

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 during the year 2007-08, revealed underassessment of tax and other deficiencies involving Rs. 315.60 crore in 479 cases which fall under the following categories:

(Rupees in crore)			
Sl. No.	Categories	No. of cases	Amount
1.	'Assessment, levy and collection of sales tax/value added tax on works/supplies contracts' – A review	1	107.10
2.	Non/short levy of tax	141	75.09
3.	Irregular allowance of concessional rate of tax	04	73.67
4.	Irregular allowance of exemption from tax	51	10.95
5.	Short levy due to incorrect determination of turnover	12	2.03
6.	Non-levy of penalty	33	0.88
7.	Application of incorrect rates of tax	23	0.90
8.	Non/short levy of additional tax and surcharge	19	0.26
9.	Non-levy of penalty for excess collection of tax/mistake in computation	02	0.12
10.	Other irregularities	193	44.60
Total		479	315.60

During the year 2007-08, the department accepted underassessment and other deficiencies of Rs. 2.64 crore in 70 cases, of which 18 cases involving Rs. 1.90 crore were pointed out during 2007-08 and the rest during the earlier years. The department reported recovery of Rs 13.63 lakh.

Audit findings of a review of "Assessment, levy and collection of sales tax/VAT on works/supplies contracts" involving a financial impact of Rs. 107.10 crore and few other illustrative cases involving Rs. 45.96 crore are mentioned in the following paragraphs.

2.2 Assessment, levy and collection of sales tax/value added tax on works /supplies contracts

Highlights

Failure of the department to frame detailed guidelines on cross verification of records of the buying departments with the Taxation Department resulted in supplies/works contracts by unregistered dealers and suppression of turnover by registered dealers remaining undetected. Consequently, there was non/short realisation of tax of Rs. 106.26 crore.

(Paragraph 2.2.7)

Non-completion of assessment within the specified time frame resulted in non-realisation of tax of Rs. 1.80 crore.

(Paragraph 2.2.9)

Two dealers were irregularly allowed exemption of Rs. 84.25 lakh on account of tax deducted at source.

(Paragraph 2.2.10)

2.2.1 Introduction

The assessment, levy and collection of sales tax on works/supplies contracts were governed by the Bihar Finance (BF) Act, 1981 till 31 March 2005. Thereafter, with the enactment of the Bihar Value Added Tax (VAT) Act, 2005, the assessment, levy and collection of VAT on works and supplies contract is being dealt under the Bihar VAT Act, rules made and notifications/instruction issued thereunder.

According to the BF Act as well as the Bihar VAT Act, 'works contract' means any agreement for carrying out for cash or deferred payment or other valuable consideration, the construction, fitting out, improvement or repair of any building, road, bridge or other immovable or movable property. Further, the BF Act envisages that, every contractor engaged in the execution of works contract in the State and whose gross turnover (GTO) exceeds Rs. 25,000 in a year is liable to obtain a certificate of registration and pay tax at the rates prescribed in the Act and in case of a supplier, the specified quantum of GTO for registration is Rs. 1 lakh. As per the Bihar VAT Act, the ceiling of GTO is 'NIL' for the purpose of works contractors and dealers engaged in transfer of property as a result of transfer of right to use goods. However, in case of a supplier, the prescribed quantum of GTO for registration is Rs. 5 lakh.

Both the BF and the Bihar VAT Acts provide for deduction of tax at source in the case of works/supplies contracts as notified by the Government from time to time. In order to expedite the process of collection and to prevent evasion of tax by contractors/suppliers, the Acts enjoin on every person of the Central and State Government departments or public/private sector undertakings responsible for making payments to the contractors/suppliers, to deduct the sales tax/VAT at source (TDS) at the prescribed rates while making payment to them and remit it to the Government account.

Audit reviewed the system of assessment, levy and collection of sales tax/VAT on works/supplies contracts and noticed a number of system and compliance deficiencies which have been discussed in the succeeding paragraphs.

2.2.2 Organisational setup

The assessment, levy and collection of sales tax/VAT are administered by the Secretary, Commercial Taxes at the Government level and by the Commissioner of Commercial Taxes (CCT) at the apex level of the department. The CCT is assisted by Additional Commissioner (AC) and Joint Commissioner of Commercial Taxes (JCCT), Bureau of Investigation (IB) along with other JCCTs and Deputy/Assistant Commissioners of Commercial Taxes (DCCT/ACCT) at the headquarter level.

The State of Bihar is divided into seven¹ commercial taxes divisions and 50² commercial taxes circles each under the charge of a Joint Commissioner (Administration) and DCCT/ACCT respectively. Of the 50 commercial tax circles, four³ circles were created in 2007-08. The in-charge of the circle who is assisted by commercial tax officers (CTO) is responsible for market survey, besides levy and collection of amount of sales tax/VAT due to the Government.

2.2.3 Audit objective

The review was conducted to ascertain whether

- the provisions of the Act and Rules governing assessment, levy and collection of tax on works and supplies contract were adequate;
- assessment, levy and collection of sales tax/VAT on works/supplies contract were being done in accordance with the provisions of the BF /Bihar VAT Act; and
- an internal control mechanism existed in the department and was adequate to monitor assessment, levy and collection of sales tax/VAT on works/supplies contracts and prevent leakage of revenue.

2.2.4 Audit scope and methodology

The review of assessment, levy and collection of sales tax/VAT on works/supplies contracts for the period 2002-03 to 2006-07 was conducted in 14⁴ out of 46 commercial taxes circle under seven commercial taxes divisions

¹ Bhagalpur, Central, Darbhanga, Gaya, Patna, Purnea and Tirhut.

² Aurangabad, Bagaha, Bhagalpur, Barh, Begusarai, Bettiah, Bhabhua, Biharsharif, Buxar, Champaran (Motihari), Danapur, Dalsinghsarai, Darbhanga, Forbesganj, Gandhi Maidan Patna, Gaya, Gopalganj, Hajipur, Jehanabad, Jhanjharpur, Jamui, Kadamkuan Patna, Katihar, Khagaria, Kishanganj, Lakhisarai, Nawadah, Madhepura, Madhubani, Munger, Muzaffarpur East, Muzaffarpur West, Patliputra, Patna West, Patna Central, Patna City East, Patna City West, Patna North, Patna Special, Patna South, Purnia, Raxaul, Sahabad (Ara), Saharsa, Samastipur, Saran (Chapra), Sasaram, Sitamarhi, Siwan, and Teghra.

³ Gandhi Maidan Patna, Kadamkuan Patna, Muzaffarpur East and Patna Central.

⁴ Begusarai, Biharsharif, Gaya, Hajipur, Jamui, Jehanabad, Motihari, Muzaffarpur, Patliputra, Patna North, Patna Special, Purnia, Samastipur and Sasaram.

and the office of the CCT between March and June 2008. During the course of review, data/information obtained from Central/State Government departments and private/public undertakings were computerised and cases of payments of Rs. 10 lakh and above were segregated and cross verified with the sales tax/VAT records of the concerned works/supplies contractors. Besides, information/data received from 15 circles⁵ have also been included to widen the ambit of the review.

2.2.5 Acknowledgment

Indian Audit and Accounts Department acknowledges the co-operation of the Commercial Taxes Department in providing the necessary information and records to audit. An entry conference was held with the Principal Secretary-cum-Commissioner, Department of Commercial Taxes in March 2008 bringing out the audit objectives, scope and methodology. The findings of the review were forwarded to the Government and the department in August 2008 and discussed in the Audit Review Committee meeting held in September 2008. The replies of the Government have been appropriately included in the respective paragraphs.

Audit findings

System deficiencies

2.2.6 Market survey and registration

The CCT issued instruction in April 1997 and March 1999 for conducting market survey during April to June every year to unearth unregistered dealers/contractors for their registration and to widen the tax base. In the BF Act, there was no separate provision for carrying out market survey to detect unregistered supplies/works contractors. However, the Bihar VAT Act provides for market survey by the circle in-charge to identify dealers who are liable to pay tax, but have remained unregistered, by issuing notice to any dealer or class of dealers to furnish information and by calling for information from the service providers like banks, companies, financial institutions, clearing and forwarding agents, owner of warehouses, *dalals*, transporters *etc.*, and public utilities such as municipal bodies, *gram panchayats*, district boards, electricity board and State Transport Corporation. Audit scrutiny revealed that though the provision for market survey of unregistered contractors/suppliers was made in the Bihar VAT Act, yet modalities for such survey *i.e.*, areas to be covered, periodicity of the surveys, number of dealers/buying departments to be covered in each survey, action to be taken after conduct of the survey, reports/returns to be furnished by the officers conducting market survey for supervision and monitoring by higher officers *etc.* have not been prescribed in the Act and the rules made thereunder.

Scrutiny of the records of the CCT and 20 out of 46 circles revealed that during the period from 2002-03 to 2006-07, no market survey was conducted

⁵ Aurangabad, Bhagalpur, Darbhanga, Forbesganj, Gandhimaidan, Gopalganj, Katihar, Khagaria, Kishanganj, Madhepura, Nawada, Patna Central, Patna West, Patna South and Saharsa.

in 11 circles⁶. In 9 circles⁷, though surveys were conducted, but no unregistered suppliers/works contractors who were eligible for registration were detected. Besides, due to the absence of report/returns, the CCT remained unaware of non-conducting of market survey by 11 circle offices and the outcome of the surveys conducted by nine circles which weakened the monitoring mechanism.

After this was pointed out, the Government stated in September 2008 that regular market surveys will be carried out to detect unregistered dealers.

The Government may consider devising detailed modalities for carrying out market surveys i.e., demarcation of the areas to be covered, periodicity of the surveys, number of dealers/buying departments to be covered in each survey to detect unregistered suppliers/works contractors and bring them under the tax net. Also, report/return to be furnished by the circles to the higher authorities may be prescribed for supervision and monitoring.

2.2.7 Cross verification of transactions

Under the provision of the BF Act, every dealer, who is a contractor, is liable to pay tax if his GTO exceeds Rs. 25,000 in a year. Further, no dealer, who is liable to pay tax, shall sell/purchase goods, unless he has been granted and is in possession of a valid registration certificate. Failure to apply for registration may render him to pay a penalty, in addition to levy of tax, at the rate of Rs. 50 for each day of default or an amount equivalent to the amount of tax assessed, whichever is less.

The Bihar VAT Act provides for registration of works contractor and supplier having 'nil' GTO and GTO of Rs. 5 lakh and above respectively. Failure to apply for registration attracts penalty, in addition to levy of tax, at the rate of Rs. 100 for each day of default or an amount equivalent to the amount of tax assessed, whichever is higher. Further, under the BF Act and the Bihar VAT Act, if the authority has reason to believe that a dealer has concealed, omitted or failed to disclose wilfully or suppressed any portion of his turnover, he shall direct the dealer to pay penalty not exceeding three times but not less than an amount equivalent to the amount of tax on the escaped turnover in cases under BF Act and a sum equal to three times of the amount of tax on the escaped turnover in cases falling under the Bihar VAT Act.

During the currency of the BF Act, the CCT, by a notification issued in May 1990, instructed all the circles to collect the data of works executed/supplies made and cross verify them with the sales tax returns/records. Further, the Bihar VAT Act and Rules contain provision for cross verification of the records of the dealers with those of other departments to detect unregistered dealers or suppression/concealment of turnover by the registered dealers.

During test check it was noticed that though the notification of the CCT issued in May 1990 requires the assessing authorities (AA) to collect data on works contracts and cross verify them with particulars of works contracts during the

⁶ Begusarai, Biharsharif, Darbhanga, Forbesganj, Gopalganj, Katihar, Khagaria, Patlipurtra, Patna Special, Patna West and Saharsha.

⁷ Aurangabad, Bhagalpur, Kishanganj, Madhepura, Nawada, Patna North, Patna South, Purnea and Samastipur.

currency of the BF Act, yet detailed guidelines/modalities like quantum, periodicity of cross verification *etc.*, were not framed. Besides, reports/returns to be furnished by the officers carrying out cross verification to the higher authorities for supervision and monitoring have not been prescribed. These deficiencies are applicable to the relevant provisions of the Bihar VAT Act also. Due to absence of detailed guidelines/mechanism for carrying out cross verification, cases of supplies/works contracts by unregistered dealers, concealment/suppression of turnover by the registered contractors could not be detected by the Taxation Department as mentioned below.

2.2.7.1 Supplies/works contracts by unregistered dealers

Cross verification of the data collected from seven⁸ Central/State Government departments with those of the Commercial Taxes Department revealed that 131 contractors/suppliers received payment of Rs. 255.45 crore on which tax of Rs. 29.92 crore was leviable. The buying departments, however, deducted TDS of Rs. 90.12 lakh only leaving a balance of Rs. 29.02 crore. As there was no mechanism devised by the Taxation Department for carrying out cross verification of the records of the buying departments, supplies/works contracts carried out by unregistered dealers escaped notice of the Commercial Tax Department. This resulted in non-realisation of tax of Rs. 53.53 crore including penalty of Rs. 24.51 crore on the taxable turnover of Rs. 239.38 crore after allowing maximum deduction of 30 *per cent* on account of labour charges as applicable under the BF Act.

After the cases were pointed out, the Government while admitting audit observations stated in September 2008 that necessary action in this regard would be taken.

2.2.7.2 Suppression of turnover by registered works contractors/suppliers

Cross verification of the data collected from six buying departments with the records of 50 works contractors registered in nine⁹ commercial taxes circles revealed that Rs. 242.05 crore was received by these contractors against the execution of works carried out during 2002-03 to 2006-07. The contractors, however, accounted for Rs. 134.45 crore only in their returns thereby concealing the turnover by Rs. 107.60 crore. Thus, due to non-conducting of periodic cross verification of the records of the buying departments by the AAs, suppression/concealment of turnover remained undetected resulting in short levy of tax of Rs. 49.72 crore including penalty of Rs. 37.28 crore as mentioned below:

⁸ Central Public Works Department, East Central Railways, Minor Irrigation Department, Public Health Engineering Department, Public Works (Building construction) Department, Road Construction Department and Rural Engineering Organisation.

⁹ Begusarai, Biharsharif, Gaya, Hajipur, Jamui, Jehanabad, Muzaffarpur, Samastipur and Sasaram.

(Rupees in crore)

Name of the department	Number of contractors/suppliers involved	Payment received	Shown in return	Amount suppressed	Tax payable	Tax deducted at source	Tax short levied	Penalty	Total
Building Construction Department	03	1.84	0.03	1.81	0.23	0.07	0.16	0.46	0.62
Central Public Works Department	01	0.48	NIL	0.48	0.06	0.02	0.04	0.12	0.16
Road Construction Department	09	5.65	0.30	5.35	0.66	0.15	0.51	1.54	2.05
Rural Engineering Organisation	23	17.75	0.09	17.66	2.21	0.71	1.50	4.50	6.00
East Central Railway	11	214.84	133.94	80.90	10.11	NIL	10.11	30.34	40.45
Water Resource Department	03	1.49	0.09	1.40	0.16	0.04	0.12	0.32	0.44
Total	50	242.05	134.45	107.60	13.43	0.99	12.44	37.28	49.72

The department in its reply has accepted the audit observation and stated that compliance will be intimated.

Cross verification of data of a manufacturer of concrete sleepers pertaining to 2005-06 obtained from the Superintendent, Central Excise Range, Hajipur with the records of the Hajipur sales tax circle revealed that a Government supplier sold 1,97,820 pieces of concrete sleeper during 2005-06, but the sales returned by the said supplier was found to be 1,39,390 pieces only thereby suppressing sales of 58,430 pieces valued at Rs. 6.02 crore during the above period. Failure of the AA to cross verify the records of buying department resulted in underassessment of VAT of Rs. 3.01 crore including penalty of Rs. 2.26 crore.

The Government may consider prescribing detailed guidelines for carrying out cross verification of the records of the buying departments by the Taxation Department *inter alia* specifying the quantum, periodicity of cross verification and report/return to be furnished by the circles to the higher authorities for supervision and monitoring to arrest cases of supplies/works contracts by unregistered dealers and suppression/concealment of turnover by the registered dealers.

2.2.8 Internal control mechanism

2.2.8.1 Monitoring of returns/register

As per the BF Act and Rules made thereunder, every contractor whose amount of admitted tax exceeds Rs. 2,500 is required to submit a monthly abstract of sale and purchase in form XIA, a quarterly return in form XI and annual return in form XII to the concerned assessing authority (AA) showing the total amount of receipt on account of sales made, amount paid on purchase, tax

paid/payable etc. The monthly abstract, quarterly and annual returns are required to be submitted by the last day of the month following the end of the month/quarter and by the 31st July following the closure of the financial year along with the proof of payment.

According to the Bihar VAT Act and Rules made thereunder, every contractor shall furnish to the authority specified a quarterly and annual return in form RT-I and RT-III in duplicate on or before the end of the month following the end of the quarter and on the 31st day of July of the year following the year to which such return relates respectively. In the case of a contractor/supplier whose GTO exceeds Rs. 40 lakh where audited accounts are required to be furnished, the last date for submission of return is 31st day of December following the year to which it relates.

Records like register VI i.e. demand, collection and balance register and register VIII i.e. daily collection register required to be maintained by the circles under executive instruction issued in April 1985, are the means of internal control to facilitate monitoring of receipt of returns and collection of admitted tax respectively.

Scrutiny revealed that after introduction of the Bihar VAT Act, register VI has been substituted by register VR IV but no substitute of register VIII was prescribed. It was seen that the registers VI and VR IV were incomplete particularly in case of works/supplies contract. There was no column in the register for indicating the details of interest and penalty paid by the works contractors for delay in payment of tax/submission of the returns.

The department accepted the audit observation and stated that the concerned registers were being updated in all the commercial taxes circles in the State.

The Government may consider amending the format of register VR IV to include specific information on payment of interest/penalty by the works contractors for delay in payment of tax and submission of returns.

2.2.8.2 Internal Audit

Internal audit assures an organisation that the prescribed systems are functioning reasonably well. The Finance (Audit) Department works as internal auditor of the Finance (Commercial Taxes) Department and is required to conduct the internal audit of the department. By an order of May 1960, the internal audit parties were required to conduct *cent per cent* audit of all the assessments finalised, examining *inter alia* assessment orders, issue of demand notices, amount of tax collected and verification of deposit of amount in treasury.

Information made available to audit revealed that no internal audit had been conducted in the office of the CCT and in the circles during the period from 2003-04 to 2006-07. In the absence of internal audit, the management had no means of knowing the areas of malfunctioning of systems and did not therefore have the opportunity of taking remedial action at the appropriate time.

The Government may consider revival of the internal audit to ensure detection and correction of errors in assessment, levy and collection of revenue.

Compliance deficiencies

2.2.9 Non-completion of assessments

As per the provisions of Bihar VAT Act, if a contractor fails to furnish returns before the due date specified in the Act, the prescribed authority shall, after giving the contractor a reasonable opportunity of being heard, assess the amount of tax due from the dealer and interest at the rate of one and half *per cent* per month on the amount due from the date of tax so payable upto the date of its payment.

Cross verification of the records of two¹⁰ commercial taxes circles with those of EC Railways, Patna revealed that though three contractors, having turnover of Rs. 11.29 crore during 2005-06 and 2006-07, failed to furnish any return during the specified period, but their cases were not assessed resulting in non-realisation of tax of Rs. 1.80 crore including interest of Rs. 38.91 lakh.

The department in its reply has accepted the audit observation and stated that compliance will be intimated.

2.2.10 Irregular exemption against tax deducted at source

Under the provision of the Bihar VAT Rules, every person deducting tax at source shall at the time of payment whether in part or in full issue to the person from whom such deduction is made, a certificate in form C II and furnish fully all such particulars as specified therein. The amount so deducted and paid in the Government account shall be treated to such extent as payment of the tax on behalf of the dealer and credit shall be given to him for the amount so deducted at the time of finalisation of the assessment.

In Samastipur commercial taxes circle, two contractors were allowed exemption on account of TDS of Rs. 85.75 lakh on the turnover of Rs. 21.84 crore during 2005-06 and 2006-07, though the contractors submitted form C II amounting to Rs. 1.50 lakh only. This resulted in incorrect exemption of tax of Rs. 84.25 lakh.

The department in its reply has accepted the audit observation and stated that compliance will be intimated.

2.2.11 Conclusion

The review revealed a number of system and compliance deficiencies in the system of assessment, levy and collection of sales tax/VAT on supplies/works contracts. Though the Bihar VAT Act and notifications issued by the CCT prescribed for market survey, yet absence of detailed modalities for market survey rendered the provisions ineffective. Neither the CCT's circular of May 1990 nor the Bihar VAT Act and rules prescribe detailed guidelines on cross verification of the records of the buying departments with those of the Taxation Department, due to which cases of evasion of tax by unregistered suppliers/works contractors and suppression/concealment by registered contractors remained undetected. Internal control mechanism in the department was weak as evidenced by the absence of an internal audit wing.

¹⁰ Biharsharif and Samastipur.

2.2.12 Summary of recommendations

The Government may consider implementation of the following recommendations for rectifying the system and compliance issues.

- devising detailed modalities for carrying out market surveys to detect unregistered dealers and bring them under the tax net in the interest of revenue of the State;
- prescribing detailed guidelines for carrying out cross verification of the records of the buying departments by the Taxation Department *inter alia* specifying the quantum, periodicity of cross verification and report/return to be furnished by the officers carrying out cross verification to the higher authorities for supervision and monitoring;
- amending the format of register VR IV to include specific information on payment of interest/penalty by the works contractors for delay in payment of tax and submission of returns; and
- revival of the internal audit to ensure detection and correction of errors in assessment, levy and collection of revenue.

2.3 Incorrect determination of turnover

2.3.1 Under the Bihar Finance (BF) Act, 1981, 'sale price' means the amount payable to a dealer as valuable consideration in respect of sale or supply of goods. It has been judicially held¹¹ that duties or taxes paid under the customs, central excise or state excise laws form an integral part of the sale price, whether they are separately charged or not, and whether they are recoverable by the seller alongwith the sale price or at a later date.

2.3.1.1 During test check of the records of Patna Special circle in February 2008, it was noticed that a dealer of petroleum products claimed exemption on account of export sale worth Rs. 735.20 crore to Nepal during 2002-03. The AA while finalising the assessment in March 2007, disallowed the claim of export sale in the absence of the bill of export and levied tax at the rate applicable in the State treating it as sales made within the State. Excise duty of Rs. 185.09 crore on disallowed claim was, however not included in the turnover, which resulted in short levy of tax of Rs. 32.85 crore including additional tax and surcharge.

After this was pointed out, the AA stated in September 2008 that excise duty is not charged on exports and hence not includible in sale price relating to exports. The reply is not tenable as export sale was disallowed by the AA himself and the assessment was finalised treating it as sale within the State. Hence excise duty should have been included in the sale turnover and taxed accordingly.

2.3.1.2 During test check of the records of Patna Special circle in February 2008, it was noticed that the AA while finalising the assessment in March 2007 for the period 2002-03 determined the taxable turnover of a dealer of petroleum products after adding excise duty of Rs. 259.91 crore to the

¹¹ Hindustan Sugar Mills Vs. State of Rajasthan (1978) 43 STC 13 SC; K L Johar & Co. Vs. State of Kerala (1972) 30 STC 394 ker.

intrastate and interstate bonded sales¹² of petroleum products. Scrutiny, however, revealed that the amount of excise duty by applying the correct rates leviable on the sale of these petroleum products was Rs. 301.16 crore. Thus, short determination of taxable turnover by Rs. 41.25 crore resulted in the underassessment of tax of Rs. 1.15 crore including additional tax and surcharge.

After this was pointed out, the AA stated in September 2008 that non-consideration of actual oil values on which excise duty rates were applied led to erroneous conclusion by audit. The reply is not tenable as the amount of actual excise duty was arrived at on the basis of actual oil values and quantities as shown in the statement furnished by the dealer on 29 March 2007 which was available in the case records of the dealer at the time of finalisation of assessments on 31 March 2007.

2.3.2 Under the BF Act, taxable turnover (TTO) of a dealer shall be the part of his GTO which remains after deducting therefrom the amount of tax actually collected and the amount of labour and any other charges in the manner and to the extent as prescribed in case of the works contractors.

2.3.2.1 During test check of the records of Sasaram commercial taxes circle in June 2007, it was noticed that though a dealer had claimed exemption on account of various expenses¹³ of Rs. 54.23 crore during the year 2004-05 but the AA while finalising the assessment in September 2005, incorrectly allowed exemption of Rs. 58.52 crore. Further, it was also noticed that out of the dealer's claim of Rs. 54.23 crore, expenses of Rs. 18.10 crore was shown towards labour charges whereas the profit and loss account shows an expense of Rs. 16.24 crore only towards labour charges.

Thus, excess allowance of exemption resulted in short determination of taxable turnover by Rs. 6.14 crore and consequent short levy of tax of Rs. 61.34 lakh including additional tax and surcharge.

2.3.2.2 During test check of the records of Patna Special circle in February 2008, it was noticed that the AA while computing the TTO of a dealer for the assessment year 2002-03 in February 2006, deducted Rs. 118.87 crore from the GTO on account of tax collected though deduction of Rs. 118.67 crore was claimed by the dealer. This resulted in short determination of taxable turnover by Rs. 20 lakh and consequent short levy of tax of Rs. 5 lakh including additional tax and surcharge.

After this was pointed out, the AA stated in September 2008 that hearing is being conducted. A report on further development has not been received (October 2008).

2.3.3 Under the BF Act, gross turnover of a dealer shall be the aggregate of sale price received including the gross amount received or receivable for the execution of works contract or for the transfer of right to use any goods for any purpose during any given period.

¹² Sales made by one oil marketing company (OMC) to another under a bond that excise duty will be paid by the purchasing OMC.

¹³ Labour and wages, architectural and designing, office expenses, maintenance of tools and plant, fuel and earth work etc.

During test check of the records of Sasaram commercial taxes circle in June 2007, it was noticed that the AA while finalising the assessment of a dealer for the year 2004-05 in September 2005 stated that the GTO will be determined by adding Rs. 4.51 crore to the turnover on account of profit element instead of Rs. 3.17 crore disclosed by the dealer. But at the time of determination of the GTO of the dealer, Rs. 63.87 lakh only was added. Thus, GTO of the dealer was determined short by Rs. 70.25 lakh which resulted in short levy of tax of Rs. 7.02 lakh including additional tax and surcharge.

The cases were reported to the Government in May 2008; their reply has not been received (October 2008).

2.4 Excess payment of interest on refund

Under the BF Act and Bihar VAT Act, the prescribed authority shall in the prescribed manner, refund any amount paid by a dealer in excess of the amount finally determined as being payable by him and if the refundable amount is not refunded within the stipulated time *i.e.* six months and three months respectively from the date of receipt of an application in that behalf from the dealer or person concerned, it shall carry an interest at the rate of nine *per cent*¹⁴ and six *per cent*¹⁵ with effect from the expiry of the specified period.

During test check of the records of Patna North circle in October 2007, it was noticed that assessments for the years 1988-89 to 1992-93 of a dealer were revised (May 2001) under the order of the CCT, Bihar and notice showing excess deposit of Rs. 61.37 lakh was issued to the dealer in May 2001. The dealer applied for refund in July 2001 but the order was passed in June 2006 only. The dealer took judicial recourse for payment of interest on the delayed refund and the High Court of Patna passed an order in October 2006 for payment of statutory interest. The AA accordingly passed the interest payment order in November 2006, computing interest of Rs. 24.57 lakh. Thus, delay in initiation and finalising the refund claim resulted in payment of interest of Rs. 24.57 lakh and consequent loss to the State exchequer.

The case was reported to the Government in May 2008; their reply has not been received (October 2008).

2.5 Short levy of tax

Under the BF Act read with the Bihar Sales Tax (BST) Rules 1983, the State Government by issuing notifications in June 1985 and July 2002 specified certain goods, class or description of goods on which sales tax was leviable at more than one point or on all the points of sale and the amount of sales tax paid at each preceding stage of sale, was to be adjusted against the amount of sales tax payable at each subsequent stage of sale in the prescribed manner.

During test check of the records of three commercial taxes circles between November 2006 and March 2007, it was noticed that four dealers had sold goods valued at Rs. 25.78 crore during the years 2001-02 to 2004-05, on which multi point tax was leviable. The AAs while finalising the assessments

¹⁴ Under Bihar Finance Act.

¹⁵ Under Bihar VAT Act.

between December 2003 and August 2006 however, incorrectly levied tax of Rs. 52.59 lakh instead of Rs. 68.97 lakh which resulted in short levy of tax of Rs. 16.38 lakh as mentioned below:

(Rupees in lakh)

Sl. No.	Name of the circle No. of dealers	Commodity turnover	Tax leviable	Tax levied	Short levy of tax	Remarks
1.	Patna North 2	Television, refrigerator, AC, washing machine and <u>IMFL</u> 1,074.16	32.43	24.12	8.31	The amount of tax paid at the preceding stage was incorrectly calculated.
2.	Patna South 1	<u>IMFL</u> 1,018.86	28.73	23.14	5.59	The AA levied additional tax and surcharge instead of multipoint tax.
3.	Darbhanga 1	Soap and detergent 484.59	7.81	5.33	2.48	- do -
Total			68.97	52.59	16.38	

After the cases were pointed out, the AA, Patna South circle stated in November 2006 that assessment order would be revised while the remaining AAs stated between November 2006 and March 2007 that the cases would be examined. Further replies have not been received (October 2008).

The cases were reported to the Government between June 2007 and May 2008; their reply has not been received (October 2008).

2.6 Short levy of additional tax

Under the BF Act and notification issued thereunder, every dealer is required to pay additional tax at the rate of one *per cent* (except liquor on which additional tax of two *per cent* is leviable) on the gross turnover and surcharge thereon unless specifically exempted from levy of the additional tax. Additional tax is leviable on multiple points of sales irrespective of taxable as well as tax paid¹⁶ goods.

During test check of the records of Sasaram commercial taxes circle in June 2007, it was noticed that the AA while finalising the assessment of a dealer for the year 2004-05 in September 2005 did not levy additional tax on tax paid sales of goods of Rs. 12.70 crore. This resulted in short levy of additional tax of Rs. 13.97 lakh including surcharge.

The case was reported to the Government in May 2008; their reply has not been received (October 2008).

¹⁶ The goods on which tax has been paid on the first point of sale in the State of Bihar is called tax paid sales at the subsequent stages.

2.7 Application of incorrect rate of tax

Under the BF Act, the State Government may, from time to time, by notification, specify the rates of tax on any class or description of goods.

During test check of the records of three commercial taxes circles¹⁷ between February and December 2007, it was noticed that three dealers sold goods valued at Rs. 2.41 crore during the assessment years 2001-02 to 2003-04 taxable at the rates ranging between 9 and 12 *per cent*. The AAs while finalising the assessments between February 2004 and February 2007 levied tax at incorrect rates ranging between 8 to 10 *per cent*. This resulted in short levy of tax of Rs. 6.68 lakh including additional tax and surcharge as mentioned below:

(Rupees in lakh)

Sl. No.	Name of circle No. of dealer	Name of commodity	Assessment year Month/Year of assessment	Value of goods	Rate of tax (in per cent)		Short levy of tax (including AT and SC)
					Leviable	Levied	
1.	Raxaul 1	Shampoo	2001-02 and 2002-03 February/2004 and December/2004	143.63	12	10	3.19
2.	Darbhanga 1	Birla white cement	2002-03 and 2003-04 May/2005	66.85	11	8	2.26
		Lime	- Do -	2.49	9	8	
3.	Patna City East 1	Oxygen gas	2002-03 and 2003-04 February/2007	27.72	12	8	1.23
Total				240.69			6.68

The cases were reported to the Government in May 2008; their reply has not been received (October 2008).

2.8 Suppression of turnover

2.8.1 Under the BF Act read with the Central Sales Tax (CST) Act, 1956, if the prescribed authority has reasons to believe that a dealer has concealed, omitted or wilfully failed to disclose the particulars of turnover or has furnished incorrect particulars of such turnover, 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 the escaped turnover, penalty not exceeding three times but not less than an amount equivalent to the amount of tax on the escaped turnover.

During test check of the records of 14 commercial taxes circles¹⁸ between May 2006 and January 2008, it was noticed that 19 dealers had purchased/sold goods of Rs. 591.28 crore during the assessment years between 2001-02 and 2004-05 as shown in their purchase/sale statements, utilisation statements of

¹⁷ Darbhanga, Patna City East and Raxaul.

¹⁸ Ara, Begusarai, Bhabhua, Buxar, Chapra, Samastipur, Motihari, Muzaffarpur, Patna North, Patna City East, Patna Special, Patna West, Purnea and Raxaul.

road permits, declaration forms 'C' and 'F' as well as annual accounts *etc.* but had accounted for Rs. 566.80 crore only in their trading account and returns *etc.* The dealers thus suppressed purchase/sales of goods of Rs. 24.49 crore. The AAs while finalising the assessments between February 2004 and March 2007, however, failed to detect the suppression of purchase/sales which resulted in short levy of tax of Rs. 7.44 crore including additional tax, surcharge and minimum leviable penalty as mentioned below:

(Rupees in lakh)

Sl. No.	Name of the circle No. of dealers	Period of assessment Month/ Year of assessment	Commodity	Rate applicable (per cent)	Actual purchase Purchase accounted for	Actual sale Sale accounted for	Turnover concealed	Amount of tax, additional tax and surcharge Penalty	Total
1.	Patna Special 3	2002-03 and 2004-05 between 7/05 and 3/07	Medicine ¹⁹	8 and 10 ²⁰	<u>4,169.98</u> 3,770.47	<u>790.51</u> 685.63	2,047.56	<u>359.16</u> 327.47	686.63
			HSD and MS	17 and 21.5	<u>46,023.47</u> 44,787.57	-			
			Lubricant	16	-	<u>1,405.57</u> 1,188.27			
			Glue and adhesive	12	<u>1,280.47</u> 1,190.49	-			
2.	Samastipur 1	2001-02 3/06	Milk product	8	<u>3,473.12</u> 3,405.77	-	67.35	<u>6.73</u> 6.11	12.84
3.	Begusarai 2	2001-02 to 2004-05 between 1/05 and 3/07	Insulation material	8	<u>337.18</u> 271.31	-	65.87	<u>6.25</u> 5.68	11.93
			Fertilizer	6					
4.	Buxar 2	2001-02 to 2003-04 between 2/04 and 3/06	Country liquor	25	-	<u>91.64</u> 79.74	20.92	<u>4.44</u> 4.03	8.47
			Liquified petroleum gas	9	<u>243.94</u> 234.91	-			
5.	Patna North 2	2002-03 Between 6/04 and 10/05	Building materials	8	-	<u>72.12</u> 61.10	35.27	<u>3.52</u> 3.20	6.72
			Medicine	8	<u>128.21</u> 103.96	-			
6.	Patna City East 1	2003-04 10/05	Masala	9	<u>287.87</u> 266.45	-	21.42	<u>2.38</u> 2.16	4.54
7.	Chapra 1	2001-02 10/05	Fertilizer	1 (AT)	<u>134.46</u> Nil	-	134.46	<u>1.48</u> 1.34	2.82
8.	Purnea 1	2004-05 9/05	Lubricant	21.5	<u>100.82</u> 95.63	-	5.19	<u>1.30</u> 1.18	2.48
9.	Motihari 1	2002-03 4/06	Raw and packing materials of biscuit	8	<u>52.83</u> 42.18	-	10.65	<u>1.06</u> 0.97	2.03
10.	Patna West 1	2003-04 7/05	Steel pipe and carbon paste	4 and 8	<u>100.72</u> 89.85	-	10.87	<u>0.87</u> 0.81	1.68
11.	Raxaul 1	2003-04 12/04	Mustard oil	4	<u>143.94</u> 128.30	-	15.64	<u>0.68</u> 0.63	1.31

¹⁹

The dealer has suppressed both purchases and sales.

²⁰

The dealer had concealed interstate sales of Rs. 1.05 crore on which tax at the rate of 10 per cent is leviable.

12.	<u>Muzaffarpur</u> 1	<u>2002-03</u> 4/05	Cycle and spare parts	8	<u>127.09</u> 121.49	-	5.60	<u>0.56</u> 0.51	1.07
13.	<u>Bhabhua</u> 1	<u>2002-03</u> 9/04	Cement	11	<u>106.54</u> 102.98	-	3.56	<u>0.47</u> 0.43	0.90
14.	<u>Ara</u> 1	<u>2002-03</u> 5/06	IMFL	2 (AT)	<u>57.80</u> 53.54	-	4.26	<u>0.09</u> 0.09	0.18
Total					<u>56,768.44</u> 54,664.91	<u>2,359.84</u> 2,014.74	2,448.88	<u>388.99</u> 354.61	743.60

After this was pointed out, the AA, Purnea stated in September 2008 that demand of Rs. 2.48 lakh has been raised while AA, Patna Special circle stated in September 2008 that hearings were being conducted in all cases.

The cases were reported to the Government in May 2008; the Government replied in June 2008 that demand of Rs. 7.04 lakh has been raised in the cases related to Chapra, Motihari and Muzaffarpur circle, of which Rs. 1.48 lakh has been realised. The reply in other cases and report on recovery has not been received.

2.8.2 Under the provisions of BF Act, if the prescribed authority in course of any proceeding or otherwise is satisfied that the dealer has concealed any sales or purchases or any particulars thereof with a view to reduce the amount of tax payable by him or has furnished incorrect particulars of his sales or purchases, the prescribed authority 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 VAT Act also provide for imposition of penalty equal to three times of the tax assessed on such concealed turnover in addition to the tax.

Cross verification of the assessment records of a dealer of Sahabad circle, Ara with those of the District Mining Office, Ara revealed that a lessee raised and sold sand valued at Rs. 8.09 crore during the period from 2002-03 to 2005-06. The dealer, however, admitted turnover of Rs. 3.11 crore thereby suppressing sales turnover by Rs. 4.98 crore during the said period. This resulted in non-realisation of sales tax/VAT amounting to Rs. 90.55 lakh including minimum leviable penalty of Rs. 49.27 lakh.

2.9 Underassessment of the central sales tax

Under section 8(5) of the CST Act, the Government of Bihar issued a notification in June 1986 reducing the rate of sales tax on interstate sale of jute from four to three *per cent*. By another notification issued under the same section of the CST Act in May 1996, industrial units were exempted from levy of sales tax on interstate sale of manufactured goods. Further, under the CST Act as amended in May 2002, production of form 'C' is mandatory while granting exemption/allowing tax at the reduced rates on the interstate sales. In case of failure to produce declarations in form 'C', tax is leviable at twice the rate applicable in the State in case of declared goods²¹ and in case of goods other than declared goods, at the rate of 10 *per cent* or at the rate applicable in the State, whichever is higher.

²¹ Goods of special importance in interstate trade and commerce as described in section 14 of the CST Act.

2.9.1 During test check of the records of two commercial taxes circles²² between March and December 2007, it was noticed that eight dealers claimed exemption/paid tax at the reduced rate on the interstate sales of various goods²³ valued at Rs. 15.72 crore during the assessment years 2002-03 to 2004-05. The AAs while finalising the assessments between June 2004 and January 2007 allowed the exemption/payment of tax at the reduced rate though the sales were not supported by declaration in form 'C'. This irregular allowance of exemption/payment of tax at reduced rates resulted in underassessment of tax of Rs. 85.40 lakh.

After the cases were pointed out, the AA of Purnea circle stated in September 2008 that the assessment order has been revised in five cases and demand for Rs. 27.99 lakh has been raised. The AA, Patna City East circle in case of one dealer stated in April 2007 that in a similar case the appeal court did not uphold the matter in light of the judgment of the apex court in the case of M/s Digvijay Cement Pvt Ltd. and others vrs State of Rajasthan, while in case of another dealer, agreed to review the case. The reply of the AA, Patna City East circle in the former case is not tenable as the CST Act was amended in May 2002 making submission of declaration forms mandatory while the order of the apex court issued in the year 1999 predated the amendment made in the CST Act and was thus not applicable in this instant case.

2.9.2 Under the CST Act read with the BF Act and the Rules framed thereunder, no tax shall be payable on the sale or purchase of goods, which take place in the course of export out of the territory of India provided the sale is substantiated by documentary evidence. According to the orders issued by the State Government in March 1986 and August 1991, for exemption from levy of tax on sale in the course of export to Nepal, the transactions must be supported, apart from other evidence, with the bills of export granted by the Customs Department of India.

During test check of the records of Munger commercial taxes circle in May 2006, it was noticed that export sale of goods of a dealer valued at Rs. 1.83 crore during the year 2001-02 were not supported by the prescribed documentary evidence like bill of export granted by the Customs Department of India. However, the AA while finalising the assessment in March 2006 granted exemption from levy of tax which resulted in underassessment of tax amounting to Rs. 18.34 lakh.

2.9.3 Under the CST Act, where a sale of any goods in the course of interstate trade or commerce has either occasioned while the movement of such goods from one State to another or has been effected by a transfer of documents of title to such goods during their movement from one State to another, any subsequent sale during such movement effected by a transfer of documents of title to such goods to a registered dealer shall be exempted from tax.

During test check of the records of Patna Special circle in February 2008, it was noticed that during 2002-03, a dealer registered in Patna Special circle placed an order with another dealer (M/s Indian Oil Corporation, Barauni)

²² Patna City East and Purnea.

²³ Iron and steel, jute and vanaspati.

registered in the same circle to deliver goods (Petroleum products) valued at Rs. 30.81 crore to two dealers located in the State of West Bengal. The dealer, however, claimed exemption on account of transit sale of these goods though the sale was effected from within the State and not during the movement of goods from one State to another and thus the transaction did not fulfill the condition of transit sale. The AA while completing the assessments in March 2007 allowed the exemption which resulted in short levy of CST of Rs. 1.23 crore.

After this was pointed out, the AA concerned in September 2008 accepted the case and raised an additional demand of Rs. 1.23 crore after revision. A report on recovery has not been received (October 2008).

The cases were reported to the Government in May 2008; their reply has not been received (October 2008).