that WRD was neither aware of the time since which water was being drawn by the *Nagar Palika,* nor the quantity of water drawn.

After this was pointed out, the EE stated (January 2009) that the Sub-divisional officer had been instructed to submit the report as per rules and regulation. Further progress has not been reported (October 2009).

## Industries

Various industries draw water from the sources of WRD for their activities. Presently, the rates for supply of water for industrial purposes and thermal power projects are Rs. 2 per cum (Government sources) and Rs. 0.50 (natural/own created source) respectively.

The details of opening balance, demand raised, receipt and outstanding balance of water rates against industries as furnished by the department are mentioned below:

**(Rupees in crore)**

| Year | Opening Balance | Demand raised | Total demand | Receipt during the year | Outstanding balance | Percentage of receipt |
|---|---|---|---|---|---|---|
| 2004-05 | 63.21 | 10.94 | 74.15 | 14.24 | 59.91 | 19.20 |
| 2005-06 | 68.47 | 13.79 | 82.26 | 11.42 | 70.84 | 13.88 |
| 2006-07 | 69.98 | 25.69 | 95.67 | 11.85 | 83.82 | 12.39 |
| 2007-08 | 173.53 | 58.84 | 232.37 | 19.63 | 212.74 | 8.44 |
| 2008-09 | Not furnished by the department. | | | | | |

The percentage of receipts against the total demand ranged between 8.44 to 19.20 *per cent* during the last four years. Though the total demand has been increasing over the last four years, the percentage of receipts has been declining steadily from 19.20 to 8.44 *per cent*. It was also observed that the receipts during the years 2005-06, 2006-07 and 2007-08 were less than the demand raised during these years. In these figures also, there is no correlation between the outstanding balance and the opening balance of subsequent years. This requires to be reconciled by the department.

After this was pointed out, no specific reply was given by the E-in-C.

Section 40 of the Irrigation Act and Rule 71 of the Irrigation Rules, 1974 read with the notification issued by the Government of MP, WRD on 29 April 1998 provide for execution of agreement in Form 7-A with the agencies before drawal of water. Further, note below clause 2 of the agreement also provides that 50 *per cent* additional rates are leviable in case of unauthorised drawal of water and clause 12 of the agreement provides 25 *per cent* interest for non-payment of water rates to WRD. It was, however, observed that **no records/registers were prescribed by the department to monitor whether water was being drawn only after execution of valid agreements. In the absence of such monitoring mechanism, the department was constrained to detect cases of drawal of water without agreement and prevent loss of revenue, as brought out in the subsequent paragraphs.**

- To meet its industrial requirements, Grasim Industries (WRD, Ujjain) constructed five dams/weirs on Chambal and Chamla rivers during the period 1953 to 1994. The industry continued to draw water from the rivers

till May 2006 without signing any agreement with the division in contravention of the provisions of the MP Irrigation Rules.

The Government of MP vide notification of April 1998 fixed the rates for supply of water for industrial purposes at 30 paise per cum. Accordingly, bills were raised along with 50 *per cent* additional rates and 25 *per cent* interest till January 2006. Against Rs. 17.58 crore payable, the company paid Rs. 94 lakh till January 2006.

The rates were further revised through notification of July 2003, as below:

| **With effect from** | **01.11.2003** | **01.11.2004** | **01.11.2005** | **01.11.2006** | **01.11.2007** |
|---|---|---|---|---|---|
| Rate (Rs. per cum) | 0.37 | 0.40 | 0.43 | 0.47 | 0.50 |

It was clearly mentioned in this notification that an agreement would be executed in form 7-A prior to making use of water.

There was further revision in rates through notification of February 2006. However, these rates were subject to the condition that the cost of construction should exceed Rs. 1 crore as per schedule of rates and specification of September 2003 of WRD. It also states that the rates of July 2003 would be applicable for those units drawing water from Government and natural sources.

Audit scrutiny, however, revealed that based on the notification of February 2006 the department issued a substantially lower revised demand notice for the period May 1998 to March 2006 to the company in June 2006. This order of the department was not in conformity with the condition stated in the notification of February 2006, which stated that the cost of construction should exceed Rs. 1 crore as per the SOR and specification of September 2003, while the dams were constructed between 1953 to 1994 when those specifications were not in vogue. Moreover, the notification also stated that the rates of July 2003 would be applicable for those units drawing water from natural sources. Grasim Industries was drawing water from a natural source (Chambal river). Thus, the rates of July 2003 should have been applied.

Further, it was observed that Government vide an executive order dated 29 February 2006 waived the imposition of 50 *per cent* additional rates and 25 *per cent* interest in contravention of the terms of agreement mentioned in Form 7-A under Rule 71 of the MP Irrigation Rules. The order of the Government was unauthorised as any remission/reduction in the rates contained in the Act or Rules can only be done by the authority of the legislature.

Thus, application of incorrect rates coupled with unauthorised waiver of penalty and interest not only extended undue financial benefit to the company but also led to loss of revenue of Rs. 9.62 crore.

- Test check of records of WR division, Chhindwara revealed that Raymond Industries and Bhansali Engineering were drawing water from Kanhan river since 1991 and 1990 respectively without executing any agreement (till date) and without making any payment on account of water charges.

It was observed that the division raised a demand of Rs. 4 lakh (till December 2008) against Bhansali Engineering without including 50 *per cent* additional rates and 25 *per cent* interest. Similarly, demand of Rs. 60 lakh was raised against Raymond Industries (December 2008) without including 50 *per cent* additional rates and 25 *per cent* interest. This led to short assessment of demand of Rs. 2.17 crore.

After this was pointed out, the EE stated (January 2009) that action to recover the amount would be taken. However, the reply was silent on the reasons for omission to include additional water rate and interest in the demand notice. Further reply has not been received (October 2009).

- Test check of records of WR division, Deosar revealed that National Thermal Power Corporation was drawing water from Rihand Dam since 1988 but the agreement was executed in December 2008. It was observed that the division had raised a demand of Rs. 130.51 crore (October 2008) against the recoverable amount of Rs. 224.72 crore including 50 *per cent* additional rates and 25 *per cent* interest. This led to short assessment of water charges of Rs. 94.21 crore. No reply was furnished by the division.

- Test check of records of WR division, Dhar revealed that *Audyogik Kendra Vikas Nigam* (AKVN) was drawing water from *Jamuniya* tank (constructed by WRD under deposit work) since 1998 without executing any agreement. The WRD, Dhar had raised (December 2001) a bill for only two years (1999-2000 and 2000-01) for Rs. 8.50 lakh against which AKVN had paid Rs. 5 lakh. Non-assessment of demand of the remaining years led to non-realisation of revenue of Rs. 5.27 crore including 50 *per cent* additional rates and 25 *per cent* interest (based on the rates prescribed in Government notification of July 2003).

After this was pointed out, the EE stated (June 2009) that the agreement form was sent to AKVN several times but these were returned without signing. He further stated that the bill was being raised now as per Government circular. A report on recovery has not been received (October 2009).

**The Government may install a proper system of monitoring the amount of arrear, current dues, dues recovered and dues remaining unrealised by prescribing reports/returns to be submitted by the divisions to the WRD. Besides, execution of agreements may be made mandatory in case of drawal of water for commercial use. Besides, stringent penal measures may also be prescribed for unauthorised drawal of water.**

### 8.2.8 Loss of revenue due to shortfall in irrigation potential created and utilised

In view of the scarcity of water resources and to motivate economic use of water, a detailed water account is required to be prepared at the divisional level. After providing for transit loss of water, balance quantity of water is utilised for the purpose of irrigation or for commercial use. **The department, however, had not prescribed any monitoring mechanism for optimum utilisation of irrigation potential created. Nor was any system prescribed for maintenance of water account in the divisions.**

The figures of irrigation potential created and utilised as furnished by the department are mentioned below:

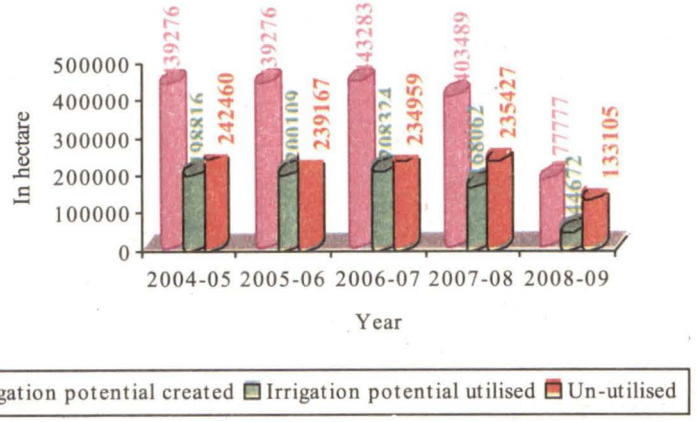
**(In lakh hectare)**

| Year | Irrigation potential created | Actual potential utilised | Un-utilised potential | Per cent of utilised potential | Loss of Revenue [9] (Rs. in crore) |
|---|---|---|---|---|---|
| 2004-05 | 22.58 | 10.34 | 12.24 | 46 | 23.84 |
| 2005-06 | 23.41 | 10.13 | 13.28 | 43 | 25.87 |
| 2006-07 | 26.64 | 09.37 | 15.27 | 35 | 34.33 |
| 2007-08 | 25.90 | 09.16 | 16.74 | 35 | 37.63 |
| 2008-09 | 26.82 | 09.39 | 17.43 | 35 | 39.18 |
| **Total** | **125.35** | **48.39** | **74.96** | **39** | **160.85** |

During 2004-05 to 2008-09, out of total 125.35 lakh hectares of available irrigation potential, only 48.39 lakh hectares (39 *per cent*) of the potential was utilised and the remaining 74.96 lakh hectare remained unutilised, which resulted in loss of revenue of Rs. 160.85 crore.

The position of irrigation potential created and utilised as collected by audit from 20[10] divisions is as below.

**Position of irrigation potential created and utilisation**




Thus, during 2004-05 to 2008-09, out of total 19,03,101 hectares of available irrigation potential (20 divisions), only 8,19,983 hectares (43 *per cent*) of the potential was utilised and the remaining 10,83,118 hectare remained unutilised, which resulted in loss of revenue of Rs. 22.94 crore. The irrigation potential has been showing decreasing trend since 2007-08. The maximum utilisation of irrigation potential was much below 50 *per cent*

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9 During the year 2004-05 to 2005-06 at Rs. 194.80 per hectare. During the year 2006-07 to 2008-09 at Rs. 224.80 per hectare.

10 WR Dn. Anuppur, Bhopal, Bhind, Chhindwara, Dewas, Deosar, Khandwa, Ratlam, Satna, Ujjain, Vidisha, Dam Safety Dn. Gwalior, Gandhi Sagar Dam Dn. Gandhisagar, Kanhargaon Dn. Chhindwara, Masanory Dam Dn. Deolond,, PBC Dn. Sohagpur, Tawa Project Dn. Itarsi, , TLBC Dn. Keolari, Survey Dn. Balaghat and Wainganga Dn. Balaghat

during the last five years. Further scrutiny revealed that in Anuppur, Gwalior and Bhind districts, the percentage of utilised potential was very minimal, i.e. 1 to 23 *per cent* during the last five years.

After this was pointed out, the department attributed (between October 2008 and April 2009) various reasons for shortfall in utilisation of the created potential. These were non-cultivation of *kharif* crops/no demand for water in *kharif* seasons, water lifting by farmers of non-command area, unlined canal system, wastage of water, change in cropping pattern, lack of awareness in farmers, poor maintenance and low provision of funds, lack of coordination between irrigation and other departments and change in land use pattern.

The Agriculture Department of MP, however, affirmed that *kharif* crops were being cultivated by the farmers in the State. The other reasons cited above were not beyond the control of the department.

**The Government may consider preparing a division wise water account for effective monitoring of irrigation potential created and utilised, water used by various agencies and revenue realised from them.**

### 8.2.9 Loss of revenue due to lack of any system to monitor the viability of lift irrigation schemes

Test check of records relating to lift irrigation schemes (LIS) in 11[11] divisions revealed that against 1,00,701 hectares of irrigation potential created, the utilised potential was 12,844 hectares (12.75 *per cent*) during the period under review. Non-utilisation of the created potential led to loss of Rs. 1.87 crore. Moreover, an amount of Rs. 11.57 crore (electricity bills Rs. 5.96 crore and expenditure on O&M Rs. 5.61 crore) was incurred on electricity bills and maintenance of these schemes while irrigation receipts were only Rs.13 lakh (1.12 *per cent* of the expenditure).

In reply, the EEs stated (October 2008 to March 2009) that irrigation potential could not be fully utilised due to interrupted or short supply of electricity and deficient rain.

**The Government may consider assessing the viability of LIS in view of the low utilisation of potential and the skewed ratio between expenditure on these schemes vis-à-vis the irrigation receipts.**

### 8.2.10 Lack of any system to monitor measuring devices

Clause 10 of the agreement for supply of water to industrial/power plants (Form 7A) clearly lays down that the automatic measuring device shall be installed and maintained by the Company which draws water, at its own cost. Further, clause 17 of the agreement lays down that the Company shall allow at all times, an officer of the Irrigation Department to inspect the measuring device. **It was, however, observed that no records were maintained in any of the test checked divisions to monitor the installations of the measuring devices, whether these were working properly, readings were taken at the prescribed intervals, any inspection conducted by the staff etc.**

[11] Water Resources Division- Anuppur, Bhopal, Bhind, Chhindwara, Deosar, Dewas, Khandwa, Ratlam, Satna, Ujjain and Vidisha.

**Due to this, the department was unaware of the water drawn by various agencies from various sources.**

Scrutiny of records revealed that in WR division, Chhindwara, two industries, Bhansali and Raymond were drawing water from Kanhan river since 1990 and 1991 respectively. Similarly, National Thermal Power Corporation was drawing water from Rihand Dam under WR division, Deosar since 1988. When enquired by audit (January to March 2009) regarding installation of any measuring device either at the source or premises of the companies, the divisions did not give any reply. **Thus, it is clear from the above that there was no control of the divisions on the water drawn by the industries.**

**The Government may launch a verification drive to check all the measuring devices and also ensure that these are monitored as per the provisions from time to time in the interest of revenue.**

## Compliance deficiencies

### 8.2.11 Loss of revenue due to incorrect application of water rates/ penalty/interest

Note below clause 2 of the agreement form for supply of water (Rule 71-A) provides that the company shall in any event pay water charges for at least 90 *per cent* of the total quantity of water allowed to be drawn by it even though the actual quantity of water drawn by the company is less than 90 *per cent* of the quantum of water allowed to be drawn. Further, this note also provides that 50 *per cent* additional rates are leviable in case of unauthorised drawal of water and clause 12 of the agreement provides 25 *per cent* interest for non-payment of water rates to WRD.

**8.2.11.1** Test check of records of Kolar Canal division, Nasrullaganj revealed that Municipal Corporation, Bhopal has been drawing water from the Kolar dam since November 1995 by executing agreement every year for supply of drinking water to the residents of Bhopal. It was observed that the Corporation had drawn 589.81 mcum of water on which water rate of Rs. 43.18 crore (including 50 *per cent* additional rate and 25 *per cent* interest) was leviable. Against this, the division had raised a demand of Rs. 24.58 crore (Upto March 2009). This resulted in short raising of demand of Rs. 18.60 crore.

After this was pointed out, the EE stated (June 2009) that regular correspondence was made with the Municipal Corporation, Bhopal for recovery of water charges. Reply of the EE was silent regarding the reasons as to why the matter was not brought to the notice of the higher authorities of the department so far.

**8.2.11.2** The WR division, Ujjain is providing water to two *Nagar Palikas* (Ghatia and Tarana) for drinking purpose and PHE, Ujjain for industrial purpose. In contravention of provisions of the agreements, the division had charged for actual water utilised instead of 90 *per cent* of the agreed quantity (where water was utilised less than 90 *per cent* of agreed quantity). Moreover, 50 *per cent* additional rates (where water was utilised

more than the agreed quantity) for unauthorised utilisation of water were not charged which led to non-realisation of revenue of Rs. 2.04 crore[12].

In reply, the EE stated (March 2009) that supplementary bill would be issued to recover the required amount as per rates applicable. A report on recovery has not been received (October 2009).

**8.2.11.3** Rates for water supplied from natural/Government sources are higher than those applicable in cases where these are developed by the user itself. Scrutiny of records in WR division, Deosar revealed that an agreement was executed between Jai Prakash Associates and the division in July 2007 for supply of water from Gopad river (natural/Government source) at Rs. 0.14 per cum. As the water was to be supplied from a natural/Government source, the rates prescribed by the Government (July 2003 at Rs. 0.47 per cum) were applicable in this case. Application of incorrect rates resulted in non-realisation of water rate of Rs. 3.65 crore.

In reply, the EE stated (March 2009) that action for recovery was in progress. The report on recovery has not been received (October 2009).

### 8.2.12 Loss of revenue due to defects in the distribution system

Scrutiny of records of Pipriya Branch Canal Division, Sohagpur, revealed that three Sub Divisions[13] were unable to deliver water from left bank canal (LBC) of Tawa dam on 36,023 hectares during 2004-05 to 2007-08 due to unauthorised supply in non-command area and non-maintenance of canal.

This not only resulted in loss of revenue of Rs. 42 lakh, but also deprived the farmers of water in the command area.

This fact was also confirmed by the report submitted by the Chief Engineer while submitting proposal for modernisation of Left Bank Canal of Tawa dam to the higher authorities.

After this was pointed out, the EE did not give any specific reply.

### 8.2.13 Non-deposit of security money

Clause 13 of Form 7-A of the agreement executed between the users of water and the divisions provides that the user shall always keep deposited with the EE, a sum equal to three times of the contracted monthly bill of the contracted quantity of water as security for due and proper payment of the water rates. In the event of failure by the company to pay the dues, the outstanding dues from the company shall be adjusted against the said deposit.

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12 Ghatia *Nagar Palika* Rs. 60 lakh, Tarana *Nagar Palika* Rs. 85 lakh and PHE, Ujjain Rs. 59 lakh.

13 Babai, Pipariya and Shobhapur.

Scrutiny of records revealed that in five WR divisions, five users had not deposited security money of Rs. 2.21 crore with the respective divisions, as mentioned below.

**(Rupees in crore)**

| Name of Division | Name of unit | Year | Amount due | Amount deposited by unit | Amount outstanding |
|---|---|---|---|---|---|
| Kolar Canal division, Nasrullaganj | *Nagar Nigam*, Bhopal | 2008-09 | 0.65 | Nil | 0.65 |
| Tawa project division, Itarsi | Ordnance Factory, Itarsi | 2008-09 | 0.61 | Nil | 0.61 |
| WR division, Deosar | JP Associates | 2008-09 | 0.68 | 0.20 | 0.48 |
| WR division, Ujjain | *Nagar Nigam*, Ujjain | 2008-09 | 0.18 | Nil | 0.18 |
| Dam Safety division, Gwalior | *Nagar Nigam*, Gwalior | 2008-09 | 0.29 | Nil | 0.29 |
| **Total** | | | **2.41** | **0.20** | **2.21** |

After this was pointed out, no specific reply was given by the divisions for non-deposit of security money.

### 8.2.14 Non-levy of betterment contribution

Section 58-C of the Irrigation Act lays down that the Government may, by notification, appoint such date being not earlier than three years from the commencement of the operation of a new canal, for levy on every permanent holder of land, whose land is situated in the command area, betterment contribution at the rate of Rs. 140 per acre. The Government accordingly issued notification in March 1983 levying the betterment contribution at the above rates.

Scrutiny of records in 17 WR divisions[14] revealed that the department had neither notified the dates nor specified the area on which betterment contribution became leviable. This resulted in non-realisation of revenue of Rs. 10.14 crore.

After this was pointed out, the EEs in their reply stated (between October 2008 and March 2009) that action for levy of betterment contribution would now be taken. A report on recovery has not been received (October 2009).

[14] Anuppur, Bhopal, Bhind, Chhindwara, Dewas, Deosar, Khandwa, Ratlam, Satna, Ujjain, Vidisha, Gandhi Sagar Dam, Kanhargaon (Chhindwara), Sohagpur (Pipariya Branch Canal), Itarsi (Tawa Project), Balaghat (Survey division) and Balaghat (Wainganga)

### 8.2.15 Short levy of penalty on delayed payment

According to Rule 193 of the MP Irrigation Rules, if any water rate (canal revenue) or any part thereof is not paid within one month of the prescribed date, the Canal Deputy Collector may impose penalty on such defaulters at prescribed rates.

Scrutiny of record of two divisions[15] revealed that while recovering arrear of Rs. 2.98 crore, the divisions recovered penalty of Rs. 20.42 lakh instead of Rs. 29.74 lakh, which led to short recovery of penalty of Rs. 9.32 lakh.

After this was pointed out, the EEs stated (January-February 2009) that necessary action would be taken to recover balance amount of penalty. A report on recovery has not been received (October 2009).

### 8.2.16 Lack of any system to monitor entry of outstanding revenue in debt books of farmers

Revenue Department's orders of August 1983 stated that the outstanding amount of irrigation revenue should be entered in the *Rin Pustika*[16] of the farmer in the command area. It also directed that banks should not advance any loan to the farmer without 'no due certificate' from the Irrigation Department.

Information collected from two divisions[17] and three banks[18] revealed that though the system was in place but these were not being followed.

After this was pointed out, the divisions replied (between October 2008 and April 2009) that farmers did not submit their *Rin Pustika* to the *Amins* and there were no requests for issue of 'no dues certificates' from the farmers. The banks replied that such orders were not available.

### 8.2.17 Conclusion

Water supply and distribution for irrigation, power, industry and domestic purposes require a huge amount of capital investment in infrastructure. Once the infrastructure is in place, operating water supply and distribution entails significant ongoing cost of maintenance. The funds for these capital and operational costs are essentially met from user charges and public funds. Review of the system for assessment and collection of water rates in the state, however, revealed that the process of framing of budgetary estimates had been *ad hoc*. There was no correlation between the actual receipts and the budget estimates for the subsequent year. The department did not have reliable figures of arrears of revenue for various categories of users of water. Besides, there was huge shortfall in utilisation of potential leading to loss of substantial revenue. No systems were instituted to monitor the installation and proper working of measuring devices while various agencies were drawing water without executing any agreement leading to substantial loss of revenue.

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15 PBC Division, Sohagpur (Rs. 7 lakh) & Tawa project division, Itrasi (Rs. 2 lakh).

16 Debt book.

17 Wain Ganga division, Balaghat and WR division, Chhindwara.

18 Jila Sahakari Bank, Land Development Bank and Satpura Narmada Kshetriya Gramin Bank, Chhindwara.

The department suffered loss of revenue on account of application of incorrect rates, defects in the distribution system, short utilisation of water, non-deposit of security money and non-levy of betterment contribution.

### 8.2.18 Summary of recommendations

The Government may consider implementation of the following recommendations to rectify the deficiencies.

- Consider framing more realistic budget estimates based on the actual receipts;
- expedite action to impose penalty on cases of unauthorised drawals and recovery thereof;
- consider preparing division wise detailed water account;
- consider preparing time bound action plan to verify and reconcile the arrears figures;
- consider launching a verification drive to check the measuring devices and monitor the measuring devices strictly as per norms; and
- consider ensuring that agreement in prescribed form is executed before drawal of water for commercial use.

## B – ELECTRICITY DUTY

### 8.3 Other audit observations

*Scrutiny of records of various offices of Superintending Engineer, Divisional Electrical Inspectors etc., revealed several cases of non-compliance of the provisions of the Indian Electricity Duty Rules/Madhya Pradesh Electricity Rules and Government orders as mentioned in the succeeding pargaraphs. These cases are illustrative and are based on a test check carried out in audit. Such omissions on the part of the departmental officers are pointed out in audit each year but not only the irregularities persist; these remain undetected till an audit is conducted. There is need for Government to improve the internal control system.*

### 8.4 Non-imposition of penalty

Under Rule 141 of the Indian Electricity Rules, 1956, if the owner of an electrical installation commits breach of any provision of the rules, he shall be liable to pay penalty upto Rs. 300 for each breach and if the breach continues, he shall be further liable to a penalty upto Rs. 50 per day till the breach persists.

Test check of records of Superintending Engineer, Electricity Safety (SE, ES) Indore and two Divisional Electrical Inspectors, Electricity Safety (DEI, ES), Chhindwara and Ujjain between January and February 2009 revealed that while carrying out inspection of 32,467 electrical installations

during 2006-2007 and 2007-2008, though the inspectors detected breach of provisions of the rules, no efforts were made to impose penalty on the defaulters for the breach. This resulted in non-levy of penalty of Rs. 97.40 lakh.

After the cases were pointed out, the SE, ES Indore and DEI, ES Chhindwara stated between January and February 2009, that penalty was imposed by the court. The DEI, ES, Ujjain stated (January 2009) that the department had no right to impose penalty and the expenditure on process of penalty was more than the revenue earned through penalty. The replies are not in consonance with the provisions of rules and also were silent regarding the reasons for non-initiation of penal proceedings by the SE, ES Indore and DEI, ES Chhindwara and Ujjain. Further replies have not been received (October 2009).

The matter was reported to the Chief Engineer (CE) and Chief Electrical Inspector (CEI) and the Government in March 2009; their reply has not been received (October 2009).

## 8.5 Non-realisation of revenue due to inaction of the department

As per the provision of section 5 (2) of the Madhya Pradesh Electricity Duty Act, 1949, without prejudice to any other mode of recovery available to the State Government, any duty which falls due for payment and interest thereon, if any, may be recovered in the same manner as an arrear of land revenue.

Test check of records of SE, ES Indore in January 2009 revealed that M/s Rama Phosphate Limited, Indore, an owner of generator, whose time limit for exemption from payment of electricity duty expired on 9 September 2005, had generated 163.63 lakh units of electrical energy during 10 September 2005 to March 2008. An amount of Rs. 50.69 lakh on account of electricity duty was receivable from the consumer. Besides, an amount of Rs. 32.31 lakh was also receivable as interest on the unpaid amount. But the department had not initiated any action for recovery of duty and interest through issue of revenue recovery certificate (RRC). As a result, the process of recovery could not be started even after a lapse of 78 months. This resulted in non-realisation of revenue of Rs. 83 lakh.

After this was pointed out, CE, ES and CEI, MP intimated (May 2009) that RRC for Rs. 75.80 lakh (including interest) for period upto July 2007 had been issued. A report on recovery in this case and status of recovery for the remaining period from August 2007 to March 2008 has not been received (October 2009).

The matter was reported to the Government (March 2009); their reply has not been received (October 2009).

**(M. RAY BHATTACHARYYA)**
**Accountant General**
**(Works & Receipt Audit)**
**Madhya Pradesh**

**Bhopal,**
**The** 18 FEB 2010

**Countersigned**

**(VINOD RAI)**
**Comptroller and Auditor General of India**

**New Delhi,**
**The** 19 FEB 2010