

## CHAPTER II: TAXES ON SALES, TRADE ETC.

### 2.1 Results of audit

Test check of the records relating to assessments and refund of sales tax in various commercial taxes circles, conducted in audit during the year 2004-05, revealed underassessment of tax of Rs 142.82 crore in 576 cases which broadly fall under the following categories:

(Rupees in crore)			
Sl. No.	Categories	No. of cases	Amount
1	Non /short levy of tax	89	13.01
2	Irregular allowance of exemption from tax	179	76.96
3	Non levy of penalty	17	2.96
4	Irregular allowance of concessional rate of tax	25	6.67
5	Non/short levy of additional tax and surcharge	35	8.54
6	Application of incorrect rates of tax	21	0.18
7	Short levy of tax due to incorrect determination of turnover	51	13.36
8	Non levy of penalty for excess collection of tax/ mistake in computation	9	0.31
9	Other cases	150	20.83
	<b>Total</b>	<b>576</b>	<b>142.82</b>

During the year 2004-05, the Department accepted underassessment etc. of Rs 10.82 crore involved in 25 cases which had been pointed out in audit during the year 2004-05. Of these, the Department raised a demand of Rs 9.21 crore involved in 23 cases and reported recovery of Rs 0.96 lakh in one case.

A few illustrative cases involving Rs 13.37 crore are discussed in the following paragraphs:

## 2.2 Suppression of purchase/sales turnover

Under the provisions of Bihar Finance Act, 1981 read with Central Sales Tax Act (CST Act), 1956 if the prescribed authority has reason to believe that the dealer has concealed, omitted or failed to disclose wilfully the particulars of turnover or has furnished incorrect particulars of such turnover and thereby returned figures below the correct amount, the said authority shall assess or reassess the amount of tax due from the dealer in respect of such turnover and shall direct the dealer to pay, besides the tax assessed on escaped turnover, penalty not exceeding three times but not less than an amount equivalent to the amount of tax on the escaped turnover. The CST Act also provides that no tax shall be payable on sale of goods which have taken place in the course of export sale. Further, the Commissioner, Commercial Taxes (CCT) Bihar issued instructions in May 1990 and June 1991 that all assessing officers incharge should cross verify the records with the Customs Department to detect escaped turnover.

Audit scrutiny revealed the following:-

- In seven<sup>1</sup> circles, assessment records of 17 dealers including utilisation certificates of declaration forms, road permits and trading account etc. disclosed that they had suppressed purchase/sale turnover of Rs 14.72 crore bought/sold on declaration forms during the years 1998-99 to 2002-03. The assessing authorities while finalising assessments between September 2001 and February 2004 failed to check suppression of purchase/sales which resulted in short levy of tax of Rs 2.68 crore including additional tax, surcharge and penalty. A few illustrative cases are given below:

(Rupees in lakh)								
Sl. No.	Name of Circle/No. of dealers	Period of assessment/Month/Year of assessment	Commodity/Rate applicable (Per cent)	Actual purchase/ accounted for	Actual sale/ accounted for	Amount concealed	Amount of tax/ penalty <sup>2</sup>	Total
1	Teghra 4	1998-99,1999-2000 and 2001-02 9/2001 12/2002 and 05/2003	Raw Petroleum coke (8) and milk products (8)	<u>726.82</u> 645.12	<u>1,477.49</u> 885.72	673.47	<u>53.96</u> 53.60	107.56
<b>Remarks:</b> Out of four cases, in one case, the Department stated in July 2005 that suppression occurred due to clerical error. The reply is not tenable as all details available in case record clearly indicated suppression of turnover. Replies in remaining cases have not been received (September 2005).								
2	Patliputra 5	1998-99, 2001-02 & 2002-03 09/2002, 06/2003 to 02/2004	Watches (13), IMFL (25), iron & steel (4), road construction materials (8 and 9) and chocolate(12)	<u>750.23</u> 666.63	<u>1,977.13</u> 1,628.06	432.67	<u>47.69</u> 43.63	91.32
<b>Remarks:</b> Out of five cases, the Department stated in July 2005 that demands in three cases (Rs 82.37 lakh) have been raised while in one case, the Department stated that suppression occurred due to clerical error. The reply of the Department is not tenable as all details available in the case record clearly indicated suppression of turnover. In another case, the Department stated in August 2005 that the amount of excise duty on raw materials has been deducted under MODVAT scheme. The reply is not tenable as the dealer has not shown any amount of excise duty paid in his manufacturing account. Further reply has not been received (September 2005).								

<sup>1</sup> Bhagalpur, Gaya, Madhubani, Motihari, Pataliputra, Teghra and Sasaram.

<sup>2</sup> Penalty is exclusive of surcharge.

Sl. No.	Name of Circle/No. of dealers	Period of assessment/Month/Year of assessment	Commodity/Rate applicable (Per cent)	Actual purchase/ accounted for	Actual sale/ accounted for	Amount concealed	Amount of tax/ penalty <sup>2</sup>	Total
3	Sasaram 2	1999-2000 and 2000-01 between 2/2001 and 3/2003	Washing powder (10), detergent cake (10), sanitary fittings and hardware (8)	<u>1,639.92</u> 1,469.59	-	170.33	<u>20.79</u> 18.90	39.69
<b>Remarks:</b> In one case, the Department stated in August 2005 that demand for Rs 0.94 lakh has been raised. Further reply has not been received (September 2005).								
4	Gaya 2	2000-01 & 2001-02 05/2003 & 8/2003	High Tention Steel wire (8), MCI Insert (8) and motor pump (8)	<u>119.91</u> 34.56	-	85.35	<u>8.53</u> 7.74	16.27
<b>Remarks:</b> The Department stated in August 2005 that demands in both cases have been raised. Report on realisation has not been received (September 2005).								
<b>Total</b>				<u>3,236.88</u> 2,815.90	<u>3,454.67</u> 2,513.78	1,361.82	<u>130.97</u> 123.87	254.84

The cases were reported to Government in March 2005 which confirmed the reply of the Department in July and August 2005 as detailed in the table. Further reply has not been received (September 2005).

- Cross verification of assessment records of eight dealers of various commodities<sup>3</sup> in three circles<sup>4</sup> with the records maintained in Customs Department revealed that the assessee disclosed sales turnover of Rs 12.26 crore on account of export to Nepal in their returns during the period 1998-99 to 2001-02 and were allowed exemption accordingly between December 2001 and February 2004 against the actual export value of goods of Rs 7.32 crore as shown in the records of Customs Department. The assessing authorities failed to cross verify the records with the Customs Department which resulted in allowance of incorrect exemption on taxable turnover of Rs 4.94 crore and consequent short levy of tax of Rs 1.73 crore including additional tax, surcharge and leviable penalty.

After this was pointed out between October and December 2004, the Department raised demand of Rs 32.51 lakh in two cases of Muzaffarpur and one case of Patliputra circle. Of this, an amount of Rs 0.96 lakh in one case of Muzaffarpur has been realised. Report on further realisation and reply in remaining cases has not been received (September 2005).

The cases were reported to Government in March 2005 which confirmed the reply of the Department in July and August 2005. Further reply has not been received (September 2005).

- In Gaya Circle, it was noticed from the assessment record of a dealer that the assessing officer while finalising the assessment between May and June 2003 found suppression of sales turnover of Rs 2.48 crore which was not shown in the

<sup>3</sup> Dairy products, electrical goods, machine, medicine, motors and sewing machine

<sup>4</sup> Muzaffarpur, Patliputra and Patna Special

return furnished by the dealer during 2000-01 and 2001-02. The assessing officer levied tax on concealed value but did not levy penalty of Rs 24.14 lakh.

After this was pointed out in August 2004, the Department stated in July 2005 that demand has been raised. Report on realisation has not been received (September 2005).

The case was reported to Government in October 2004 which confirmed the reply of the Department in July 2005.

### **2.3 Short levy of additional tax**

Under the provisions of Bihar Finance Act, every dealer is required to pay additional tax at the rate of one *per cent* (except on liquor) on his gross turnover unless specifically exempted from levy of additional tax.

In Patna Special circle, it was noticed in case of a dealer dealing in petroleum products and assessed in August 2003 for the assessment year 2001-02 that additional tax was levied by the assessing officer on tax of Rs 98.36 crore instead of correct amount of Rs 764.06 crore which included tax and turnover. This resulted in short levy of additional tax of Rs 7.32 crore including surcharge.

After this was pointed out in December 2004, the Department stated in June 2005 that demand has been raised. Report on realisation has not been received (September 2005).

The case was reported to Government in March 2005 which confirmed the reply of the Department in July 2005.

### **2.4 Incorrect adjustment of additional tax**

By a notification issued in June 1985 under the provisions of the Bihar Finance Act, tax on sale of IMFL<sup>5</sup> is leviable at every stage of sale at the rate of 25 *per cent* of the sale price and additional tax at the rate of two *per cent* on total sales turnover including tax. Bihar Sales Tax Rules, 1983 (BST Rules) provide for adjustment of sales tax paid at each preceding stage of sale against the amount of tax payable at each subsequent stage of sale.

In Katihar circle, it was noticed in case of two dealers assessed in September and October 2002 that sales tax paid at the preceding stage by these dealers was Rs 1.54 crore but tax of Rs. 1.69 crore inclusive of Rs 15.39 lakh of additional tax was adjusted against tax payable at the succeeding stage during the year 1999-2000 and 2000-01. The adjustment of Rs 15.39 lakh of additional tax against sales tax payable was incorrect. This resulted in short levy of tax of Rs 17.27 lakh including surcharge of Rs 1.88 lakh.

After this was pointed out in November 2003, the Department stated in July 2005 that demands have been raised. Report on realisation has not been received (September 2005).

The matter was reported to Government in March 2005 which confirmed the reply of the Department in July 2005.

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<sup>5</sup> *India made foreign liquor*

### 2.5 Incorrect grant of exemption

Under the provisions of Bihar Finance Act, read with BST Rules as amended from time to time, where any dealer claims that no tax is payable by him on any part of his gross turnover in respect of any goods by reason of transfer of goods by him to any other dealer or to his agent or principal as the case may be, for sale, the burden of proving this claim shall be on the dealer and for this purpose alongwith other evidence, he shall furnish a declaration in the form "IX D" as prescribed by the Department in February 2000.

In two circles<sup>6</sup> it was noticed in June and August 2004 that in two cases assessed between October 2002 and January 2003 exemption was allowed on stock transfer of goods valued at Rs 2.05 crore during February 2000 to March 2003 without production of declaration in Form "IX D". Incorrect grant of exemption resulted in short levy of tax of Rs 47.72 lakh.

After this was pointed out between June and August 2004, the Department in one case of Sasaram circle stated in July 2005 that demand for Rs 41.66 lakh has been raised. Report on realisation in case where demand has been raised and reply in remaining case has not been received (September 2005).

The cases were reported to Government between May 2004 and February 2005 which confirmed the reply of the Department. Further reply has not been received (September 2005).

### 2.6 Short levy of tax due to mistake in computation

In Patna Special circle, it was noticed in December 2004 that in the case of a dealer assessed in December 2003, mistake in computation of tax payable by the dealer during the year 2001-02 resulted in short levy of tax of Rs 23.80 lakh.

After this was pointed out in December 2004, the Department stated in June 2005 that demand has been raised. Report on realisation has not been received (September 2005).

The case was reported to Government in March 2005 which confirmed the reply of the Department in July 2005.

### 2.7 Short levy of penalty

Under the provisions of Bihar Finance Act, if any registered dealer fails to make payment of the admitted tax within the due date or the extended date, the prescribed authority shall impose a penalty which may extend to five *per cent* but not less than two and half *per cent* of the amount of tax for each of the first three months or part thereof following the due date or the extended date, and to 10 *per cent* but not less than five *per cent* for each subsequent month or part thereof.

In two circles (Buxar and Sasaram), it was noticed from the assessment records and the periodical returns that two dealers deposited the admitted tax with delay. The delay ranged between 14 days to 31 months pertaining to the assessment years 1999-2000 to 2001-02. The assessing officer while finalising the

<sup>6</sup> *Sasaram and Teghra*

assessments between October 2002 and March 2003 levied penalty of Rs. 0.19 lakh only instead of leviable penalty of Rs 24.88 lakh. This resulted in short levy of penalty of Rs. 24.69 lakh.

After this was pointed out in June 2004, the Department stated in July 2005 that demands have been raised. Report on realisation has not been received (September 2005).

The cases were reported to the Government in December 2004 which confirmed the reply of Department in July 2005.

### **2.8 Incorrect determination of taxable turnover**

Under the provisions of Bihar Finance Act, taxable turnover of a dealer shall be that part of his gross turnover which remains after deducting therefrom the amount of sales tax actually collected as such, if any, alongwith the sale prices received or receivable for sale of goods.

In Muzaffarpur circle, it was noticed from the assessment order completed in March 2004 and trading account for the assessment year 1999-2000 that taxable turnover of a dealer engaged in business of medicine was incorrectly determined at Rs 2.36 crore against the actual taxable turnover of Rs 4.16 crore. This resulted in incorrect determination of taxable turnover and consequent short levy of tax of Rs 13.87 lakh including surcharge.

After this was pointed out in October 2004, the Department stated in July 2005 that demand has been raised. Report on realisation has not been received (September 2005).

The case was reported to the Government in March 2005 which confirmed the reply of the Department in July 2005.

### **2.9 Non levy of purchase tax**

Under the provisions of Bihar Finance Act, every dealer who purchases goods in circumstances in which no sales tax is payable and consumes such goods in the manufacture of other goods for sale, shall be liable to pay tax on the purchase price of such goods at the rate at which it would have been leviable on the sale price of such goods.

In Muzaffarpur circle, it was noticed in August 2004 that a dealer purchased goods worth Rs 1.12 crore during the year 2000-01 within the State without payment of tax and consumed the same in manufacture of tobacco product. Though the dealer was liable to pay tax, the assessing officer while finalising the assessment in July 2003 failed to levy tax on purchase price of Rs 1.12 crore. This resulted in non levy of tax of Rs 12.32 lakh.

After this was pointed out in October 2004, the Department stated in July 2005 that demand has been raised. Report on realisation has not been received (September 2005).

The case was reported to the Government in March 2005 which confirmed the reply of the Department in July 2005.