

# **Chapter-2**

## **Commercial Taxes**



## CHAPTER-2: COMMERCIAL TAXES

### 2.1 Tax administration

The levy and collection of commercial taxes<sup>1</sup> in the State is governed by the following Acts and Rules:

- Central Sales Tax (CST) Act, 1956;
- Bihar Value Added Tax (BVAT) Act, 2005;
- Bihar Tax on entry of goods into local areas (BTEG) Act, 1993;
- Bihar Entertainment Tax Act, 1948;
- Bihar Taxation on Luxuries in Hotels Act, 1988;
- Bihar Electricity Duties Act, 1948;
- Bihar Tax on Professions, Trades, Callings and Employments Act, 2011; and
- Bihar Tax on Advertisements Act, 2007.

The Commercial Taxes Department (CTD) is headed by the Commissioner of Commercial Taxes (CCT) assisted by five Additional Commissioners, three Joint Commissioners of Commercial Taxes (JCCT), 10 Deputy Commissioners of Commercial Taxes (DCCT)/Assistant Commissioners of Commercial Taxes (ACCT) and five Commercial Taxes Officers (CTOs) at the headquarters level including the Bureau of Investigation. At the field level, the State is divided into nine administrative divisions<sup>2</sup>, nine appeals divisions<sup>3</sup> and nine audit divisions<sup>4</sup>, each headed by a JCCT. The nine administrative divisions are further sub-divided into 50 circles, each headed by a DCCT/ACCT assisted by CTOs. The circle is the basic activity centre of the Department.

### 2.2 Internal Audit

The BVAT Act, 2005 and BVAT Rules empower the Commissioner to select, by 31 March of the following year, such number of dealers as may be deemed fit, for detailed audit by the Audit divisions headed by the JCCT (Audit) within thirty six months from the due date<sup>5</sup>. After audit the observations are sent to the circles for assessment/re-assessment and recovery of revenue.

The CTD has nine Audit divisions responsible for audit of returns/statements filed by the dealers. In 2016-17, the CCT selected 2,385 dealers to verify the correctness of their tax liabilities for the assessment year 2015-16. It was observed that during 2016-17, eight Audit divisions conducted audit of 17,382 dealers related to the period 2012-13 to 2014-15, which were selected by the CCT during 2013-14 to 2015-16, in which audit observations worth ₹ 476.01 crore (four Audit divisions) were made. The remaining four Audit divisions did not furnish money value of

<sup>1</sup> Commercial taxes include taxes on sales, trade etc., taxes on goods and passengers; taxes and duties on electricity; other taxes on income and expenditure-taxes on professions, trades, callings and employment and other taxes and duties on commodities and services.

<sup>2</sup> Bhagalpur, Central, Darbhanga, Magadh, Patna East, Patna West, Purnea, Saran and Tirhut.

<sup>3</sup> Bhagalpur, Central, Darbhanga, Magadh, Patna East, Patna West, Purnea, Saran and Tirhut.

<sup>4</sup> Bhagalpur, Central, Darbhanga, Magadh, Patna East, Patna West, Purnea, Saran and Tirhut.

<sup>5</sup> 31 December in case of Company and dealers whose accounts are required to be audited under the Act or under any other law, and 31 July in case of other dealers.

audit observations and none of the Audit divisions furnished the amount of recovery against their audit observations.

### 2.3 Results of audit

During 2016-17, the Accountant General test checked 43 units (68 per cent) (41 circles<sup>6</sup> out of 50 and two check-posts<sup>7</sup> out of six) out of 63 units of CTD. The CTD collected ₹ 17,122.42 crore revenue during 2015-16 of which audited units collected ₹ 16,690.50 crore (97 per cent). Audit test checked records of 5,080 dealers out of total 2,36,032 dealers registered in test checked units and identified irregularities worth ₹ 1,198.87 crore in 2,409 cases as detailed in **Table - 2.1**.

**Table - 2.1**

			(₹ in crore)
Sl. No.	Categories	No. of cases	Amount
1.	Suppression of turnover	472	494.03
2.	Application of incorrect rates of tax	95	36.71
3.	Non/ short levy of taxes	456	67.47
4.	Incorrect/Excess allowance of ITC <sup>8</sup>	284	83.75
5.	Irregular allowance of exemption	290	214.62
6.	Incorrect determination of turnover	67	44.38
7.	Suppression of import value	186	66.00
8.	Application of incorrect rates of entry tax	24	2.63
9.	Non/short levy of electricity duty	4	107.20
10.	Non/short levy of entertainment tax	4	1.98
11.	Other cases	527	80.10
<b>Total</b>		<b>2,409</b>	<b>1,198.87</b>

The Department accepted underassessment and other deficiencies of ₹ 212.83 crore in 559 cases between April 2016 and March 2018. Out of these, 204 cases involving ₹ 51.82 crore were pointed out during 2016-17 and the rest during earlier years. Further, the Department recovered (between April 2016 and March 2018) ₹ 22.57 crore in 105 cases, of which ₹ 13.63 crore pertained to cases pointed out during 2016-17 and the rest to earlier years. Replies in the remaining cases of 2016-17 and those of earlier years are awaited (June 2018).

This Chapter contains 16 paragraphs involving 205 cases worth ₹ 178.41 crore. Most of these are persisting irregularities, despite similar cases being pointed out repeatedly in the Audit Reports during the last five years as detailed in **Table - 2.2**.

<sup>6</sup> Aurangabad, Bagaha, Barh, Begusarai, Bhabhua, Bhagalpur, Chhapra, Biharsharif, Danapur, Darbhanga, Forbesganj, Gandhi Maidan, Gaya, Gopalganj, Hajipur, Kadamkuan, Katihar, Kishanganj Lakhisarai, Madhubani, Motihari, Munger, Muzaffarpur East, Muzaffarpur West, Nawada, Patliputra, Patna Central, Patna City East, Patna City West, Patna North, Patna South, Patna Special, Patna West, Purnea, Raxaul, Saharsa, Samastipur, Sasaram, Sitamarhi, Siwan and Toghra.

<sup>7</sup> Dalkola and Rajauli.

<sup>8</sup> Credit (set-off) of tax paid on inputs (purchase) at previous stage from the tax payable at subsequent stage of sale.

Table - 2.2

(₹ in crore)

Nature of observation	2011-12		2012-13		2013-14		2014-15		2015-16		Total	
	Cases	Amount	Cases	Amount	Cases	Amount	Cases	Amount	Cases	Amount	Cases	Amount
Suppression of turnover	43	55.37	9	18.08	12	76.26	64	452.39	23	12.41	151	614.51
Incorrect claim of ITC	19	102.86	17	31.06	7	33.80	55	40.06	21	4.89	119	212.67
Non-levy of purchase tax	-	-	-	-	1	0.10	8	13.86	3	0.86	12	14.82
Application of incorrect rate of tax	31	39.85	24	56.81	8	4.66	34	7.77	8	4.21	105	113.30
Non-levy of surcharge	-	-	-	-	-	-	6	0.29	9	0.60	15	0.89
Incorrect adjustment of entry tax towards payment of VAT/CST	12	10.91	23	12.34	38	20.48	40	40.38	12	5.80	125	89.91
Incorrect allowance of deductions	13	1.73	21	13.01	14	4.41	28	10.72	6	2.84	82	32.71
Irregular deduction on account of transit sales	-	-	-	-	2	4.02	3	7.73	-	-	5	11.75
Short levy of entry tax	-	-	-	-	-	-	-	-	9	838.97	9	838.97
Short levy of entry tax due to suppression of import value	4	23.67	12	86.88	45	272.61	-	-	9	2.00	70	385.16
Application of incorrect rate of entry tax	11	8.80	6	3.63	22	66.66	5	0.16	4	0.77	48	80.02
Short payment/non-realisation of admitted entry tax	2	0.84	4	1.51	19	135.60	3	2.11	6	5.80	34	145.86
Non/Short calculation of reverse credit	-	-	4	0.45	1	0.08	8	16.36	3	1.79	16	18.68
Short payment of admitted tax and non-levy of interest	11	1.34	9	1.19	14	1.85	89	21.26	54	48.88	177	74.52
Non-levy of entry tax and penalty due to non-registration	11	2.80	16	13.22	26	2.13	6	0.42	8	0.76	67	19.33

**Recommendation:**

**The Department should initiate corrective/preventive measures to address the lapses/irregularities to avoid the recurrence of similar lapses/irregularities in future.**

**2.4 Suppression of turnover**

**Assessing Authorities (AAs) did not detect suppression of turnover of ₹ 24.31 crore leading to underassessment of tax worth ₹ 11.17 crore including leviable penalty and interest.**

Under the BVAT Act, 2005, in case of concealment, omission or failure to disclose correct sale/purchase, the AAs are empowered to impose penalty at three times of the tax payable besides tax and interest on the escaped turnover. Further, as per section 25 (1) of the BVAT Act, the AAs are required to scrutinise every quarterly and annual return as per the six checklists provided therein under clause (a) to (f).

Audit test check of assessment records in 10 commercial taxes circles<sup>9</sup> revealed that 12 dealers (two cases of scrutiny and 10 cases of self-assessment) reported their sales/purchase turnover of ₹ 1,102.69 crore only against their actual sales/purchase turnover of ₹ 1,127 crore during the year 2013-14 and 2014-15, as observed from cross-verification of related records<sup>10</sup> submitted/filed by the dealers, leading to suppression of turnover of ₹ 24.31 crore. The AAs failed to scrutinise the 10 cases and could not detect the suppression of turnover from the records even in the two cases scrutinised by them, leading to underassessment of tax of ₹ 11.17 crore including penalty of ₹ 7.77 crore and interest of ₹ 78.91 lakh.

The AAs accepted audit observations in four cases and raised demand of ₹ 5.10 crore between June and August 2017. Recovery in the accepted cases and replies in the remaining cases are awaited (June 2018) though the matter was reported to the Department in July 2017.

Similar observations were pointed out in the Audit Reports for the years 2011-12 to 2015-16 highlighting the system deficiencies and failure of AAs to effectively scrutinise dealers' returns to detect short collection of tax of ₹ 614.51 crore from 151 dealers. However, the lapses/irregularities continue to recur.

**Recommendation:**

**The Department should ensure cross-verification of turnover details in the returns with other related records of the dealers to detect suppression of turnover by periodical revision of scrutiny parameters.**

**2.5 Application of incorrect rate of tax**

**AAs failed to detect application of incorrect rates of tax leading to short levy of tax of ₹ 12.45 crore including interest.**

The BVAT Act, 2005, requires the AAs to scrutinise quarterly as well as annual returns to ensure application of correct rate of tax. The Act further provides for levy of interest at the rate of one and a half *per cent* per month on the amount of tax found payable subsequent to scrutiny.

Audit test check of assessment records in 16 commercial taxes circles<sup>11</sup> revealed that tax liabilities of 44 dealers<sup>12</sup> were assessed/self-assessed at the lower rates of zero to five *per cent* instead of correct applicable rates of one to 13.5 *per cent* on

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<sup>9</sup> Gaya, Kadamkuan, Munger, Muzaffarpur East, Muzaffarpur West, Patna Central, Patna north, Patna Special, Patna City East and Patna City West.

<sup>10</sup> Tax Audit Report (TAR), trading and profit and loss account, quarterly and annual returns, utilisation statements of Simplified usage of vehicle information data harmonized application (Suvidha) and declarations in form 'C'.

<sup>11</sup> Bhagalpur, Darbhanga, Gandhi Maidan, Gopalganj, Kadamkuan, Madhubani, Muzaffarpur West, Patliputra, Patna Central, Patna City West, Patna North, Patna South, Patna Special, Raxaul, Saharsa and Samastipur.

<sup>12</sup> One case of assessment under section 31 of the BVAT Act, three cases of scrutiny and 40 cases of self-assessment.

the sale of various goods<sup>13</sup> of ₹ 129.02 crore during the year 2012-13 to 2014-15. Out of these 44 dealers, in 40 cases, the AAs failed to scrutinise the returns and detect the application of incorrect rates. In the remaining four cases, the AAs failed to detect application of incorrect rate of tax even during scrutiny/assessment, leading to short levy of tax of ₹ 12.45 crore including interest of ₹ 2.68 crore.

The AAs accepted the audit observations in six cases, raised demand of ₹ 2.55 crore and recovered ₹ 1.24 crore in two cases. Recovery in the remaining accepted cases and replies in the remaining cases are awaited (June 2018) though the matter was reported to the Department in July 2017.

The Audit Reports for the year 2011-12 to 2015-16 had highlighted application of incorrect rates of tax and failure of AAs to effectively scrutinise dealers' returns to detect short collection of tax of ₹ 113.30 crore from 105 dealers. However, similar lapses/irregularities continue to persist, indicating that the Department did not take corrective measures to prevent recurring leakage of revenue.

### **Recommendation:**

**The Department should evolve a mechanism whereby AAs invariably scrutinise returns to detect cases of incorrect application of rate of tax.**

## **2.6 Input Tax Credit (ITC)**

**AAs did not detect incorrect ITC claims of ₹ 2.09 crore by 14 dealers due to non-scrutiny of returns and non-verification of ITC ledger on the VATMIS leading to underassessment of tax of ₹ 9.00 crore including leviable interest and penalty.**

The BVAT Act, 2005 provides that a dealer is entitled to claim ITC, if he purchases any input within the State from another registered dealer after paying him tax, and makes sales of such goods within the State or outside the State or consumes them in the manufacture of goods (except Schedule-IV goods<sup>14</sup>) for such sales. The AA is empowered to impose interest and penalty equivalent to three times of the tax in case of incorrect claim of ITC.

### **2.6.1 Irregular/excess claim of Input Tax Credit**

Audit test check of assessment records in four commercial taxes circles<sup>15</sup> revealed that during 2013-14 and 2014-15, seven dealers (one case of scrutiny and six cases of self-assessment) availed ITC of ₹ 11.74 crore on purchase of the goods worth ₹ 116.69 crore as against their admissible entitlement of ₹ 10.44 crore. However, the AAs did not scrutinise the returns and verify ITC claims to detect incorrect availing of ITC on various inadmissible items<sup>16</sup> and even failed to detect incorrect

<sup>13</sup> Stone chips, stone boulders and ballast, mobile phone battery charger, timber, stone dust, auto accessories, bitumin emulsion, articles made of rolled gold and imitation jewellery and besan sold by a dealer having GTO of ₹ 100 crore or more.

<sup>14</sup> Non-VATable goods such as petrol, diesel, all type of liquor and tobacco products.

<sup>15</sup> Bhagalpur, Muzaffarpur East, Patna city East and Patna Special.

<sup>16</sup> Such as flour (on which tax was not admitted on its sale), goods consumed in manufacturing of schedule IV goods and consumables (spare parts, lubricants, electrical goods and fittings).

ITC in the one scrutinised case. As a result, tax of ₹ 5.60 crore including penalty of ₹ 3.91 crore and interest of ₹ 39.73 lakh could not be levied.

The matter was reported to the Department (July 2017) and reply is awaited (June 2018).

The Audit Reports for the years 2011-12 to 2015-16 had highlighted the incorrect claim/availing of ITC and failure of AAs to effectively scrutinise dealers' returns to detect short collection of tax of ₹ 212.67 crore from 119 dealers. However, the Department did not take appropriate measures to ensure verification and checking of admissibility of ITC claims by the AAs, despite assurance of the Principal Secretary in 2015 to develop ITC ledger for verification of ITC in the VATMIS, as a result the irregularities continued to recur.

**Recommendation:**

**The Department should prescribe mandatory submission of evidence in support of ITC claims and ensure that AAs invariably check their admissibility.**

**2.6.2 Excess claim of ITC on inflated purchases**

Audit test check of assessment records in six commercial taxes circles<sup>17</sup> revealed that seven dealers (all cases of self-assessment) had disclosed purchase of goods worth ₹ 16.18 crore for the years 2013-14 and 2014-15, though their actual purchases were worth only ₹ 8.33 crore. Thus the dealers had claimed excess ITC of ₹ 79.27 lakh by inflating purchases worth ₹ 7.85 crore in the returns which was revealed on cross-verification of purchase disclosed by the purchasing dealers in their returns/TAR with the sales disclosed by the selling dealers in their returns/TAR. However, the AAs failed to scrutinise the returns and verify ITC ledger on VATMIS to detect the inflated purchase and incorrect/excess ITC claim of ₹ 79.27 lakh. As a result, the AAs did not levy tax of ₹ 3.40 crore including leviable penalty of ₹ 2.38 crore and interest of ₹ 22.50 lakh.

The AA accepted the audit observation in one case and raised demand of ₹ 1.05 crore. Recovery in the accepted case and replies in the remaining cases are awaited (June 2018) though the matter was reported to the Department in July 2017.

The Audit Reports for the years 2011-12 to 2015-16 had highlighted the incorrect claim of ITC by dealers and failure of AAs to effectively scrutinise dealers' returns to detect incorrect ITC leading to short collection of tax of ₹ 212.67 crore from 119 dealers. However, the Department did not take appropriate measures to ensure verification of ITC despite assurance of the Principal Secretary in 2015 to develop ITC ledger for verification of ITC in the VATMIS. As a result the irregularities continued to recur.

**Recommendation:**

**The Department should ensure that ITC claims are verified by the AAs through the ITC ledger of dealers on VATMIS.**

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<sup>17</sup> Bagaha, Begusarai, Gopalganj, Muzaffarpur West, Patna Special and Sasaram.



## 2.7 Excess allowance of ITC due to non-calculation of reverse credit<sup>18</sup>

**AAs failed to detect non-calculation of reverse credit by the dealers leading to excess allowance of ITC of ₹ 6.25 crore including penalty and interest.**

The BVAT Rules, 2005 stipulate that a manufacturing dealer is required to reverse the ITC when he makes inter-state/intra-state stock transfer of the goods manufactured from the inputs on which he had claimed ITC. The BVAT Rules further provide for reversal of ITC in case purchased goods on which ITC was claimed are subsequently returned to their sellers by the purchasing dealers. The BVAT Act, 2005 empowers the AAs to impose interest and penalty equivalent to three times of the tax payable for incorrect claim of ITC.

Audit test check of assessment records in five commercial taxes circles<sup>19</sup> indicated that five dealers (one assessed and four self-assessed) availed ITC of ₹ 42.10 crore on their purchases and either returned the purchased goods or made inter-state/intra-state stock transfer of goods manufactured by consuming such purchased goods without making reverse credit of ₹ 1.44 crore during the year 2013-14 and 2014-15. The AAs did not scrutinise the returns of four out of five dealers and therefore failed to detect non-reversal of ITC including one case which was assessed by him. As a result, tax of ₹ 6.25 crore including leviable penalty of ₹ 4.33 crore and interest of ₹ 47.03 lakh could not be levied by the AAs.

The AAs accepted the audit observations in three cases and raised demand of ₹ 4.33 crore and recovered ₹ 2.64 lakh in one case. The recovery in the remaining accepted cases and replies in the remaining cases are awaited (June 2018) though the matter was reported to the Department in July 2017.

Similar observations were pointed out in Audit Reports for the year 2011-12 to 2015-16 highlighting failure of AAs to effectively scrutinise dealers' returns to detect short collection of tax of ₹ 18.68 crore from 16 dealers. However, similar lapses/irregularities continue to persist, indicating that the Department did not take corrective measures to prevent recurring leakage of revenue.

## 2.8 Short levy of tax due to incorrect adjustment of entry tax

**AAs failed to detect incorrect adjustment of entry tax towards VAT/CST liability leading to short levy of VAT/CST of ₹ 2.97 crore including interest.**

Under the provisions of BTEG Act, 1993 adjustment of entry tax paid by a dealer on purchase of scheduled goods<sup>20</sup> towards his VAT liability is not admissible in various circumstances such as (i) the goods imported were not re-sold, (ii) the rate of VAT was less than the rate of ET, and (iii) the manufacturer did not belong to small, medium or sick industries category. Further, the liability of CST is not adjustable from the entry tax.

<sup>18</sup> Reversal of input tax credit already availed by the dealer due to circumstances given in Rule 14, 15 and 16 of the BVAT Rules, 2005, is reverse credit.

<sup>19</sup> Patna City East, Patna City West, Patna North, Patna Special and Sitamarhi.

<sup>20</sup> Goods mentioned in the schedule attached to the BTEG Act, 1993 on which entry tax is leviable at different rates prescribed in the schedule.

Audit test check of assessment records in seven commercial taxes circles<sup>21</sup> revealed that 10 self-assessed dealers, had adjusted their VAT/CST liability amounting to ₹ 240.35 crore from entry tax paid by them during the period 2013-14 and 2014-15. However, the dealers were eligible for entry tax adjustment of ₹ 238.07 crore only, as the remaining amount of ₹ 2.29 crore was not admissible as per the provision of the Act *ibid*. This led to incorrect adjustment of entry tax of ₹ 2.29 crore towards payment of VAT/CST. The AAs failed to scrutinise returns and detect incorrect adjustment of entry tax which resulted into short levy of VAT/CST of ₹ 2.97 crore including interest of ₹ 67.94 lakh.

The AA accepted the audit observation in one case and raised demand of ₹ 24.58 lakh. Recovery in the accepted case and replies in the remaining cases are awaited (June 2018) though the matter was reported to the Department in July 2017.

The Audit Reports for the years 2012-13 to 2015-16 had highlighted non-observance of these provisions by dealers and failure of AAs to effectively scrutinise dealers' returns to detect those lapses/irregularities leading to short collection of tax of ₹ 89.91 crore from 125 dealers. However, the Department did not take appropriate measures, resulting in recurrence of similar lapses/ irregularities.

**Recommendation:**

**The Department may ensure scrutiny of returns by the AAs to detect cases of irregular adjustment of entry tax.**

**2.9 Incorrect availing/allowance of deduction**

**AAs failed to detect incorrect availing of deductions by works contractors leading to short levy of tax of ₹ 1.69 crore.**

The BVAT Act, 2005 and Rules, 2005 stipulate that a works contractor is liable for deduction on the items of labour/services and other charges enumerated therein.

Audit test check of assessment records in two commercial taxes circles (Bhagalpur and Munger) revealed that two works contractors (self-assessed) availed deductions of ₹ 372.86 crore towards labour and other charges during the period between 2013-14 and 2014-15. As observed from the records<sup>22</sup> they availed deductions to the extent of ₹ 29.77 crore towards inadmissible items<sup>23</sup> and were eligible for deduction of ₹ 343.09 crore only. The AAs had not scrutinised returns and as such, could not detect the incorrect deductions. Moreover, it was observed that evidence to substantiate claims of deductions by works contractors to be submitted with the returns was not prescribed under BVAT Act/Rules. This led to incorrect deductions of ₹ 29.77 crore which resulted in short levy of tax of ₹ 1.69 crore.

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<sup>21</sup> Hajipur, Kadamkuan, Patna Central, Patna City West, Patna Special, Patna West and Shahabad (Ara).

<sup>22</sup> Returns, profit and loss accounts and TAR.

<sup>23</sup> Purchase of goods in the course of interstate trade and commerce, TDS, other petty administrative expenses and profit other than on labour and services.

The matter was reported to the Department (July 2017) and reply is awaited (June 2018).

The Audit Reports for the years 2012-13 to 2015-16 had highlighted non-observance of these provisions by dealers/works contractors and failure of the AAs to effectively scrutinise dealers' returns to detect short collection of tax of ₹ 32.71 crore from 82 dealers. However, similar lapses/irregularities continue to persist, indicating that the Department did not take corrective measures to prevent their recurrence.

#### **Recommendation:**

**The Department may consider mandatory assessment of returns of works contractors, as presently, the BVAT Act/Rules do not require works contractors to furnish evidence to substantiate claims of deductions.**

### **2.10 Short levy of tax on rental charges of electric meters**

**AAs underassessed VAT of ₹ 2.80 crore including interest on the rental charges of electric meters.**

The BVAT Act, 2005 provides that "sale" includes a transfer of the right to use any goods for any purpose.

Audit test check of assessment records in Patna special commercial taxes circle revealed that two dealers had not admitted any VAT on the proceeds of electric meter rent of ₹ 148.51 crore received during 2013-14 and 2014-15. The AA, under the impression that the meter rent receipts was inclusive of VAT, excluded the amount of VAT while doing assessment and determined the taxable turnover at ₹ 130.84 crore only, without actually examining the schedules of annual accounts. However, Audit examination of annual accounts and schedules revealed that the meter rent receipt of ₹ 148.51 crore was absolute and not inclusive of any tax. Thus due to lack of due diligence by the AAs, VAT of ₹ 20.90 crore (including interest) was levied instead of ₹ 23.70 crore (including interest), leading to short levy of tax and interest of ₹ 2.80 crore.

The AA accepted the audit observation in one case and rectified the assessment order by raising additional demand of ₹ 1.52 crore. The recovery in the accepted case and reply in the remaining case are awaited (June 2018) though the matter was reported to the Department in July 2017.

### **2.11 Non/Short payment of admitted tax and interest**

**AAs failed to detect non/short/delayed payment of admitted tax leading to non/short realisation of tax and interest of ₹ 6.27 crore.**

The BVAT Act, 2005 stipulates payment of tax by every dealer on or before 15<sup>th</sup> of the following month failing which, he is required to pay interest at the rate of one and a-half *per cent* per month. AAs are required to scrutinise quarterly as well as annual returns to ensure payment of tax and interest.

- Audit test check of assessment records in 28 commercial taxes circles<sup>24</sup> revealed that 52 self-assessed dealers, had paid only ₹ 29.66 crore against the payable admitted tax of ₹ 33.50 crore during the years 2013-14 and 2014-15. Thus, they made short payment of tax of ₹ 3.85 crore. The AAs failed to detect short/non-payment of taxes of ₹ 4.88 crore including interest of ₹ 1.03 crore due to non-scrutiny of returns. Audit also observed absence of a system of raising alerts in the VATMIS to red flag non/short payment of admitted tax.

The AAs accepted the audit observations in 16 cases and raised demand for ₹ 1.29 crore and recovered ₹ 11.43 lakh in three<sup>25</sup> cases. Recovery in the accepted cases and replies in the remaining cases are awaited (June 2018) though the matter was reported to the Department in July 2017.

- Audit test check of assessment records in 17 commercial taxes circles<sup>26</sup> revealed that 23 self-assessed dealers had paid their admitted tax with delays ranging from two to 823 days during 2013-14 and 2014-15. The AAs failed to levy interest of ₹ 1.39 crore for such default due to non-scrutiny of returns. Audit also observed the absence of a system of raising alerts in the VATMIS to red flag the delayed payment of admitted tax.

The AAs accepted the audit observations in five cases and raised demand for ₹ 64.90 lakh and recovered ₹ 2.14 lakh in one case. Recovery in the accepted cases and replies in the remaining cases are awaited (June 2018) though the matter was reported to the Department in July 2017.

The Audit Reports for the years 2011-12 to 2015-16 had highlighted similar non-observance of these provisions by dealers and failure of the AAs to effectively scrutinise the dealers' returns to detect short payment of admitted tax and interest thereon of ₹ 74.52 crore in 177 cases. However, the lapses/irregularities continue to persist, indicating that the Department did not take corrective measures to prevent their recurrence and leakage of revenue.

### **Recommendation:**

**The Department should evolve a mechanism to detect cases of non/short/delayed payment of admitted tax in the VATMIS.**

### **2.12 Non-levy of purchase tax**

**AA failed to cross-verify details of purchase/sale and did not levy purchase tax of ₹ 70.82 crore including interest in case of a dealer.**

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<sup>24</sup> Bagaha, Begusarai, Bhabhua, Bhagalpur, Darbhanga, Forbesganj, Gopalganj, Kadamkuan, Lakhisarai, Madhubani, Motihari, Munger, Muzaffarpur East, Muzaffarpur West, Nawada, Patliputra, Patna Central, Patna City East, Patna City West, Patna North, Patna South, Patna Special, Patna West, Saharsa, Sasaram, Sitamarhi, Siwan and Teghra.

<sup>25</sup> These cases relate to Bhabhua, Motihari and Sitamarhi.

<sup>26</sup> Aurangabad, Begusarai, Bhagalpur, Darbhanga, Gandhi Maidan, Gopalganj, Kadamkuan, Motihari, Muzaffarpur West, Patliputra, Patna Central, Patna city East, Patna South, Patna West, Purnea, Sitamarhi and Siwan.

Under the BVAT Act, 2005, purchase tax is leviable in circumstances where no tax is payable at the time of purchase of goods and subsequently the goods is transferred (other than sales) to another dealer.

Audit test check of assessment records in Patliputra commercial taxes circle revealed that a dealer, Bihar State Food and Civil Supplies Limited (BSFCSL) had procured food grains worth ₹ 1,644.12 crore from various unregistered farmers without requirement of payment of tax<sup>27</sup> and transferred the food grains to Food Corporation of India (FCI). However, the fact of transfer to FCI was not disclosed in returns by BSFCSL. The returns filed by FCI however disclosed receipt of food grains of ₹ 1,644.12 crore from BSFCSL during 2013-14. As such, purchase tax was leviable as per provisions of the Act *ibid*. The AA failed to cross-verify details of purchase/sale and did not levy purchase tax of ₹ 70.82 crore including additional tax of ₹ 49.32 crore and interest of ₹ 15.06 crore.

In response to the audit observation, the AA assessed the case and raised (August 2016) demand of ₹ 70.82 crore. Details of recovery are awaited (June 2018) though the matter was reported to the Department in July 2017.

The Audit Report for the year 2014-15 had highlighted underassessment of tax of ₹ 72.88 crore (including penalty and interest) by the same dealer. However, the AAs failed to prevent their recurrence and safeguard revenue.

#### **Recommendation:**

**The Department may ensure compliance to the rules pertaining to purchase tax by dealers and detection of its non-compliance.**

### **2.13 Non/short levy of surcharge**

#### **AAs failed to levy surcharge of ₹ 43.45 lakh on the sales of tobacco products.**

As per the notification issued in May 2013 under the BVAT Act, 2005, every dealer selling tobacco products was required to pay surcharge of 15 per cent.

Audit test check of assessment records in seven commercial taxes circles<sup>28</sup> revealed that seven dealers (self-assessed) had paid tax of ₹ 4.16 crore on sales of tobacco products worth ₹ 15.25 crore during the period 2013-14 and 2014-15. However, surcharge of ₹ 19.00 lakh only was paid by one out of these seven dealers against the payable amount of ₹ 62.45 lakh. The AAs failed to scrutinise the returns of the dealers, leading to short levy of surcharge of ₹ 43.45 lakh. Audit also observed absence of commodity linked mapping in the VATMIS to ensure payment of surcharge by the dealers of tobacco products.

Following the audit observation, the AA recovered ₹ 2.81 lakh in one case. Replies in the remaining cases are awaited (June 2018) though the matter was reported to the Department in July 2017.

<sup>27</sup> As per Section 43(1) of the BVAT Act, no un-registered person can collect tax on sales of goods.

<sup>28</sup> Bhagalpur, Forbesganj, Hajipur, Kishanganj, Muzaffarpur West, Patna South and Patna Special.

The Audit Reports for the years 2014-15 and 2015-16 had highlighted similar observations. However, the lapses/irregularities continue to persist, indicating that the Department did not take corrective measures to prevent their recurrence and leakage of revenue.

**Recommendation:**

**The Department should ensure levy and collection of surcharge on tobacco products.**

**2.14 Non-levy of tax on closing stock of discontinued business**

**AA failed to detect tax liability of ₹ 3.20 crore on closing stock of goods held by the dealer who discontinued his business.**

As per the BVAT Act, 2005, a registered dealer is required to pay tax on the stock of the goods remaining with him when he closes or discontinues his business.

Audit test check of assessment records in Patna North commercial taxes circle revealed that a dealer (self-assessed) had disclosed closing stock of goods of ₹ 52.28 crore in his annual return for the period 2013-14. The dealer had neither filed any return since December 2014 nor paid any tax for the subsequent years as he had discontinued his business and therefore he was liable to pay tax on the stock of goods held by him along with the leviable interest as per the provision of the Act *ibid*. The AA failed to detect the discontinuance of business by the dealer and levy tax on the closing stock which resulted into non-levy of tax of ₹ 3.20 crore<sup>29</sup> including interest of ₹ 58.81 lakh.

The AA accepted the audit observation and raised demand of ₹ 3.36 crore. However, recovery is awaited (June 2018) though the matter was reported to the Department in July 2017.

**2.15 Irregular claim of deduction towards transit sales**

**AAs did not detect the irregular claim of transit sale leading to short levy of tax of ₹ 42.75 crore.**

The Central Sales Tax (CST) Act, 1956 and CST Rules, 1957 provide for exemption for transit sale of goods made during the movement of goods for inter-state trade and commerce subject to submission of form 'C' and certificate 'E-I' by dealer claiming such exemption. The CCT issued instructions in 2006, 2011 and 2013 to all the AAs to disallow claims of exemption/concessions towards inter-state sales not supported by the prescribed documents within the prescribed time and levy tax along-with applicable interest on such disallowed claims.

<sup>29</sup> Calculation: Tax at the rate of five *per cent* on ₹ 52,27,65,586 = ₹ 2,61,38,279  
Interest at the rate of 1.5 *per cent* for 15 months = ₹ 58,81,112  
Total = ₹ 3,20,19,391



Audit test check of assessment records in two commercial taxes circles (Patna Central and Patna Special) revealed that two dealers<sup>30</sup> (self-assessed) claimed exemption for transit sale of goods worth ₹ 245.11 crore during the period 2013-14 and 2014-15. However, the dealers did not submit certificates in form 'E-1' and declaration in form 'C' and proof of movement of goods (utilisation of Road permit generated in *Suvidha*<sup>31</sup>) in support of their claims. The AAs failed to detect the incorrect claims of exemption towards transit sales leading to short levy of tax of ₹ 42.75 crore including interest of ₹ 9.66 crore.

Accepting the audit observation, the AA raised demand of ₹ 16.44 crore in one case. Recovery in the accepted case and reply in the remaining case are awaited (June 2018) though the matter was reported to the Department in July 2017.

Similar observations were pointed out in Audit reports for the years 2013-14 and 2014-15 highlighting non-observance of these provisions by dealers and failure of the AAs to effectively scrutinise the dealers' returns to detect incorrect exemption leading to underassessment of tax of ₹ 11.75 crore in five cases. However, the lapses/irregularities are still persisting despite issuance of directives by the CCT in 2006, 2011 and 2013 to scrutinise such cases within the prescribed time and disallow such claims not supported by the prescribed documentary evidence.

### Recommendation:

**The Department should ensure compliance of the directives issued by the CCT from time to time and take action against officials/officers who failed to follow such directions.**

## Entry Tax

### 2.16 Under assessment of entry tax

The BVAT Act, 2005, and the BTEG Act, 1993, empower the AAs to levy tax on turnover escaping tax for any reason *viz.*, concealment, omission, non-disclosure etc., besides interest and penalty equivalent to three times the tax payable on escaped turnover. The Acts *ibid* further requires the AA to scrutinise quarterly and annual returns as per the six checklists provided under Section 25 (1) (a) to (f) of the BVAT Act, 2005.

<sup>30</sup> Calculation:

(₹ in crore)						
Sl. No.	Name of the dealer/TIN	Period	Amount of transit sale	Tax leviable	Interest	Total
1.	A 2 Z Infra Engineering Ltd. 10010652007	2013-14	87.60	11.83	3.55	15.38
2.	Sri Gopi Krishna Infrastructure Pvt. Ltd 10157633047	2013-14	15.34	2.07	0.93	3.00
		2014-15	142.17	19.19	5.18	24.37
<b>Total</b>			<b>245.11</b>	<b>33.09</b>	<b>9.66</b>	<b>42.75</b>

<sup>31</sup> *SUVIDHA* (Simplified Usage of Vehicle Information Data Harmonised Application) is an application which captures details of transportation of goods and generates 16 digit unique number to identify different consignments.

### 2.16.1 Suppression of import<sup>32</sup> value

**AAs failed to detect suppression of import of scheduled goods by the dealers leading to short levy of entry tax of ₹ 6.03 crore including penalty.**

Audit test check of assessment records in five commercial taxes circles<sup>33</sup> revealed that eight dealers (one assessed and seven self-assessed) had disclosed import value of scheduled goods of ₹ 365.69 crore in their returns. However, their actual import value was of ₹ 392.87 crore as observed during the cross-verification of the related records<sup>34</sup>. Thus the dealers suppressed the imports by ₹ 27.18 crore in their returns during 2013-14 and 2014-15. The AAs did not scrutinise the returns in seven cases and failed to detect suppression of turnover even in one case assessed by them leading to underassessment of tax of ₹ 6.03 crore including penalty of ₹ 4.53 crore.

The AA accepted audit observation in one case and raised demand of ₹ 4.88 lakh (April 2018). Recovery in the accepted case and replies in the remaining cases are awaited (June 2018) though the matter was reported to the Department in July 2017.

Similar observations were pointed out in the Audit reports for the years 2011-12 to 2015-16 highlighting non-observance of these provisions by dealers and failure of the AAs to effectively scrutinise the dealers' returns to detect underassessment of tax of ₹ 385.16 crore in 70 cases. However, the lapses/irregularities continue to persist, indicating that the Department did not take corrective measures to prevent their recurrence and leakage of revenue.

#### **Recommendation:**

**The Department may prescribe a mechanism for cross-verification of turnover with other related records of the dealers to detect suppression of import/purchase in self-assessment cases.**

### 2.16.2 Short levy of Entry Tax

**AAs failed to detect actual entry tax liability of eight dealers, leading to short levy of entry tax of ₹ 92.27 lakh.**

Audit test check of assessment records in eight commercial taxes circles<sup>35</sup> revealed that eight dealers (two cases of assessment and six cases of self-assessment) had imported scheduled goods worth ₹ 21.71 crore during the years 2012-13 to 2014-15 on which they had entry tax liability of ₹ 1.13 crore but admitted and paid entry tax

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<sup>32</sup> Purchase/receipts of goods from outside the State as well as outside the country.

<sup>33</sup> Aurangabad, Hajipur, Muzaffarpur East, Saharsa and Samastipur.

<sup>34</sup> Utilisation statements of *SUVIDHA* and declarations in form 'C' with the returns filed by the dealers under entry tax.

<sup>35</sup> Bhabhua, Danapur, Hajipur, Katihar, Patliputra, Patna Central, Patna Special and Sasaram.



of ₹ 20.35 lakh only, as observed on the cross-verification of related records<sup>36</sup>. The AAs failed to detect the underassessment of tax from the records even in the two cases assessed by them leading to short levy of entry tax of ₹ 92.27 lakh.

The AAs accepted the audit observation in three cases and raised demand of ₹ 25.41 lakh (April 2018). The recovery in the accepted cases and replies in the remaining cases are awaited (June 2018) though the matter was reported to the Department in July 2017.

Similar observations were pointed out in the Audit report for the year 2015-16 highlighting non-observance of these provisions by dealers and failure of the AAs to effectively scrutinise the dealers' returns to detect underassessment of tax of ₹ 838.97 crore in nine cases. However, the lapses/irregularities continue to persist, indicating that the Department did not take corrective measures to prevent their recurrence and leakage of revenue.

### **2.17 Application of incorrect rate of entry tax**

**AAs failed to detect application of incorrect rate of entry tax due to non/deficient scrutiny/assessment leading to short levy of entry tax of ₹ 36.11 lakh including interest.**

The BTEG Act, 1993 provides for payment of entry tax at the rates specified in the Schedule. The BVAT Act and the BTEG Act requires the AAs to scrutinise quarterly as well as annual returns to ensure correct application of rates of tax.

Audit test check of assessment records in four commercial taxes circles<sup>37</sup> revealed that four dealers (one case of assessment and three cases of self-assessment) had imported various scheduled goods<sup>38</sup> of ₹ 7.53 crore during 2013-14 and 2014-15, but had admitted their entry tax liability at rates lower than those prescribed under the schedule of the Act. The AA of Patna South circle failed to detect the application of incorrect rate even while doing assessment in September 2015, though the commodity-wise purchase statement was placed on record which indicates lack of due diligence by him while doing assessment. In the remaining three cases the AAs failed to scrutinise the returns and detect incorrect application of rates of tax leading to short levy of entry tax of ₹ 36.11 lakh including interest of ₹ 1.08 lakh. Audit further observed that there was absence of mapping of the applicable rates of tax with the commodities given in the schedule, so that the rates could be auto applied while uploading the returns on VATMIS.

The AA accepted the audit observation in one case and raised demand of ₹ 6.62 lakh (April 2018). Recovery in accepted case and replies in the remaining cases are awaited (June 2018) though the matter was reported to the Department in July 2017.

<sup>36</sup> Suvidha, purchase statements and returns and TAR filed under VAT and payment made under entry tax.

<sup>37</sup> Aurangabad, Motihari, Patna Central and Patna South.

<sup>38</sup> Batteries, electrical goods, iron and steel and plastic goods.

Similar observations were pointed out in Audit reports for the years 2011-12 to 2015-16 highlighting non-observance of these provisions by dealers and failure of the AAs to effectively scrutinise the dealers' returns to detect underassessment of tax of ₹ 80.02 crore in 48 cases. However, the lapses/irregularities continue to persist, indicating that the Department did not take corrective measures to prevent their recurrence and leakage of revenue.

**Recommendation:**

**The Department should ensure detection of cases of incorrect application of rate of tax through scrutiny.**

**2.18 Short/non-payment of entry tax and interest**

**AAs failed to detect the short/delayed payment of entry tax and non-levy of interest of ₹ 94.91 lakh.**

The BVAT Act, 2005 and the BTEG Act, 1993, stipulates payment of tax, by every dealer on or before 15<sup>th</sup> of the following month failing which he is required to pay interest at the rate of one and a-half *per cent* per month. The AAs are required to scrutinise quarterly as well as annual returns to ensure payment of tax and interest.

Audit test check of assessment records in five commercial taxes circles<sup>39</sup> revealed that three self-assessed dealers had admitted entry tax liability of ₹ 2.27 crore in their returns during 2014-15, though they had actually paid entry tax of ₹ 2.01 crore only. Thus, these dealers had made short payment of entry tax of ₹ 26.08 lakh. Further, three other dealers paid their entry tax liability of ₹ 5.07 crore with delays ranging from 153 to 325 days during the period 2014-15. But no interest was paid by them though there was liability of interest of ₹ 68.83 lakh. These remained undetected by the AAs due to their failure to scrutinise the returns, leading to short realisation of admitted entry tax of ₹ 26.08 lakh and interest of ₹ 68.83 lakh. Audit also observed absence of a system of generating automatic alerts in VATMIS for issue of demand notice through e-mail and mobile phone messages in case of short/non-payment and delayed payment of taxes by the dealers.

The AA accepted the audit observation in one case and raised demand of ₹ 2.11 lakh (April 2018). Recovery in the accepted case and replies in the remaining cases are awaited (June 2018) though the matter was reported to the Department in July 2017.

Similar observations were pointed out in Audit reports for the years 2011-12 to 2015-16 highlighting non-observance of these provisions by dealers and failure of the AAs to effectively scrutinise the dealers' returns to detect short/non-payment of tax and interest of ₹ 145.86 crore in 34 cases. However, the lapses/irregularities continue to persist, indicating that the Department did not take corrective measures to prevent their recurrence and leakage of revenue.

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<sup>39</sup> Aurangabad, Biharsharif, Kadamkuan, Patna City East and Patna Special.

**Recommendation:**

**The Department should ensure detection of cases of short/delayed payment of taxes through scrutiny.**

**2.19 Non-levy of entry tax and penalty**

**AAs failed to detect the import of scheduled goods by dealers not registered under entry tax Act leading to non-levy of entry tax of ₹ 34.30 lakh including penalty.**

The BTEG Act, 1993 and Rules requires every dealer to apply for registration within seven days of becoming liable to pay entry tax. In case of willful failure by dealers to apply for registration, the AAs are empowered to assess to the best of their judgment, the amount of tax due, and penalty of ₹ 100 for every day of default or an amount equal to tax assessed, whichever is higher.

Audit test check of assessment records in four commercial taxes circles<sup>40</sup> revealed that four dealers (all cases of self-assessment) registered under the BVAT Act, had imported various scheduled goods<sup>41</sup> of ₹ 3.85 crore during 2014-15. However, they did not get themselves registered under the BTEG Act. The AAs failed to scrutinise VAT records and detect those un-registered dealers, though the information of their liability for registration under entry tax was available on the records<sup>42</sup>. Audit further observed that the Department has not put a system in place to ensure detection and prevention of import of scheduled goods by dealers unregistered under entry tax. The AAs therefore failed to levy entry tax of ₹ 34.30 lakh including penalty of ₹ 30.18 lakh.

The matter was reported to the Department (July 2017) and reply is awaited (June 2018).

Similar observations were pointed out in Audit reports for the years 2011-12 to 2015-16 highlighting non-observance of these provisions by dealers and failure of the AAs to effectively scrutinise the dealers' returns to detect non-registration of dealers and underassessment of tax of ₹ 19.33 crore in 67 cases. However, the lapses/irregularities continue to persist, indicating that the Department did not take corrective measures to prevent their recurrence and leakage of revenue.

<sup>40</sup> Bhagalpur, Patna Central, Patna West and Saharsa.

<sup>41</sup> Battery, D.G. set, Iron & Steel, Plastic sheets and fabrics, PVC pipe and sanitary goods.

<sup>42</sup> Returns filed under VAT, TAR, *savidha* utilised by the dealers and their profile up-loaded on VATMIS.

