

CHAPTER V: OTHER TAX RECEIPTS

5.1 Results of Audit

Test check of the records of the following receipts, conducted in audit during the year 2004-05, revealed under assessments of tax, fee, duty and losses of revenue etc. of Rs 182.84 crore in 433 cases which broadly fall under the following categories:-

(Rupees in crore)			
Sl. No.	Categories	No. of cases	Amount
• Stamp duty and registration fees			
1	Non collection of differential stamp duty in respect of referred cases	1	0.43
2	Other cases	96	3.78
	Total	97	4.21
• Land revenue			
1	Non/short levy of cess and or interest on arrears of cess	42	2.06
2	Non fixation of salami and commercial rent	57	10.71
3	Non settlement of vested lands	36	1.98
4	Non settlement of <i>sairats</i>	52	6.01
5	Loss of revenue due to non renewal/violation of terms and conditions of lease hold <i>Khas mahal</i> land	1	58.53
6	Other cases	133	73.31
	Total	321	152.60
• Entry Tax/P.G.Tax			
1	Levy and collection of entry Tax	1	20.98
2	Others	5	0.35
	Total	6	21.33
• Taxes on sugarcane			
1	Non levy of interest on arrears of tax	3	2.85
2	Other cases	6	1.85
	Total	9	4.70
	Grand Total	433	182.84

During the year 2004-05, the concerned departments accepted underassessment etc. involving Rs 59.09 crore in 13 cases which were pointed out in audit during the year 2004-05. Of this Rs 15.09 lakh was recovered in two cases.

A few illustrative cases involving Rs 69.58 crore are discussed in the following paragraphs:

5.2 Non realisation of revenue due to non renewal/violation of terms and conditions of lease hold *khas mahal* land

Under the Bihar Government Estates (*Khas mahal*) Manual, 1953 and Rules framed thereunder, the State Government is to issue notices to the lessees for grant of lease six months prior to the expiry of lease, to apply for renewal of such lease, whereas a lessee is required to apply for renewal thereof three months prior to the expiry of his lease. A lessee continuing to occupy leasehold property without payment of rent and renewal of lease or who changes the purpose of lease or transfers his property without approval of the competent authority is to be treated as a trespasser and shall have no claim for renewal on past terms and conditions. They should be issued notice to notify their intention by a fixed date if they are desirous of taking fresh lease.

On fresh leases, *Salami*¹ at the current market value of land besides annual rental (one fiftieth and one twentieth of such *salami* for residential and commercial leases respectively), is leviable. In case of arrears, the lessees are liable to pay double the rent as determined in fresh lease from the date of non payment of rent together with interest on arrear rent at 10 *per cent* per annum.

Mention was made in paragraph 2.1 of the Report of the Comptroller and Auditor General of India (Revenue Receipts), Government of Bihar for the year ended 31 March 1999 on the above subject and revenue implications thereof. The Public Accounts Committee (PAC) recommended in July 2003 to take appropriate and justifiable action within six months and report to the Committee.

A test check of records between October 2004 and April 2005 in the office of *khas mahal* officer, Munger revealed as under:

Non renewal of expired leases

5.2.1 Nine hundred and ninety residential leases for 86.86 acres of land were not renewed after their expiry between 1954-55 and 1991-92 for which neither the Department issued notices nor had the lessees applied for renewal. The lessees continued to occupy leasehold property without payment of rent. Inaction on the part of the Department to levy and collect rental dues resulted in non levy/recovery of Rs 28.70 crore for the period 1998-99 to 2003-04 in the shape of *salami*, penal rent and penal interest. Of this Rs 25.34 crore pertained to the years 2000-01 to 2003-04.

Violation of terms and conditions of leases

5.2.2 Five hundred and twenty residential leases for 47.11 acres of land were either converted for commercial purposes or the leases were transferred without approval of the competent authority. The leases had not been renewed after their expiry since 1991-92 and the lessees continued to occupy leasehold property without payment of any rent. Action to regularise their leases on fresh terms and condition had not been taken by the Department. This resulted in non realisation

¹ *Salami is the Government share in increased value of land.*

of revenue of Rs 29.83 crore for the period 1998-99 to 2003-04. Of this, Rs 23.25 crore pertained to the years 2001-02 to 2003-04.

After this was pointed out in audit, the *khas mahal* officer stated between October 2004 and April 2005 that survey work had already been started. The records produced to audit revealed that survey work of only three out of 22 'mauza'² had been completed as of March 2005. The reply was also not tenable in view of the recommendation of the PAC.

5.3 Levy and collection of entry tax

Under the Bihar tax on entry of goods into local areas for consumption, use or sale therein (BTEG) Act, 1993 and Rules framed/notifications issued thereunder, every dealer liable to pay tax under Bihar Finance Act, or any other person importing scheduled goods above a specified quantum in a year is liable to pay entry tax at specified rate on entry of scheduled goods into local areas³. The BTEG Act further provides that all provisions relating to returns, assessment, reassessment, escaped turnover, recovery of tax, offences and penalties etc. under the Bihar Finance Act, shall apply *mutatis mutandis* under the BTEG Act. The work of assessment and collection of entry tax has been assigned to the assessing authorities specified under Bihar Finance Act.

Test checks on efficacy and effectiveness in levy and collection of entry tax under the BTEG Act for the period from 2000-01 to 2003-04 revealed as under:

Suppression of import value

5.3.1 Under the BTEG Act read with Bihar Finance Act, 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 figure below the real 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 Bihar Finance Act further provides that if the prescribed authority in the course of any proceedings or otherwise is satisfied that any registered dealer has furnished incorrect statement of his turnover or incorrect particulars of his sales or purchases in the return furnished, he shall after giving such a dealer an opportunity of being heard, direct that he shall in addition to any tax which is or may be assessed, pay by way of penalty a sum not exceeding two times but not less than an amount equal to the amount of tax on the suppressed turnover or on concealed or incorrect particulars. According to executive instructions of the

² *mauza* - village: as recognised and separately attached at the time of the revenue survey (Ref: Bihar Tenancy Act, 1885)

³ 'Local Areas' means the areas within the limit of a Municipal Corporation, Municipality, Notified Area Committee, Cantonment Board, Town Board, Mines Board, Municipal Board, Gram Panchayat or any other local authority under any law for the time being in force.

Department issued in November 1998 and May 2002, the assessing authority was required to review returns and initiate proceedings against the defaulting dealers under the provisions of the Bihar Finance Act.

- In five commercial taxes circles, it was noticed from the assessment records, utilisation certificates of declaration forms, road permits, purchase statements, trading accounts etc. and returns filed by 14 dealers that they suppressed import/purchase of scheduled goods of Rs. 104.22 crore during the years 2000-01 to 2003-04. The assessing officers while finalising assessment between September 2002 and July 2004 failed to detect the suppression of import value. This resulted in short levy of entry tax of Rs 5.27 crore including penalty as shown below:

(Rupees in lakh)								
Sl. No.	Name of the circle Number of dealer	Assessment Year Month/Year of assessment	Commodity Rate of tax (in per cent)	Value of Import according to records	Value of Import accounted for	Difference	Amount of leviable tax penalty	Total
1	<u>Ara</u> 4	<u>2001-02</u> June 2003	Coal (4)	713.11	504.86	208.25	<u>8.33</u> 8.33	16.66
2	<u>Aurangabad</u> 2	2001-02 and <u>2002-03</u> April 2003 February 2004 and May 2004	Motor vehicles (4) and coal (4)	685.20	464.74	220.46	<u>8.82</u> 8.82	17.64
3	<u>Begusarai</u> 2	<u>2000-01 and 2001-02</u> February 2003	Crude oil (2) , cement (5), electrical fittings (8) and iron & steel (4)	3,12,030.04	3,02,853.76	9,176.28	<u>208.48</u> 208.48	416.96
4	<u>Patliputra</u> 3	2000-01 to <u>2002-03</u> November 2003, February 2004 and July 2004	Electrical fittings (5), cement (5), iron and steel (4), polyvinyl chloride (4) air conditioner (5), motor vehicle (5) and India made foreign liquor (5)	4,038.13	3,393.40	644.73	<u>31.05</u> 31.05	62.10
5	<u>Sasaram</u> 3	2001-02 to <u>2002-03</u> September 2002, June 2003 and May 2004	Coal (4) and marble (5)	673.66	501.65	172.01	<u>6.89</u> 6.89	13.78
Total	14			3,18,140.14	3,07,718.41	10,421.73	<u>263.57</u> 263.57	527.14

After this was pointed out in audit between October 2003 and April 2005, the Department stated in July 2005 that notices in two cases of Begusarai circle have been issued. Further reply has not been received (September 2005).

The cases were reported to Government in June 2005; their reply has not been received (September 2005).

- Cross verification of returns filed by the dealers under BTEG Act with their returns filed under Bihar Finance Act and figures collected from different departments⁴ revealed between August 2004 and April 2005 that 29 dealers in 11⁵ commercial tax circles suppressed import of scheduled goods valued at Rs 212.26 crore in their returns filed under BTEG Act during the period 2000-01 to 2003-04. The assessing officers failed to review the returns and initiate proceedings for levy of penalty in these cases. This resulted in non realisation of penalty of Rs 11.02 crore.

The cases were reported to the Department between August 2004 and April 2005 and to the Government in June 2005; reply has not been received (September 2005).

Application of incorrect rate of tax

5.3.2 Government by a notification issued in August 2003⁶ revised the rates (applicable with effect from August 2003) on entry of scheduled goods into local areas.

In four commercial taxes circles, it was noticed that five dealers admitted tax in their periodical returns for 2003-04 at rates lower than the applicable rates. The assessing authorities, however, failed to review the returns and initiate proceedings for levy of correct tax in these cases. The tax involved worked out to Rs 51.76 lakh as detailed below:

Sl. No	Name of the circle (No. of Dealers)	Commodity	Import value of goods	Rates of tax		Amount of tax escaped
				Leviable (in per cent)	Admitted (in per cent)	
1	Bhagalpur (1)	Motor vehicle	493.42	8	5	14.80
2	Gaya (2)	Cement	473.00	12	5	33.10
3	Patna City East (1)	Tobacco Product	25.37	16	5	2.79
4	Sasaram (1)	Tobacco Product	9.76	16	5	1.07
			1,001.55			51.76

After this was pointed out in audit between December 2004 and April 2005, the Department stated in August 2005 that Rs 15 lakh in one case of Bhagalpur circle has been realised. Reply in remaining cases has not been received (September 2005).

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

⁴ Bihar State Electricity Board and Barauni Thermal Power Station

⁵ Ara, Aurangabad, Begusarai, Bhabhua, Bhagalpur, Gaya, Hajipur, Munger, Muzaffarpur, Patna City East and Patliputra.

⁶ S O No 159 dt. 22 August 2003.

Non levy of tax

5.3.3 Under the provisions of BTEG Act read with Bihar Finance Act and Rules made thereunder, every dealer who is liable to pay tax under the BTEG Act shall make an application for registration separately for every place of business before the prescribed authority within seven days of his becoming liable to pay tax. On receipt of application for registration, the prescribed authority after verifying or causing to be verified the particulars furnished by the dealer, grant him a registration certificate within 30 days from the date of receipt of said application.

According to provisions of Bihar Finance Act if any dealer liable to pay tax for any period has nevertheless wilfully failed to apply for a registration the prescribed authority shall after giving the dealer a reasonable opportunity of being heard, direct that the dealer shall pay by way of penalty in addition to amount of tax a sum of Rs 50 for each day of default or an amount equal to the amount of tax whichever is less.

Departmental instructions issued in 1997 and 2001 provide for effective survey to locate unregistered dealers evading levy of entry tax and ensure realisation of Government revenue.

- From the information furnished by the CCT Bihar to different circles and collected in audit from the case files in five⁷ commercial taxes circles it was noticed that 37 dealers imported scheduled goods valued at Rs 30.76 crore during the period 2000-01 to 2003-04 but did not get themselves registered and pay entry tax under the provisions of BTEG Act. It was further noticed that the dealers were registered under Bihar Finance Act.

The assessing authorities being common under both the Acts, failed to detect the fact of non registration of the dealers under BTEG Act through linking of figures from periodical returns and initiate proceedings for registration and levy/collection of entry tax. This resulted in non registration and non levy of entry tax of Rs 1.26 crore besides penalty.

After this was pointed out in audit during December 2004 to April 2005, the department stated in August 2005 that demands for Rs 20.44 lakh from nine dealers of Bhabhua circle has been raised. Further reply has not been received (September 2005).

- Cross verification of information collected in audit from case files, utilisation statement of declaration forms in 'C,' 'F,' road permits, trading accounts and returns filed by six dealers registered under Bihar Finance Act in five⁸ circles revealed that the dealers imported scheduled goods valued at Rs 7.90 crore during 2000-01 to 2003-04 and though liable to pay entry tax on the import value did not get themselves registered and pay entry tax on the import value of scheduled goods under the provisions of BTEG Act.

⁷ Ara, Bhabhua, Bhagalpur, Buxar and Munger

⁸ Ara, Bhabhua, Buxar, Saharsa and Teghra

Failure on the part of the assessing authorities to get these dealers registered under BTEG Act resulted in non levy of entry tax of Rs 43.48 lakh besides penalty.

After this was pointed out in audit between August 2004 and April 2005, the Department stated in August 2005 that demand for Rs 45.92 lakh in case of a dealer of Teghra circle has been raised. Further reply has not been received (September 2005).

- Cross verification of the information from the CCT Bihar as furnished to various commercial taxes circles regarding import of scheduled goods by various dealers of Bihar also revealed that 60 unregistered dealers falling under the jurisdiction of seven circles⁹ imported scheduled goods (coal) valued at Rs 30.85 crore during the period 2001-02 to 2003-04 but did not pay entry tax on the import value on entry of such goods into the local area. The assessing officers though in possession of information from CCT did not initiate steps to trace and register these dealers.

Failure on the part of the assessing authorities to comply with the instructions of CCT resulted in non levy of tax of Rs 1.23 crore besides penalty.

The cases were reported to the Department during December 2004 to April 2005; reply has not been received (September 2005).

- Further 13 unregistered dealers falling under the jurisdiction of five circles¹⁰ imported vegetable oil from a dealer registered in Aurangabad circle valued at Rs 1.51 crore during 2000-01 and 2001-02, but did not pay entry tax on the import value on entry of goods into the local area. Failure on the part of the assessing authorities to comply with the instructions of CCT Bihar to locate unregistered dealers resulted in non levy of entry tax of Rs 7.56 lakh besides penalty.

After this was pointed out during August 2004 to April 2005, the Department stated in July 2005 that notices to the dealers of Begusarai circle have been issued. Further reply has not been received (September 2005).

The above cases were reported to Government in June 2005 which confirmed the reply of the Department.

Irregular reduction of tax liability

5.3.4 Under the provisions of BTEG Act and Rules framed thereunder, an importer of scheduled goods liable to pay tax under the Act becomes liable to pay tax under the Bihar Finance Act by virtue of sale of such scheduled goods. His liability to pay tax under the Bihar Finance Act shall stand reduced to the extent of tax paid under the BTEG Act.

A claim for reduction in the liability to pay sales tax is required to be scrutinised by the assessing authority before the next quarterly return by the concerned dealer is due and to satisfy itself regarding the correctness of the claim. The assessing

⁹ Ara, Bhabhua, Bhagalpur, Buxar, Hajipur, Patna City East and Sasaram.

¹⁰ Begusarai, Gaya, Hajipur, Munger and Sasaram.

authority is to make appropriate endorsement in the assessment record of the dealer and sign the certificate in the said form ET-X. The dealer's liability is to be reduced at the time of assessment of sales tax on production of a certificate issued by the prescribed authority to that effect.

- In Hajipur and Patliputra Circles, two dealers availed reduction in liability of tax of Rs 39.26 and 29.17 lakh respectively payable under Bihar Finance Act on the basis of entry tax paid on the value of goods imported for consumption during the years 2001-02 to 2003-04.
- In another case of Patliputra circle the dealer availed reduction in the year 2003-04 of Rs 8.58 lakh on the basis of entry tax paid in another state.
- In Sasaram circle a dealer assessed to tax in June 2003 under Bihar Finance Act was allowed reduction in tax of Rs 1.91 lakh on the value of the goods which were not subjected to sale. The reduction was irregular as the dealer had no liability to that extent under Bihar Finance Act.

Scrutiny of the claims and proper endorsement in ET-X as required under Rules was not done by the assessing authorities resulting in irregular reduction of liability.

The cases were reported to the Department/Government in October 2004, April 2005 and June 2005 respectively; reply has not been received (September 2005).

Non levy of penalty

5.3.5 Under the Bihar Finance Act read with BTEG Act; if a registered dealer fails to make payment of the tax due within the stipulated time, the assessing authority shall after allowing the dealer an opportunity of being heard impose penalty at rates prescribed under the Act.

In Muzaffarpur and Patna Special circles it was noticed in October and November 2004 that two dealers failed to deposit the admitted tax of Rs 1.33 crore by the due dates for the assessment years 2001-02 and 2002-03. The delay ranged between 10 days and 604 days. The assessing officers while finalising the assessments in March 2003 and January 2004 did not levy penalty of Rs 39.42 lakh.

After this was pointed out in October and November 2004, DCCT Muzaffarpur stated in October 2004 that the dealer was passing through financial crisis. The reply of the Department is not tenable as no such relaxation is available in the Act/Rules. Further reply has not been received (September 2005).

The cases were reported to the Government in June 2005; reply has not been received (September 2005).