

CHAPTER 2
COMMERCIAL TAXES

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2.1 Tax administration

The levy and collection of commercial taxes¹ in the State is governed by the provisions of the following Acts and Rules made thereunder:

- Central Sales Tax (CST) Act, 1956;
- Central Goods and Services Tax (CGST) Act, 2017;
- Bihar Goods and Services Tax (BGST) Act, 2017;
- Integrated Goods and Services Tax (IGST) Act, 2017;
- 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 Duty Act, 1948;
- Bihar Tax on Professions, Trades, Callings and Employments Act, 2011; and
- Bihar Tax on Advertisement Act, 2007.

At the apex level, the Commercial Taxes Department (CTD) is headed by the Commissioner of State Tax (CST) assisted by Special Commissioners of State Tax, Additional Commissioners of State Tax, Joint Commissioners of State Tax (JCST), and Deputy Commissioners of State Tax (DCST)/Assistant Commissioners of State Tax (ACST). At the field level, the State is divided into nine administrative divisions², nine appeals divisions³ and nine audit divisions⁴ as they were under the VAT period, each headed by an Additional Commissioner of State Tax. The nine administrative divisions are further sub-divided into 50 circles each headed by a JCST/DCST assisted by Assistant Commissioners of State Tax.

2.2 Results of audit

During 2018-19, Audit test-checked records of the office of the CST. Out of 60 units of CTD, two units⁵ were audited during April 2019 to February 2020 in which

¹ Commercial taxes include Taxes on Sales, Trade etc., Taxes on goods and services, 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.

² Bhagalpur, Central, Darbhanga, Magadh, Patna East, Patna West, Purnea, Saran and Tirhut.

³ Bhagalpur, Central, Darbhanga, Magadh, Patna East, Patna West, Purnea, Saran and Tirhut.

⁴ Bhagalpur, Central, Darbhanga, Magadh, Patna East, Patna West, Purnea, Saran and Tirhut.

⁵ Patliputra and Patna Special.

irregularities involving ₹ 869.07 crore in 343 cases were observed which fall under the following categories as detailed in **Table 2.1**.

Table- 2.1			
Results of audit			
(₹ in crore)			
Sl. No.	Categories	No. of cases	Amount
A: Taxes on sales, trade etc./ VAT/CGST/SGST/IGST			
1.	Suppression of turnover	49	257.24
2.	Excess allowance of ITC	41	105.32
3.	Irregular allowance of exemption from tax	05	30.74
4.	Application of incorrect of rates of tax	34	26.00
5.	Non-levy and short levy of taxes	30	25.13
6.	Transitional credit in GST	30	23.30
7.	Non levy of purchase tax	01	15.91
8.	Short levy due to incorrect determination of turnover.	08	13.47
9.	Non-levy or short levy of additional tax & surcharge.	03	1.35
10.	Irregular allowance of concessional rate of tax	01	0.13
11.	Underassessment of CST	01	0.01
12.	Other cases	118	310.82
Total		321	809.42
B: Entry Tax			
1.	Short levy of entry tax due to suppression of import value	16	48.79
2.	Application of incorrect rates of entry tax	06	10.86
Total		22	59.65
Grand Total		343	869.07

During April 2018 to April 2020, the Department accepted underassessment and other deficiencies of ₹ 36.71 crore in 665 cases and recovered ₹ 6.92 crore in 142 cases which were pointed out before 2018-19. The replies in the remaining cases of previous years and all cases of 2018-19 were not received (May 2020).

2.2.1 Access to GST data

Section 16 of C&AG's (DPC) Act, 1971 provides that it shall be the duty of the Comptroller and Auditor General of India to audit all receipts which are payable into the Consolidated Fund of India and of each State and of each Union territory having a Legislative Assembly and to satisfy himself that the rules and procedures in that behalf are designed to secure an effective check on the assessment, collection and proper allocation of revenue and are being duly observed and to make for this purpose such examination of the accounts as he thinks fit and report thereon. As per section 54 of Regulations on Audit and Accounts, 2007, audit of receipts includes an examination of the systems and procedures and their efficacy in respect of identification of potential tax assesses, ensuring compliance with laws as well as detection and prevention of tax evasion etc. Further section 164 of Regulations on Audit and Accounts 2007 also provides that the auditable entity shall ensure that Audit has the right of access to the IT systems, irrespective of the fact whether the systems are owned, maintained and operated by the auditable entity or by any other agency on behalf of the auditable entity.

During the period of this report, Audit did not have access to GST data, in absence of which, audit could not examine the records pertaining to the period of GST except the claim and admittance of transitional credits where audit was conducted in light of the records of VAT period.

In absence of access to the GSTN/GST data, audit could not examine whether the IT system is properly mapped with the GST rules, whether the returns are filed and payment of tax is done in time, whether the ITC is claimed as per norms, whether interest for delayed payment of tax is done by the dealers etc.

2.3 Suppression of turnover

The Assessing Authority did not detect suppression of turnover of ₹ 5.64 crore, in case of three dealers which resulted in under-assessment of ₹ 2.36 crore including leviable penalty and interest.

Under Section 31 (2) of the BVAT Act, 2005, in case of concealment, omission, or failure to disclose correct sale/purchase, the Assessing Authorities (AAs) are empowered to impose penalty at three times 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).

2.3.1 Suppression of sales turnover

Audit test-check of assessment records in Patliputra commercial taxes circle in November 2019 revealed that a dealer had disclosed sales of goods of ₹ 70.75 crore in his annual return during the period 2016-17. However, as per the figures of TAR-IV⁶, his sales turnover was worth ₹ 71.71 crore. Thus, the dealer suppressed sales turnover of ₹ 96.25 lakh which could not be detected during assessment in March 2019. This resulted in under-assessment of tax of ₹ 48.22 lakh, including leviable penalty of ₹ 32.40 lakh and interest of ₹ 5.02 lakh.

The matter was reported to the Department (March 2020); the reply was not received (January 2021).

2.3.2 Suppression of purchase turnover

Audit test-check of assessment records in Patliputra commercial taxes circle in November 2019 revealed that two dealers had actually purchased goods of ₹ 349.58 crore during the period 2016-17 as shown in their Tax Audit Report⁷ and utilisation statement of "Suvidha"⁸. They, however, disclosed purchases of ₹ 344.67 crore only in their annual returns, thereby suppressing purchases of goods worth ₹ 4.92 crore. The suppression of purchase turnover of ₹ 4.92 crore was not detected during assessment of the dealers in January and July 2018. This resulted in under-

⁶ Tax Audit Report.

⁷ TAR- Every dealer having gross turnover of ₹ One crore and above is required to submit TAR certified by a Chartered Accountant before the stipulated date.

⁸ Simplified Uses of Vehicle Information Data Harmonised Application. Suvidha is a declaration form used by the dealers for transportation of goods from/to outside the state and from/to within the state.

assessment of tax of ₹ 1.88 crore including penalty of ₹ 1.27 crore and leviable interest of ₹ 19.18 lakh, as detailed in **Annexure-1**.

The matter was reported to the Department (March 2020); the reply was not received (January 2021).

2.4 Short levy of tax due to incorrect availing/claim of deduction

The Assessing Authorities failed to detect availing of inadmissible deductions by dealers which resulted in short levy of tax of ₹ 1.60 crore.

Section 7 of the BVAT Act stipulates that no tax shall be payable on sale or purchase of goods specified in Schedule-I. Further, serial no. 76 of Schedule-I of BVAT Act read with S.O. No. 325 dated 05.12.2008 provide that no tax shall be paid on purchase/sale of goods for the use of members of the Central Paramilitary Forces by Central Master Canteen situated in the State subject to the condition that an officer not below the rank of a Commanding Officer certifies that the sale/purchase has been done for the use of a member of the Central Forces and resale of the sold goods shall not be done.

Test-check of assessment records and other documents such as returns and TAR in two commercial taxes circles⁹ in July and November 2019 revealed that six dealers had availed deductions of ₹ 20.51 crore towards schedule-I goods during the period 2016-17 though they were eligible for deduction of ₹ 11.97 crore only. Out of six, five dealers availed deductions towards the sale of goods to CSD Canteens and others though the exemption certificate was issued by In-Charge of Master Canteen and Canteen Officer and not certified by the Commanding Officer (SHQ). While, in one remaining case deduction was claimed towards sale of Schedule-I goods but as per the invoice actually medicines were sold. The AAs, in five cases, failed to detect the claims of deduction not supported by requisite exemption certificate and in one case disallowed the deduction on account of sale to CSD Canteen in the assessment order but did not levy tax on disallowable deduction between July 2018 to September 2019 while doing the assessment which resulted in short levy of tax of ₹ 1.60 crore including leviable interest of ₹ 46.99 lakh, as detailed in **Annexure-2**.

The matter was reported to the Department (March 2020); the reply was not received (January 2021).

2.5 Non/Short payment of admitted tax and interest

Non-detection of short/delayed payment of admitted tax during assessment resulted in short realisation of tax of ₹ 2.88 crore and non-levy of interest of ₹ 4.38 crore.

As per section 24 of the BVAT Act, the payment of tax by every dealer on or before 15th of the following month failing which, he is required to pay interest at the rate of one and a-half *per cent* per month. Further, as per section 25 (1) of the BVAT Act, the AAs are required to scrutinise quarterly as well as annual returns to ensure payment of tax and interest.

⁹ Patliputra and Patna Special.

- Audit test-check of records in two commercial taxes circles¹⁰ between August and November 2019 revealed that two dealers had paid tax of ₹ 53.08 crore against the admitted tax of ₹ 55.10 crore shown in their returns for the period 2016-17. Thus, there was a short payment of admitted tax of ₹ 2.02 crore. AAs were required to scrutinise the returns and see the evidence of payment of tax and accordingly issue a notice to the dealers. However, they could not detect the short payment during assessment between March 2017 and March 2018 which resulted in short payment of admitted tax of ₹ 2.02 crore and leviable interest of ₹ 86.75 lakh, as detailed in **Annexure-3**.

The matter was reported to the Department (March 2020); the reply was not received (January 2021).

- Audit test-check of assessment records in Patna special circle, between June and July 2019, revealed that two dealers had paid their admitted tax with a delay of six to 714 days during the period 2016-17. However, no interest was paid by them though they were liable to pay interest of ₹ 4.38 crore. The AA failed to detect the delayed payment between December 2018 and March 2019 while doing the assessment, and therefore, did not levy interest for such delayed payment of tax in violation of the provisions of the Act *ibid*. This resulted in non-levy of interest amounting to ₹ 4.38 crore, as detailed in **Annexure-4**.

The matter was reported to the Department (March 2020); the reply was not received (January 2021).

2.6 Interest not levied on delayed payment of Entry tax

Assessing Authorities did not levy interest of ₹ 1.91 crore on delayed payment of entry tax.

Section 24 of the BVAT Act, read with Section 8 of the BTEG Act, 1993, stipulates that payment of tax, by every dealer on or before 15th of the following month failing which he is required to pay interest at the rate of one and a-half *per cent* per month. Further, as per section 25 (1) of the BVAT Act, the AAs were required to scrutinise quarterly as well as annual returns to ensure payment of tax and interest.

Test-check of assessment records in two commercial taxes circles¹¹ between June and November 2019 revealed that three dealers (had paid their admitted entry tax with delays ranging from two to 251 days during the period 2016-17. These dealers against the liability of interest of ₹ 1.93 crore paid interest of ₹ 1.50 lakh only. The AAs did not levy interest on delayed payment of entry tax between March 2017 to March 2019 in violation of the provisions of the Act *ibid* while doing the assessment. This resulted in non-levy of interest amounting to ₹ 1.91 crore as detailed in **Annexure-5**.

The matter was reported to the Department (March 2020); the reply was not received (January 2021).

¹⁰ Patliputra and Patna Special.

¹¹ Patliputra and Patna Special.