

CHAPTER 3

COMMERCIAL TAXES

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3.1 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 appeal 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.

3.2 Results of audit

During 2020-21, Audit test-checked records of 17 units out of 90 units of CTD, in which irregularities involving ₹109.25 crore in 414 cases were observed which fall under the following categories as detailed in **Table 3.1**.

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.

Table-3.1
Results of audit

(₹ in lakh)

Sl. No.	Categories	No. of cases	Amount
A: Taxes on sales, trade etc./ VAT			
1.	Non-levy and short levy of taxes	40	1,015.05
2.	Suppression of turnover	29	441.01
3.	Excess allowance of ITC	27	497.45
4.	Irregular allowances of exemption from tax	7	2.46
5.	Non-levy or short levy of additional tax and surcharge	2	557.69
6.	Application of incorrect rate of tax	25	1,643.13
7.	Short levy due to incorrect determination of turnover	19	467.54
8.	Other cases	179	5,094.51
Total		328	9,718.84
B: Entry Tax			
1.	Short levy of entry tax due to suppression of import value	15	767.19
2.	Other cases	20	302.32
Total		35	1,069.51
C: Electricity duty			
1.	Other cases	1	0
Total		1	0
D: GST			
1.	Non/short levy of GST	50	136.74
Total		50	136.74
Grand Total		414	10,925.09

During 2020-21, the Department accepted underassessment and other deficiencies of ₹ 117.11 crore in 505 cases and recovered ₹ 8.29 crore in 151 cases which were pointed out before 2020-21. The replies in the remaining cases of previous years and all cases of 2020-21 were not received (March 2022).

3.3 Compliance Audit on “Transitional Credits”

3.3.1 Introduction

Introduction of GST (Goods and Services Tax) is a significant reform in the field of indirect taxes in the country which replaced multiple taxes levied and collected by the Centre and States. Tax is levied simultaneously by the Centre and States on a common tax base. Central GST (CGST) and State GST (SGST)/ Union Territory GST (UTGST) are levied on intra-state supplies and Integrated GST (IGST) is levied on inter-state supplies. The tax accrues to the taxing authority which has the jurisdiction over the place of supply.

Availability of input tax credit (ITC) of taxes paid on inputs, input services and capital goods for set off against the output tax liability is one of the key features of GST. To ensure the seamless flow of ITC from the existing laws to GST regime, a ‘Transitional arrangements for ITC’ was included in the GST Acts to facilitate the taxpayers for claiming ITC in respect of taxes or duties paid under existing laws. Transitional credit provision is important for both the Government and business as it is a tool to ensure ‘ease of doing business’ which is one of the important features of GST. The provisions enable taxpayers to transfer such input credits only when they are used in the ordinary course of business or furtherance of business.

3.3.2 Audit scope and methodology

Audit was conducted (between April 2021 and October 2021) covering the period from July 2017 to March 2020. Records of 18 Commercial Taxes circles out of 50 Circles were selected for audit examination.

Out of total claims of transitional ITC of ₹ 110.55 crore due to SGST made by 758 taxpayers falling under central tax jurisdiction, Audit examined records of 85 taxpayers (73 verified/assessed cases and 12 unverified/unassessed cases) claiming transitional ITC of ₹ 79.50 crore in 18 circles which is 72 per cent of total SGST claims by the taxpayers falling under central jurisdiction.

3.3.3 Audit objectives

Audit was conducted with the objective of assessing whether:

- the transitional credits carried over by the assesseees to GST period were in compliance with the extant provisions of BGST Act and Rules 2017.
- the transitional credits carried over by the assesseees to GST period were admissible ITC claims under the legacy Acts/Rules.

3.3.4 Audit Criteria

Audit criteria have been derived from the following sources:

- Bihar Value Added Tax (BVAT) Act and Rules, 2005;
- Bihar Tax on entry of goods into local areas for sale, use and consumption therein (BTEG) Act, 1993;
- Bihar Goods and Services Tax (BGST) Act and Rules, 2017; and
- Notifications/Circulars/Orders issued by Central Board of Indirect Taxes and Customs (CBIC) and State Commercial Taxes Department.

3.3.5 Status of audit of transitional credit claims

Audit examined verified/assessed files in those cases where verification of transitional credit claims was done by the proper officers. In those cases, where verification was not done by the proper officers, Audit examined GST TRAN-1 and TRAN-2 forms and returns for the last six months pertaining to pre-GST period. Details of the transitional ITC claims by the taxpayers in the State, cases of transitional SGST claims under Central Tax Authority as sampled, cases examined by the Department and cases examined by Audit are detailed below:

(₹ in crore)

Sl. No.	Particulars	No. of cases/ taxpayers	Amount
1.	Total Transitional ITC claims made by taxpayers under SGST in the State	758	110.55
2.	Transitional ITC claims made by taxpayers under SGST as sampled and verified by Audit	85	79.50
3.	Out of sampled cases Department examined	73	74.66
4.	Irregularities observed by Audit in verified/assessed cases	29	19.52
5.	Irregularities observed by Audit in unverified/unassessed cases	04	1.44

3.3.6 Audit Findings

As per Section 140 of the BGST Act, 2017 read with rule 117 of BGST Rules, 2017 a registered person, other than a person registered as composition dealer under Section 10, was:

- a) entitled to carry forward the un-availed amount of ITC of the pre-GST period (1st quarter of 2017-18) to the GST period.
- b) entitled to carry forward un-availed ITC in respect of capital goods not carried forward in the return for the 1st quarter of 2017-18.
- c) entitled to carry forward credit of Value Added Tax (VAT)/Entry Tax (ET) in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on which credit was not claimed in pre-GST period and the taxpayers were eligible for ITC on such inputs under GST as prescribed under Section 140(3) to 140(6) of BGST Act, 2017.

In order to claim the above credits, declaration in GST TRAN-1 and GST TRAN-2 was required to be filed on the GST common portal.

Further, the taxpayers were entitled to claim transitional credit under GST if the credit was admissible as ITC under GST, the dealer had furnished all the returns required under the existing Acts for the period of six months prior to 1st July 2017 and the said amount of credit did not relate to goods manufactured and cleared under such exemption notifications as were notified by the State Government.

Audit observed that the above provisions were not followed by the taxpayers while claiming transitional credit under SGST which were further not detected by the proper officers in verified cases and in unverified cases due to non-verification. Irregular claims of transitional ITC of ₹ 20.96 crore by 33 taxpayers are discussed in paragraphs 3.3.6.1 to 3.3.6.6.

3.3.6.1 Non-reversal of detected amount

The proper officer did not initiate any action to recover ₹ 15.95 crore due for recovery.

Section 78 of the BGST Act, 2017 provides that any amount payable by a taxable person in pursuance of an order passed under BGST Act, 2017 shall be paid by such person within a period of three months from the date of service of such order failing which recovery proceedings shall be initiated provided that where the proper officer considers it expedient in the interest of revenue, he may, for reasons to be recorded in writing, require the said taxable person to make such payment within such period less than a period of three months as may be specified by him. Further, different modes of recovery of tax are prescribed under the provisions of section 79 of BGST Act, 2017.

Test checked of verified/assessed files (April 2021 to October 2021) of 16 taxpayers in six circles⁵ out of 85 taxpayers revealed that only ₹ 0.63 crore was deposited/reversed by the taxpayers out of demand raised of ₹ 16.58 crore by the proper officers during May 2019 to August 2019. Thus, ₹ 15.95 crore was not deposited/

⁵ Muzaffarpur East, Patliputra, Patna Central, Patna City East, Patna Special and Shahabad.

reversed by the taxpayers even after a lapse of more than 19 months of demand raised, as detailed in **Annexure-I**.

Audit noticed that no action for recovery of the detected amount was taken by the proper officers under section 79 of BGST Act, 2017. Further, out of above cases, in two cases of Patna Central circle, Audit found that though correspondence with banks was done by the proper officers for recovery, due to non-follow up, the amount was pending for realisation till July 2021.

Non/delay initiation of process for recovery of detected amount resulted in non-realisation of Government revenue. After this was pointed out (April 2021 to October 2021), the proper officers of six circles replied that the matter would be examined. The JCST of Patna Special circle replied that the recovery procedure is to be done by the jurisdictional authority under which the taxpayer is registered. The reply of the JCST is not correct as the above cases relate to state GST.

The matter was reported to the Government (December 2021); the reply was awaited (March 2022).

3.3.6.2 Tax Deducted at Source (TDS) claimed as transitional ITC

Two taxpayers of two circles incorrectly claimed TDS of ₹ 1.69 crore as transitional ITC in GST TRAN-1.

Test-check of verification files as well as GST TRAN-1 and last quarterly/ annual returns of VAT period and payment details *etc.*, during April 2021 to October 2021 revealed that one taxpayer of Katihar and one taxpayer of Patliputra circle, out of 85 test checked taxpayers (including one verified by the proper officer) had claimed transitional ITC of ₹ 1.69 crore in GST TRAN-1. These claims pertained to TDS and not to any ITC but was claimed as ITC. Thus, these taxpayers incorrectly claimed ITC of ₹ 1.69 crore and were, therefore, liable for payment of tax of ₹ 1.69 crore besides leviable interest and penalty as per the provisions of the Act *ibid*, as detailed in **Annexure-II**.

The matter was reported to the Government (December 2021); the reply was awaited (March 2022).

3.3.6.3 Excess claim of transitional ITC in TRAN-1 in comparison to ITC carried forward in the last return

Three taxpayers of two circles claimed excess transitional ITC of ₹ 35.31 lakh in GST TRAN-1 in comparison to the last return of VAT.

Audit test-checked verification files as well as GST TRAN-1 and last quarterly/ annual returns of VAT period and payment details *etc.*, during April 2021 to October 2021 and found that three taxpayers of two circles⁶ out of 85 test checked taxpayers, had claimed transitional ITC of ₹ 35.31 lakh in TRAN-1 though those taxpayers had not shown any amount of 'carry forward' in their last returns of VAT as required under section 140(1) of BGST Act, 2017. Thus, these taxpayers claimed excess transitional ITC of ₹ 35.31 lakh and were, therefore, liable for

⁶ Patliputra and Patna City West.

levy of interest and penalty also as per the provisions of the Act *ibid*, as detailed in **Annexure-III**.

The matter was reported to the Department (December 2021); the reply was awaited (March 2022).

3.3.6.4 Incorrect claim of transitional ITC on closing stock

Three taxpayers of two circles incorrectly claimed transitional ITC of ₹ 1.58 crore in GST TRAN-1 on closing stock.

Audit test-check of verification files as well as GST TRAN-1 and last quarterly/annual returns of VAT period and payment details *etc.*, during April 2021 to October 2021 revealed that three taxpayers (all verified by proper officer) of two circles⁷ out of 85 test checked taxpayers had claimed transitional ITC of ₹ 3.71 crore in GST TRAN-1 on closing stock. Thus, the taxpayers intended to carry forward from VAT period to GST period their unadjusted amount of VAT/ET paid on inputs supported by invoices/documents evidencing payment of tax carried forward to electronic credit ledger as SGST under sections 140(3), 140(4)(b) and 140(6) of BGST Act, 2017.

However, during examination of quarterly return of VAT/ET for the first quarter of 2017-18, audit observed that the taxpayer's claims were incorrect in light of facts and figures⁸ mentioned in the returns. Thus, these taxpayers incorrectly claimed ITC of ₹ 1.58 crore and therefore they were liable for payment of tax of ₹ 1.58 crore besides leviable interest and penalty as per the provisions of the Act *ibid*, as detailed in **Annexure-IV**.

The matter was reported to the Department (December 2021); the reply was awaited (March 2022).

3.3.6.5 Non/short demand of interest/penalty on detected irregular credit

The proper officer failed to detect ₹ 82.35 lakh as interest and penalty on irregular transitional credit in case of five taxpayers of four circles.

Rule 121 of the BGST Rules, 2017 provides that the amount credited under sub-rule (3) of rule 117 may be verified and proceedings under section 73 or, as the case may be, section 74 shall be initiated in respect of any credit wrongly availed, whether wholly or partly.

Further, as per section 73(9) of BGST Act 2017, the proper officer shall, determine the amount of tax, interest and penalty equivalent to ten *per cent* of tax or ten thousand rupees, whichever is higher, due from such person and issue an order.

Scrutiny of the verification files in four circles⁹ revealed that in case of five taxpayers (all verified by the proper officer) out of 85 test checked taxpayers, irregular

⁷ Katihar and Patliputra.

⁸ The taxpayer did not claim any ITC c/f in quarterly return of 1st quarter of 2017-18 and had short paid ET, the taxpayer had not any balance ET to be carried forward as transitional ITC and the taxpayer had claimed excess ITC c/f compared to balance ET payment.

⁹ Begusarai, Bhagalpur, Patna Special and Purnea.

transitional credit of ₹ 5.52 crore was detected by the proper officers. However, Audit noticed that the proper officers had not demanded the applicable interest/penalty from these taxpayers. Hence, interest and penalty amounting to ₹ 82.35 lakh was recoverable from these taxpayers, as detailed in **Annexure-V**.

After this was pointed out (April 2021 to October 2021), the proper officers of four circles replied that the matter will be examined and in one case the JCST of Begusarai circle replied that as per Finance Act 2021, interest is leviable only if payment is made by debiting cash ledger. The reply of the JCST is factually incorrect as the Finance Act 2021 has stipulated such provision in respect of sub-section (1) of section 50 of CGST Act 2017 which deals with levy of interest on delayed payment of tax. This has not made any such provision in respect of sub-section (3) of section 50 of CGST Act 2017 which deals with levy of interest on incorrect availing of ITC.

The matter was reported to the Department (December 2021); the reply was awaited (March 2022).

3.3.6.6 Incorrect claim of transitional ITC due to other reasons

Four taxpayers of three circles incorrectly claimed transitional ITC of ₹ 57.31 lakh in GST TRAN-1.

Audit test-check of verification files, GST TRAN-1, last quarterly/ annual returns of VAT period, payment details, *etc.* during April 2021 to October 2021 revealed that four taxpayers (all verified by proper officer) of three circles¹⁰ out of 85 test checked taxpayers had incorrectly claimed transitional ITC of ₹ 57.31 lakh in different tables of GST TRAN-1 but these claims were incorrect due to various reasons¹¹.

Thus, these taxpayers incorrectly claimed ITC of ₹ 57.31 lakh and therefore they were liable for payment of tax of ₹ 57.31 lakh besides leviable interest and penalty as per the provisions of the Act *ibid*, as detailed in **Annexure-VI**.

The matter was reported to the Government (December 2021); the reply was awaited (March 2022).

3.3.7 Conclusion

Out of ₹ 79.50 crore of SGST transitional ITC claims by 85 taxpayers falling under jurisdiction of Central Tax Authorities and examined by Audit, ₹ 20.96 crore (26.36 *per cent*) was detected as incorrect transitional claims in 33 cases. This included incorrect transitional claims of ₹ 5.01 crore in 17 cases and non-reversal of detected amount of ₹ 15.95 crore in 16 cases verified by proper officers. Such high percentage of incorrectly claimed transitional ITC itself indicates the risk inherent to the process. Out of demand of ₹ 16.59 crore in verified/assessed cases, ₹ 15.95 crore (96.14 *per cent*) was not recovered till date. This indicates that the system of follow up of the verified/assessed cases is very poor.

¹⁰ Kadamkuan, Patna north, and Shahabad.

¹¹ The taxpayers were not eligible for claiming the transitional credit as the claim of ITC under VAT was itself incorrect due to suppression of turnover, suppression of opening stock and ITC brought forward from 2016-17 was incorrect, resulting into incorrect ITC carried forward to 2016-17.

3.3.8 Recommendations

- The Department should verify transitional ITC claims of the rest of the assesses to ensure that the provisions governing transitional ITC claims were properly complied.
- Immediate steps for recovery of dues due to incorrect claim of transitional ITC should be taken.

3.4 Legacy Issues

3.4.1 Non-levy of tax and penalty on closing stock of discontinued business

The Assessing Authorities did not levy tax of ₹ 94.63 lakh on the closing stock on discontinuance of business.

Section 3(5) of the BVAT Act, stipulates that 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 checked assessment records in Bhagalpur Commercial Taxes Circle in September 2021 and found that a dealer had disclosed closing stock of goods of ₹ 3.51 crore in his stock details as on 18.06.2016. The dealer had neither filed any return since April 2016 nor paid any tax for the subsequent years. As the dealer had discontinued his business, he was liable to pay tax on the stock of goods held by him along with the leviable interest at the rate of 1.5 *per cent* per month as per the provision of the Section 24(10) of BVAT, Act. The Assessing Authority (AA) did not levy tax on the closing stock on discontinuance of business which resulted into non-levy of tax of ₹ 94.63 lakh¹² including interest of ₹ 41.91 lakh.

The matter was reported to the Government (January 2022); the reply was awaited (March 2022).

3.4.2 Suppression of turnover

The Assessing Authorities failed to detect suppression of turnover of ₹ 3.51 crore which resulted in under assessment of tax of ₹ 1.18 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 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 two commercial taxes circles¹³ in July 2021 revealed that three dealers had disclosed their purchase/sales of ₹ 68.02 crore only in their annual returns during the period 2016-17. However, as per the figures

¹² Calculation: Tax @15% on ₹ 3,51,44,991	=	₹ 52,71,748
Interest @1.5% for 53 months	=	₹ 41,91,039
Total	=	₹ 94,62,787

¹³ Patna City East and Patna North.

of sales, purchases/trading ledger/*SUVIDHA* details, their purchase/sales turnover should be worth ₹ 71.53 crore. Thus, it was evident that the dealers suppressed their turnover by ₹ 3.51 crore which could not be detected by the AAs even during the assessment. This resulted in under assessment of tax of ₹ 1.18 crore including leviable penalty of ₹ 74.11 lakh and interest of ₹ 18.69 lakh, as detailed in **Annexure-VII**.

The matter was reported to the Government (January 2022); the reply was awaited (March 2022).

3.4.3 Non-admittance of Entry tax

The Assessing Authorities did not levy entry tax while doing assessment which resulted in short realisation of entry tax of ₹ 45.21 lakh including leviable interest.

Section 3 of the Bihar Tax on Entry of Goods into local areas Act, stipulates that a tax shall be levied and collected on entry of scheduled goods into a local area for consumption, use or sale therein. Further, as per section 24 of the BVAT Act, read with Section 8 of BTEG Act, every dealer shall deposit the tax payable 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.

Audit test check of assessment records in Bhagalpur Commercial Taxes circle in September 2021 revealed that a dealer did not admit his entry tax liability of ₹ 25.19 lakh (at the rate of 8 *per cent*) during the year 2016-17 against import of hydraulic excavator of ₹ 3.15 crore in his annual return. The AA did not levy entry tax while doing assessment which resulted in short realisation of entry tax of ₹ 45.21 lakh including leviable interest.

The matter was reported to the Government (January 2022); the reply was awaited (March 2022).

3.4.4 Irregular/excess claim of Input Tax Credit

The Assessing Authorities failed to detect irregular/excess claim of ITC of ₹ 1.39 crore which resulted in under assessment of tax of ₹ 6.68 crore including leviable penalty and interest.

As per Section 16 of the BVAT Act, a registered dealer shall claim input tax credit (ITC), if he purchases any input within the State of Bihar from another registered dealer after paying him tax under section 14 or section 4 of the Act, and makes either within the State or interstate sales of such goods or consumes them in the manufacture of goods (other than Schedule-IV goods) for sale in the State or outside the State. Further, Section 31(2) of the Act empowers the Assessing Authority to impose interest at the rate of 1.5 *per cent* per month besides penalty equivalent to three times of the tax payable for incorrect claim of ITC.

Further, clause (f) of sub-section (1) of Section 25 of the BVAT Act, empowers the Assessing Authority to scrutinise every return filed under sub-sections (1) and (3) of Section 24 to ascertain that information and evidence, as may be

prescribed to support claims of ITC have been furnished in such manner as may be prescribed.

Test check of assessment records in two commercial taxes circles¹⁴ between July and August 2021 revealed that three dealers availed ITC of ₹ 4.02 crore on purchase of the goods worth ₹ 43.18 crore as against their admissible entitlement of ₹ 2.63 crore during the period 2015-16 and 2016-17. Thus, it was evident that the dealers availed excess ITC of ₹ 1.39 crore which could not be detected by the AAs even during the assessment. This resulted in under assessment of tax of ₹ 6.68 crore including leviable penalty of ₹ 4.16 crore and interest of ₹ 1.13 crore, as detailed in **Annexure-VIII**.

The matter was reported to the Government (January 2022); the reply was awaited (March 2022).

3.4.5 Short levy of tax due to application of incorrect rate of tax

The Assessing Authorities failed to detect the application of incorrect rate of tax which resulted in short levy of tax for ₹ 2.12 crore including interest.

Under the provision of Section 25(1) of the BVAT Act, the prescribed authority shall, within the time and the manner prescribed, scrutinise every return filed under sub-sections (1) and (3) of Section 24 for the purpose of ascertaining that the rates of tax have been applied correctly. Further, under the provision of section 39 (4) of the BVAT Act, interest at the rate of one and half *per cent* per month is also leviable on the amount of tax payable.

Audit test checked assessment records in three commercial taxes circles¹⁵ between August and September 2021 and found that seven dealers assessed their tax liability at the lower rate of five to six *per cent* on sale of sand and grit and electrical goods worth ₹ 13.57 crore instead of the correct applicable rate of six to 15 *per cent* during 2016-17. The AAs failed to detect the application of incorrect rate of tax during assessment. Thus, failure of AAs in detecting incorrect application of rate of tax resulted in short levy of tax for ₹ 2.12 crore including interest of ₹ 92.43 lakh, as detailed in **Annexure-IX**.

The matter was reported to the Government (January 2022); the reply was awaited (March 2022).

¹⁴ Patna City East and Patna North.

¹⁵ Bhagalpur, Danapur and Patna Central.