

CHAPTER 2 : Taxes on Sales, Trade etc.

2.01 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 2001-02, revealed under assessment of tax of Rs.270.53 crore in 459 cases which broadly fall under the following categories: -

(Rupees in crore)			
Sl. No.	Category	No. of cases	Amount
1.	Irregular allowance of exemption from tax	196	24.31
2.	Incorrect allowance of concessional rates of tax	15	12.54
3.	Short levy of tax due to incorrect determination of gross turnover	76	10.16
4.	Non-levy of penalty	38	2.23
5.	Non-levy/short levy of additional tax and surcharge	52	1.73
6.	Application of incorrect rate of tax	26	0.56
7.	Other cases	56	219.00
Total		459	270.53

During the year 2001-02, the department concerned accepted under assessment, etc. of Rs.0.55 crore involved in 25 cases of which 6 cases involving Rs. 0.16 crore have been pointed out in audit during 2001-02 and the rest in earlier years.

A few illustrative cases including a Review on “**Internal Control Mechanism in Commercial Taxes Department**” involving tax effect of Rs.192.76 crore are discussed in the following paragraphs:-

2.02 Internal Control Mechanism in Commercial Taxes Department

2.02.01 Introduction

Internal controls are intended to provide reasonable assurance of proper enforcement of laws, rules and departmental instructions. These also help in prevention and detection of frauds and other irregularities. The internal controls also help in creation of a reliable financial and management information system for prompt and efficient services and for adequate safeguards against evasion of taxes and duties.

It is, therefore, the responsibility of the department to ensure that a proper internal control structure is instituted, reviewed and updated from time to time to keep it effective.

The levy, assessment and collection of sales tax is governed by sales tax laws, the rules framed thereunder and administrative instructions issued from time to time by the department. On receipt of the returns, from the dealers, it is the responsibility of the department to ensure prompt completion of assessments in accordance with the provisions of law and the executive instructions issued from time to time. The department has instituted certain control measures to monitor the various aspects of its functioning. The adequacy of such measures in respect of returns and assessments was reviewed in audit.

A review on this subject was featured as paragraph 2.2 in the Report of the Comptroller and Auditor General of India for the year ending March 1993; this Report has not been discussed by the Public Accounts Committee so far.

2.02.02 Organisational set up

At the apex level Commissioner of Commercial Taxes (CCT) is responsible for the administration of the Acts and rules in the department. He is assisted by Additional/Joint Commissioners of Investigation Bureau (IB), Administration, Vigilance and Monitoring and other Officers at the headquarters level. The State of Bihar is divided into 7 Commercial Taxes Divisions¹ and 47 Circles, each under the charge of Joint Commissioner Administration and Deputy/ Assistant Commissioner of Commercial Taxes respectively. A Deputy Commissioner of IB is posted in each Division to assist the JCCT (Administration) and a Deputy Commissioner of Vigilance and Monitoring is posted under the direct charge of the CCT. The incharge of the circle is also responsible for conducting market survey.

2.02.03 Scope of Audit

A review of the efficacy of the functioning of the internal control measures with respect to sales tax was conducted for the period 1995-96 to 2000-01. Information was collected from the offices of the CCT, Bihar, IB Headquarters, 2 Divisional IBs and 2 Vigilance and Monitoring Cells. Records

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

of the office of the CCT, Bihar and 14² out of 47 circles in the state were examined between January and July 2002. The adequacy of internal control measures and monitoring thereof was reviewed in audit.

2.02.04 Highlights

(i) In 3 Circles, non- adherence to codal provisions of granting registration within one month of receipt of application resulted in pendency of registration ranging from 17 to 37 per cent during 1996-97 to 2000-01. Further, in the case of 94 dealers in 11 circles security initially fixed was not revised and in case of 31 dealers the security was short revised. The department neither prescribed nor the circles maintained any control register to watch, review and revise security indicating non-institution of appropriate internal control mechanism.

(Paragraph 2.02.06 (ii) and (iii)(b))

(ii) Non-adherence to internal control mechanism instituted for review of return for watching the payment of admitted tax resulted in non-levy of minimum penalty of Rs. 27.32 crore for delay in payment of admitted tax by 11 dealers in 5 Circles.

(Paragraph 2.02.07(A))

(iii) Non-adherence to the prescribed norms with regard to completion of assessment resulted in pendency of assessment ranging between 25 per cent and 61 per cent during 1996-97 to 2000-01.

(Paragraph 2.02.08)

(iv) Non-adherence to the CCT's instruction for cross verification of data/information collected from different Central/ State Government/ departments resulted in non/short levy of tax of Rs. 24 crore including penalty in case of 17 dealers of 4 Circles. Further, cross verification of information collected by audit in respect of incoming goods from outside the State revealed fraud and evasion of tax of Rs. 5.84 crore including penalty.

(Paragraph 2.02.08 (A) (i) (ii) and (B))

(v) In the case of 5 circles, the assessing officers did not levy /short levied penalty of Rs.46.08 crore due to default in payment of assessed tax of Rs. 22.62 crore by 12 dealers. Further in 5 Circles the assessing officers failed to institute certificate proceedings for the actual amount, which resulted in short institution of proceeding by Rs. 22.70 crore against 5 dealers.

(Paragraph 2.02.09 (B) and (C))

² Central Circle, Kolkata, Danapur, Hajipur, Munger, Muzaffarpur, Patna City West, Patna City East, Patna North, Patna South, Patna Special, Patna West, Patliputra, Aurangabad and Jahanabad.

(vi) **Incorrect grant of exemption to 7 dealers of 4 Circles, on account of tax paid sale and on defective/invalid declaration resulted in non-levy of tax amounting to Rs. 1.29 crore during 1996-97 to 1999-2000.**

(Paragraph 2.02.10 (i))

(vii) **No internal audit was conducted since 1990 indicating absence of a vital component of internal control.**

(Paragraph 2.02.12)

2.02.05 *Trend of Revenue*

The variation between budget estimates and actuals in respect of undivided Bihar during the year 1996-97 to 1999-2000 and in respect of Bihar after formation of Jharkhand state for the year 2000-01 is as under :

(Rupees in crore)

Year	Budget estimates	Actuals	Variation	Percentage of Variation
1996-97	1479.82	1496.39	(+) 16.57	(+) 1
1997-98	2000.20	1567.64	(-) 432.56	(-) 22
1998-99	2042.00	1821.85	(-) 220.15	(-) 11
1999-2000	2280.00	2067.79	(-) 212.21	(-) 9
2000-01	1950.00	1821.47	(-) 128.53	(-) 7

The above table indicates that actual collection of sales tax fell short of budget estimates during the years 1997-98 to 2000-01, the shortfall ranging between 7 to 22 per cent.

2.02.06 *Registration of dealers*

(i) *Market survey*

The department issued instructions (March 1999) for conduct of time bound and effective market survey for grant of registration to the eligible dealers, and for disposal of pending applications for registration by the end of April 1999 to widen the tax base.

Information furnished by 4³ out of 12 Commercial Taxes Circles regarding market survey revealed as under :

Year	No.of surveys conducted during the year	No.of dealers found due for registration	No.of dealers recommended for registration	No.of surveyed dealers who applied for registration	Percentage of Col.5 to 4
1	2	3	4	5	6
1998-99	186	172	172	20	12
1999-2000	120	80	80	11	14
2000-01	97	76	76	20	26

³ Patna south, Munger, Patna city West and Siwan.

Table above indicates that percentage of dealers who applied for registration to dealers found due for registration varied between 12 and 26. This indicated inadequate follow up action and failure of internal control mechanism at the apex level to increase the tax base and to mobilise resources.

(ii) Pending application for registration

Under provisions of the Bihar Finance Act, 1981 read with rules made thereunder, no dealer who is liable to pay tax, shall sell or purchase goods unless he has a valid registration certificate. For this, a dealer has to apply within 7 days from the date of his becoming liable for payment of tax. The authority prescribed shall grant him a registration certificate within a period of 30 days from the date of receipt of the said application.

The department reiterated, through instructions (September 1998 and March 1999), the codal provision of granting registration within one month of receipt of application.

Information furnished by 3⁴ out of 12 circles called for, regarding registration revealed as under:

Year	Opening balance	No. of applications received	Total	No. of registration granted	No. of applications rejected	Closing Balance (Pending for more than 1 month)	Pendency in per cent Col. 7 to Col. 4
1	2	3	4	5	6	7	8
1996-97	33	439	472	384	6	82	17
1997-98	82	375	457	291	15	151	33
1998-99	151	381	532	349	35	148	28
1999-2000	148	356	504	303	16	185	37
2000-01	185	595	780	581	9	190	24

The above table indicates that the pendency for registration during the period 1996-97 to 2000-01 varied between 17 per cent and 37 per cent.

However, scrutiny of the files produced to audit revealed that neither any compliance report was received from the Circles/monitoring wing nor the receipt of the reports was monitored at the Commissioner's office. Thus the internal control as enshrined in the Act and instructions issued in September 1998 and March 1999 failed to ensure timely grant of registration certificates.

(iii) Inadequate Security

Under provisions of the Bihar Finance Act, 1981 read with rules made thereunder the prescribed authority may require any registered dealer to furnish security for proper payment of tax payable by him. If at any time the said authority finds that the tax payable by the dealer for one year exceeds the amount of security furnished by him, the said authority may direct the dealer to furnish security equivalent to the tax payable by the dealer for one year.

⁴ Patna South, Munger and Patna City West.

(a) Scrutiny of assessment records of 6 circles⁵ revealed that 10 dealers, whose securities were not revised/short revised, had either closed their business and their whereabouts were not known or had become insolvent. This resulted in loss of Government revenue to the tune of Rs. 6.24 crore.

(b) Test check of 125 dealers in 11 Circles⁶ revealed that in the case of 94 dealers, securities furnished at the time of registration were not revised and in the case of 31 dealers, the securities were short revised.

Neither any control register was prescribed by the department nor any register maintained in any circle, indicating dealerwise security furnished at the time of registration and tax assessed, to monitor, review and revise the security. No periodical returns/reports were sent to the JCCT/CCT Bihar, Patna. This indicates that no internal control mechanism had been introduced to check whether the provisions of Act/Rules were strictly followed.

2.02.07 Monitoring of returns/registers

The Bihar Finance Act, 1981, read with CST Act, 1956 and Rules made thereunder provide for submission of periodical returns (monthly/quarterly), giving details of turnover alongwith the proof of payment of tax by 15th of the month following the end of the month/quarter. Annual return is to be furnished by 31 July following the close of the financial year. On the basis of return, the assessing officer is required to complete the assessment within 4 years of the assessment period.

The department, through executive instructions, prescribed two registers (Register VI and VIII) to be maintained by the Circle to facilitate the monitoring of receipt of returns and collection of admitted tax. The prescribed authority was required to review the return and initiate the proceedings within three days against the defaulting dealers for delay in submission of return, belated payment of admitted tax and turnover escaping assessment .

Further, by an executive instruction of September 1998, the circles/ monitoring wing were instructed to update Register VI to watch timely deposit of admitted/ assessed tax; compliance was to be sent to the headquarters.

A test check of Register VI in 11 Circles revealed that no information regarding date of submission of return, date of completion of proceedings and date of service of demand was available. Neither was the date of initiation of proceedings entered nor were the entries cross verified with the entries of Register VIII and authenticated.

Test check of Register VIII in 8 Circles revealed that the entries in the register were not reconciled with entries in treasury records and were not authenticated.

⁵ Patna North, Patna City West, Patna South, Patna West, Patna City East, Muzaffarpur.

⁶ Patna North, Patna City East, Hajipur, Danapur, Patna City West, Patna South, Patna Special, Patna West, Patliputra, Munger, Muzaffarpur

Further, test check of 286 annual returns revealed that 278 annual returns furnished by 129 dealers were not properly filled in.

No compliance report on the executive instructions was submitted by the circles/ monitoring wing of the division to the headquarters; no action for implementation of instructions was initiated at the apex level.

(A) Non- imposition of penalty for belated payment of admitted tax

Under provisions of the Bihar Finance Act, 1981, if a registered dealer fails to make payment of admitted tax due on due date, a penalty shall be imposed at the prescribed rate(s).

In the case of 11 dealers of 5 Circles⁷ minimum penalty amounting to Rs. 27.32 crore, though leviable under the provisions of the Act was not/ short levied for belated payment of admitted tax. Failure of the assessing officer to invoke the penalty provision under the Act and to review the return within three days and initiate proceedings resulted in non/ short levy of penalty.

2.02.08 Assessment

Under the provisions of the Bihar Finance Act, 1981, after the receipt of the returns, assessment is completed by the prescribed authority to determine and levy tax due alongwith penalty. Efficient assessment procedures have a vital bearing on the revenues of the State Exchequer. It is therefore necessary to keep a constant watch on certain critical aspects of assessment procedure. The department does that through certain internal control measures. Some of them are as under:

The CCT, Bihar had fixed (March 1989), the following norms for various assessing officers to finalise assessment cases.

Deputy Commissioner incharge of the circle	Minimum 15 cases per month alongwith registration cases
Assistant Commissioners incharge of circle	Minimum 25 cases and maximum 35 cases alongwith registration cases per month
Other Assistant Commissioners	Minimum 35 cases per month
Commercial tax officers incharge of the circle	Minimum 40 cases per month
Other Commercial tax officers	Minimum 50 cases per month

Test check of the records of 4⁸ Circles revealed that the norms prescribed by the CCT were not followed scrupulously. The assessments completed during last 5 years were far below the assessment required to be completed as per norms, as a result thereof a large number of cases were pending as detailed below:

⁷ Patna Special, Patna North, Patna City East, Patna South and Central Circle, Kolkata.

⁸ Hajipur, Patna South, Patna City West and Patna North.

Year	Minimum no. of assessment to be completed as per norms	Pending assessment	Assessment completed during the year	Shortfall in numbers	Shortfall in percentage (col. 5 to col 3)
1	2	3	4	5	6
1996-97	15900	14028	6826	7202	51
1997-98	13920	13987	5491	8496	61
1998-99	12720	13742	10296	3446	25
1999-2000	12540	13370	6879	6491	49
2000-01	12540	13287	7301	5986	45

This indicates that the instruction had not been adequately acted upon, though the system of monitoring existed. Files produced also indicated that no follow up action was taken on instructions issued in March 1989 indicating failure of internal control mechanism at apex level.

(A) Monitoring of inter-departmental cross verification of data

The Commissioner of Commercial Taxes (CCT) issued instruction (May 1990) for cross verification of data/information collected from Income-tax/Central Excise department and departments of the State Government regarding purchase/sale by business establishments with their returns/records to check evasion of tax. The Investigation Bureau of the department was also entrusted (June 1991) with this work and was required to submit monthly report on verification by 10th of the following month to CCT Bihar.

Files produced to audit in the office of CCT Bihar revealed that neither did the I.B. submit any report/return regarding verification of the data / information collected nor were any steps taken by the department to enforce submission of reports/returns.

However, cross verification of data collected by audit from the Commissioner, Central Excise with the assessment records of 17 manufacturing dealers in 4 Commercial Taxes Circles⁹ revealed short accounting of central excise duty paid in their account, which resulted in short levy of tax including penalty as under:

(i) Cross verification of assessment records of 7 manufacturing dealers of steel strips, cold drinks, road roller and its parts etc. registered in 4 commercial taxes circles with the records maintained in central excise department revealed that the assessee had disclosed payment of central excise duty amounting to Rs. 1.55 crore in their sales tax returns against the actual payment of Rs. 7.42 crore during the period 1995-96 to 1999-2000 (assessed between June 1998 and August 2001). This resulted in suppression of taxable turnover of Rs. 5.87 crore and consequent short levy of tax of Rs. 2.21 crore including penalty of Rs. 1.62 crore leviable under provision of the Act.

(ii) Cross verification of records of 4 manufacturing dealers engaged in business of iron ingot, P.V.C. pipe, biscuit, perfumed hair oil registered with 2 commercial taxes circles (Danapur and Patliputra) with data/information

⁹ Danapur, Patliputra, Patna South, Patna City West.

collected from central excise department revealed that the dealers had suppressed taxable turnover of Rs.56.13 crore by short accounting of goods sold during the period between 1997-98 and 1999-2000 (assessed between August 1999 and July 2001) which resulted in short levy of tax of Rs. 21.79 crore including penalty of Rs.15.96 crore leviable under provision of the Act *ibid*.

(B) Monitoring of inter-state transactions by I.B. wing

By an executive order issued in June 1991 under the provisions of the Bihar Finance Act, 1981, IB wing of the Commercial Taxes Department was assigned the work of verification of declaration forms 'C', 'F' and 'H', and formulation of procedure for market survey. The wing was to conduct surprise inspection of big business premises as well as inspect vehicles for prevention of tax evasion. As a measure of internal control, the department prescribed (August 1984) minimum 35 inspections business premises and 60 vehicles per month by the IB wing. A report on these was required to be received in the office of CCT Bihar by 10th /25th of the following month.

Information furnished for the period between 1995-96 and 2000-01 by IB headquarter revealed that only one declaration form 'C' was verified during 1998-99 and action initiated against the dealer. Further, the IB conducted inspection of one business premise and 33 vehicles during the year 1995-96 and 1999-2000 against the minimum norms prescribed and hence failed to achieve the target.

Moreover, cross-verification of information collected by audit in respect of incoming goods from outside the State, declaration forms 'C', 'F' /invoices revealed evasion of tax as mentioned below:

(a) Suppression of sales turnover

Under the Bihar Finance Act, 1981, read with the CST Act, 1956 as amended, every registered dealer shall furnish a true and complete return in respect of all his transactions. If the prescribed authority is satisfied that reasonable grounds exist to believe that any turnover of a dealer has escaped assessment, the said authority may, within eight years from the date of assessment or reassessment, assess or reassess the amount of tax due from the dealer in respect of such turnover.

Cross verification of assessment records of 24 dealers in 6 Commercial Taxes Circles¹⁰ of Bihar with the records of 45 manufacturer/transferor or dealers of Andhra Pradesh (31) West Bengal (4), Tamil Nadu (8) and Madhya Pradesh (2) revealed non/ short accounting of goods valued at Rs. 14.95 crore relating to the period between 1995-96 and 2000-01 (assessed between August 1996 and January 2002) received by way of purchase/transfer against declaration in form C/F or against invoices. This resulted in under assessment of tax amounting to Rs. 5.29 crore including penalty of Rs. 3.87 crore.

¹⁰ Danapur, Patna City East, Patna City West, Patna North, Patna South and Patliputra.

(b) Loss of revenue due to use of stolen/unauthorised declarations forms

Under the Central Sales Tax (Bihar) Rules, 1957, if any declaration form is lost, destroyed or stolen, necessary steps are to be taken for issue of public notice of the loss, destruction or theft. The commissioner, thereafter by notification may declare the forms as invalid with effect from such date as may be specified in the notification. The receipt of goods against such declarations will, in addition, to tax, attract penalty to the extent of three times but not less than an amount equal to the amount of tax leviable.

In 3 Circles (Patna city East, Patna city West and Patna South) 9 dealers received veneer, turmeric, fireworks, paper and biscuit valued at Rs. 1.43 crore during 1995-96 to 1997-98 (assessed between September 1996 and November 1999) from 8 manufacturers/transfersors of Andhra Pradesh (1), Tamil Nadu (5) and West Bengal (2) against 67 declarations in form 'C' and 2 declarations in form F declared invalid by the Commissioners as the form were reported to be stolen from different divisions or were not issued to the dealers and the goods were not accounted for in the accounts by the dealers of the State. The dealers were liable to pay tax amounting to Rs. 54.73 lakh including penalty of Rs. 40.04 lakh.

Inadequate verification of forms C/F/H and inspection of big business premises/vehicles during the year from 1995-96 to 2000-01 indicated failure of internal control measures in respect of IB. Test check of records/ files produced to audit in the office of CCT, Bihar revealed that no follow up action was taken for the shortfall in the norms prescribed for inspection by IB wing indicating lack of monitoring at the apex level.

2.02.09 Monitoring of Recovery

(A) Trend of arrears of revenue

(Rupee in crore)					
1995-96	1996-97	1997-98	1998-99	1999-2000	2000-01
379.68	N. A.	908.57	1173.57	1377.74	691.79 [#]

Arrears of revenue increased from Rs. 379.68 crore in 1995-96 to Rs. 1377.74 crore in 1999-2000, which constituted an increase of 363 per cent.

(B) Non/short levy of penalty for non- payment of assessed tax

Under the provisions of Section 25(3) of the Bihar Financial Act, 1981, if a dealer failed to make payment of any amount of tax, the prescribed authority may direct the dealer to pay by way of penalty at the prescribed rates for such failure, an amount which may extend to 5 per cent of the amount of tax, for each of the first three months following the expiry of such date and 10 per cent for each subsequent month or part thereof. The CCT, Bihar issued instruction in September 1998, that all the Assessing Officer in-charge should take action

[#] The figures upto 1999-2000 pertain to composite Bihar and for 2000-01 excluding Jharkhand

against the dealers who have defaulted and sought compliance report on the same by 15 November 1998.

Records in the office of the CCT Bihar revealed that no follow up action was taken to monitor cases of non-imposition of penalty for non-payment of assessed tax.

Test check of assessment records of 12 dealers in 5 circles¹¹ revealed that the dealers defaulted in payment of assessed tax amounting to Rs. 22.62 crore (between 1990-91 and 1999-2000) but no penalty was imposed resulting in non imposition of penalty amounting to Rs.46.08 crore.

(C) Institution of certificate proceedings

The position of arrears of revenue and certified arrears during the period 1995-96 to 2000-01 was as under:-

As on	Arrears		Certified cases	Percentage of certified cases to total arrear
	Total	More than 5 years old		
31.3.96	379.68	12.38	51.71	13.62
31.3.97	N.A.	N.A.	51.10	-
31.3.98	908.57	83.60	68.60	7.55
31.3.99	1173.57	221.00	158.54	13.51
31.3.2000	1377.74	664.20	172.76	12.54
31.3.01	691.79	N.A.	172.76	24.97

It was observed that no specific records / files were maintained to ascertain the number of cases and period to which the certified cases pertained. However, the department issued executive instruction (March 1999) for recovery of certified amount involved in long pending and high money value cases and institution of fresh cases on arrears. A circle wise progress report was to be sent to the Headquarters office by 15 July 1999 but no such compliance report and follow up action was found to have been taken in the records of CCT office. The fact remained that no internal control mechanism existed to check the compliance of executive instructions issued as well as to check whether certificate cases were instituted for the proper amount.

Test check conducted in this regard revealed the following: -

Short institution of certificate proceeding

Under the provisions of the Bihar Finance Act, 1981, the amount of tax together with penalty, if any, which remains unpaid after the date specified in the notice shall, without prejudice to any other mode of recovery, be recoverable as if it were an arrears of land revenue. Before initiation of certificate case against the dealer, penalty is also leviable on the unpaid amount of assessed tax by an amount which may extend upto 5 per cent of the

¹¹ Hajipur, Patna North, Patna Special Patna city West, Patna city East.

amount of tax, for each of first three months and upto 10 per cent for each subsequent month and part thereof.

In case of 5 dealers of 5 Circles¹², certificate proceedings were instituted (between June 1999 and April 2002) for non-payment of tax of Rs. 11.37 crore (for the assessment period 1985-86 to 1996-97) assessed between March 1995 and December 1998 instead of actual amount of Rs. 34.07 crore (including penalty). This resulted in short institution of certificate proceedings amounting to Rs. 22.70 crore.

2.02.10 Working of Vigilance and Monitoring wing

In CCT Office, there exists a Vigilance and Monitoring Wing. By executive instructions issued in February 1986 and March 1997, the department framed guidelines for the working of the Wing which *inter alia*, included checking of 20 assessment records per month. Selection of records was to be made on the basis of gross turnover. Besides, the Deputy Commissioner (DC), Vigilance and Monitoring was required to check the inspection register, cheque register, returns, and issue of demand notes. The DC was required to send his report on the compliance of registration, non-levy of penalty for belated payment of admitted tax/assessed tax and realisation of assessed tax. The Joint Commissioner (Administration) at the divisional level was required to review the position of compliance of pending monitoring reports on quarterly basis and send the same to the CCT Bihar.

As per the information furnished in the office of CCT Bihar, the position of assessment records checked by all the divisions of the State revealed that the percentage of shortfall in checking of records varied between 23 and 89 during 1995-96 to 2000-01 as shown in the table.

Year	No. of assessment records due for checking during the year	No of assessment records checked during the year	Percentage of shortfall
1996-97	2400	1850	23
1997-98	2400	1800	25
1998-99	2400	750	69
1999-2000	2400	570	76
2000-01	2400	275	89

The files as produced to audit in the office of CCT Bihar regarding performance of Vigilance and Monitoring wing revealed as under:-

- 1 Out of 216 monthly and 72 quarterly returns required to be received during 1995-96 to 2000-01, only 54 monthly and 11 quarterly reports were received in the office.
- 2 No review report was found to have been made/submitted to the Commissioner by the Joint Commissioner.

¹² Muzaffarpur, Patna South, Patna Special, Patna North and Patna West.

The above facts indicate that the controls instituted through the executive instructions were not evaluated at apex level thereby defeating the very purpose of issue of such instructions.

(i) *Incorrect exemption on account of tax paid sale/ invalid/ defective declarations*

By a notification issued under provisions of the Bihar Finance Act, 1981, the State Government specifies in respect of any goods, that if sales tax is levied at the first point of sale in the state then subsequent sale of the same goods shall not be levied to tax. However, the dealer making the subsequent sale shall have to produce before the assessing officer the original copy of cash memo, bill or invoices and file true and complete declaration in form IXC in original for the same amount. Further, declaration forms being declared invalid/ duplicate/ incomplete are liable to be rejected.

In 4 Circles¹³ in case of 7 dealers exemption amounting to Rs. 9.38 crore was allowed between 1996-97 and 1999-2000 (assessed between November 1998 and July 2001) on production of duplicate copy/ counterfoil of declaration form/ declaration form for lesser value/ transaction. This resulted in short levy of tax amounting to Rs. 1.29 crore.

(ii) *Under assessment under CST Act*

Under provisions of the Central Sales Tax Act, 1956 and rules made thereunder, a dealer who claims exemption from levy of tax on account of branch transfer of goods is required to declare places of business in his registration certificate. Non-compliance of the provisions of the Act/Rules may invalidate the claim for exemption and tax will be leviable at double the rate of tax in case of declared goods and in other cases at the rate of 10 per cent or at the rate applicable in the State whichever is higher.

In 2 Circles (Patna Special and Patna North) 6 dealers were allowed exemption on stock transfer of PVC pipes, medicine, motor parts, valued at Rs. 3.78 crore during 1995-96 and 1999-2000 (assessed between October 1996 and March 2002) to their places of business not covered by their registration certificates. Thus the movement of goods from the State to another in these cases were not occasioned by reason of transfer, but were inter-State sale leviable to tax. Failure of the department to make cross verification of declarations with reference to certificate of registration of the unit and non-monitoring of the case by the monitoring wing resulted in short levy of tax amounting to Rs. 37.75 lakh.

(iii) *Irregular grant of exemption*

Under the provisions of the CST Act, 1956, the Bihar Finance Act, 1981 and Rules framed thereunder, no tax shall be payable on sales or purchases of goods which have taken place in the course of export out of territory of India.

¹³ *Aurangabad, Jahanabad, Muzaffarpur & Patna Special.*

According to orders issued by Government in March 1986 and August 1991, for exemption from levy of tax on sale taking place in the course of export, the transactions must be supported, apart from other evidence, by bill of export issued by the Custom officials of India.

During the course of audit of 4¹⁴ Commercial Tax Circle, it was noticed in case of 11 dealers that sale of goods valued at Rs.205.45 crore made between the period 1994-95 and 1999-2000 (assessed between August 1998 and June 2001), not supported by prescribed documentary evidences like bill of export, was exempted from levy of tax treating the sale as taking place in the course of export. Non-observance of the requirements by the assessing officer resulted in under assessment of tax amounting to Rs. 26.30 crore including additional tax and surcharge.

2.02.11 *Incorrect allowance of exemption*

Under the provisions of the Bihar Finance Act, 1981 as amended by the Bihar Finance (Amendment) Act 1989 effective from 3 May 1989, 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 other dealers or his branches for sale, the burden of proving this claim shall be on the dealer and for this purpose he shall furnish a declaration in the form and manner prescribed. After a lapse of 11 years of its enactment by legislature, the department prescribed a declaration in form IX D in February 2000 for this purpose. In the absence of this control mechanism the claims of transfer within the State could not be verified properly by the assessing officer with reference to the particulars given.

In Central Circle Kolkata a dealer (Indian Oil Corporation), engaged in manufacturing and selling of petroleum products, was allowed exemption on transfer of motor spirit and diesel valued at Rs.362.51 crore to M/s Hindustan Petroleum Corporation Ltd. (HPCL) and Bharat Petroleum Corporation Ltd. (BPCL) during the years 1991-92, 1992-93 and 1994-95 (reassessed in March 1997 and December 2000). Cross verification with the records of transferee dealers for these years revealed that there was nothing on record to indicate that they had received the materials. Thus, due to department's failure to prescribe a proper declaration in time, its failure to conduct cross verification even though the oil companies were within its jurisdiction, resulted in incorrect allowance of exemption amounting to Rs. 47.10 crore. A similar irregularity was featured in the Report of the Comptroller and Auditor General of India for the period ending March 2001.

2.02.12 *Internal audit*

Internal audit is considered to be an effective mechanism for evaluating the various internal controls in the system and identifying their weaknesses. The Finance (Audit) Department works as internal auditor for all the departments of the State Government including Finance (Commercial Taxes) Department.

¹⁴ *Central Circle, Kolkata, Muzaffarpur, Patna Special, and Patna city West.*

By an order of May 1960, the internal audit parties are required to conduct cent per cent audit of all assessments finalised examining inter-alia assessment orders, issue of demand notices, amount of tax collected, verification of deposit of amount with treasury records etc.

Information as made available to audit in the office of the CCT Bihar, revealed that no internal audit was conducted since 1990 thus, indicating that a very vital component of internal control had not been utilised.

On this being pointed out (July 2002), the department stated (August 2002) that concerned JCCTs and Circles incharge were being directed to take necessary action.

2.02.13 Conclusion

The department failed to take effective and meaningful action in either prescribing internal control procedure or in effectively enforcing existing control procedures leading to large scale leakage of revenue.

Internal control needs to be strengthened by proper maintenance of records including those needed for monitoring of securities received under the Act. There is also a need for revisions of norms for checking of assessment records by Vigilance and Monitoring wing of the department and for immediate establishment of internal audit wing. A system of cross-verification of transactions under various declarations also needs to be put in place.

The above findings were pointed out to the Government (August 2002); their reply has not been received (November 2002).

2.03 Incorrect availing of benefit of deferred tax payment

Under the Bihar Sales Tax Supplementary (Deferment of Tax) Rules, 1990, an industrial unit eligible for deferred tax payment, shall obtain a certificate of eligibility from Commercial Tax Department in accordance with the procedure laid down in the rules. Further, interest at the rate of 2 per cent is leviable in case of non-payment of instalment of deferred tax on due date.

In Patna Special Circle, a manufacturer of Portland Slag was granted eligibility certificate on adhoc basis for 2 months only during which the dealer was required to obtain ISI mark certificate. The dealer was irregularly allowed the benefit of deferment of tax for a period of 8 years with effect from May 1995, amounting to Rs. 32.49 lakh as he could not obtain the said certificate. Further, in 3 Circles (Patna South, Patna City West and Hajipur) 3 dealers failed to deposit the instalment of deferred tax amounting to Rs. 2.13 crore on or before the due date of payment. The delay ranged between 1 year and 3 years for which interest leviable worked out to Rs. 1.70 crore besides the deferred tax amounting to Rs. 2.13 crore.

On this being pointed out (November 2001 and July 2002) the department stated (August 2002) that the circles concerned have been instructed to take action for realisation. Further reply has not been received (November 2002).

The cases were reported to the Government (August 2002); their reply has not been received (November 2002).

2.04 Suppression of sales turnover

Under the Bihar Finance Act, 1981, read with the Central Sales Tax Act, 1956, if the prescribed authority has reason to believe that the dealer has concealed, omitted or failed to disclose willfully the particulars of turnover or has furnished incorrect particulars of such turnover, the said authority shall assess or re-assess 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.

In 4 Circles, it was noticed (between December 1999 and June 2001) from the assessment records (assessed between September 1998 and December 2000) and declaration forms ('IX C'), Road Permits, Trading Account etc., that 9 dealers suppressed sales turnover of Rs. 28.69 crore bought /sold on declaration forms during the years between 1996-97 and 1999-2000 which remained undetected by the department. The failure of the department to check the suppression of purchases/sales resulted in short-levy of tax amounting to Rs. 4.26 crore (including additional tax, surcharge and minimum leviable penalty) as detailed below: -

(Rupees in lakh)								
Sl. No.	Name of Circle/ No. of Dealers	Period of assessment Month /Year of assessment	Commodity	Actual purchase/ Accounted for	Actual sale Accounted for	Amount concealed Rate applicable (per cent)	Amount of tax/ Penalty	Total
1.	Patna Special 1	1997-98 & 1998-99 NA & 9/1999	Fertilizer	6201.63 6114.21	--	87.42 6 +SC	5.77 5.25	11.02
2.	Patna Special 1	1997-98 6/1999	Electrical goods	--	113.31 Nil	113.31 10+1+SC	13.83 12.58	26.41
3.	Patna Special 1	1998-99 NA	Ayurvedic Medicine	6146.78 4570.76	--	1576.02 7 + 1 +SC	121.35 110.32	231.67
4.	Patna South 1	1998-99 12/2000	Medicine	--	353.25 203.58	149.67 7+SC	11.52 10.48	22.00
5.	Patliputra 1	1996-97 9/1998	Refrigerator, Washing machine	--	515.02 500.13	14.89 16+1+SC	2.81 2.55	5.36
6.	Patna Special 1	1997-98 6/1999	Tyre, Tubes & Flaps	--	1187.90 1082.70	105.20 9 +1+SC	11.68 10.61	22.29
7.	Danapur 1	1998-99 & 1999-2000 8/2000 & 9/2000	Atta, Maida, Suji	--	323.71 80.81	242.90 10	24.29 24.29	48.58

8.	Danapur 1	<u>1997-98</u> 5/1999	MS Ingots	<u>641.53</u> 247.66	--	<u>393.87</u> 4+SC	<u>15.75</u> 15.75	31.50
9.	Special Circle, Patna 1	<u>1998-99</u> NA	Medicine	Nil	<u>185.64</u> Nil	<u>185.64</u> 7+SC	<u>14.29</u> 12.99	27.29
	Total			<u>12989.94</u> <u>10932.63</u>	<u>2678.83</u> <u>1867.22</u>	2868.92	<u>221.29</u> <u>204.82</u>	426.11

On these being pointed out (between December 1999 and June 2001), the department stated (between January 2000 and June 2001) that the cases would be reviewed. Further reply has not been received (November 2002).

The cases were reported to the Government (between February and June 2002); their reply has not been received (November 2002).

2.05 Incorrect grant of exemption from levy of tax

(a) Under notification issued (May 1997) spirit including rectified spirit was excluded from sale/purchase at concessional rate of tax with effect from 21 May 1997.

In Bettiah circle, it was noticed (November 2001) that a dealer sold methylated spirit valued at Rs.57.02 lakh during the years 1997-98 and 1998-99 (assessed in March 2001) at a concessional rate of 2 per cent instead of at the correct rate of 25 per cent. This resulted in incorrect exemption of tax amounting to Rs. 13.73 lakh (including additional tax and surcharge).

On this being pointed out the department stated (November 2001) that case would be reviewed. Further reply has not been received (November 2002).

The case was reported to the Government (April 2002); their reply has not been received (November 2002).

(b) By a notification issued in December 1995, exemption from levy of tax on the sale of goods was not allowed to a manufacturing dealer availing benefit of deferment of tax during the same period.

In Patliputra Circle, a manufacturing dealer of paper was allowed exemption from levy of tax on sale of goods valued at Rs 1.04 crore during the year 1997-98 (assessed in July 1999) though the dealer had availed benefit of deferment of tax during the same period. This resulted in incorrect exemption of tax to the tune of Rs. 10.44 lakh.

On this being pointed out in audit (March 2001) the department re-assessed the case and raised revised demand. Report of realisation has not been received (November 2002).

The matter was reported to the Government (July 2002); their reply has not been received (November 2002).

2.06 *Mistake in computation of tax*

Mistake in computation of tax payable by a dealer of Saran Circle, Chapra for the period 1997-98 (assessed in November 1998) resulted in short levy of tax amounting to Rs. 16.08 lakh.

On this being pointed out (October 2001), the department stated (November 2001) that the case would be reviewed. Further reply has not been received (November 2002).

The case was reported to the Government (June 2002); their reply has not been received (November 2002).

2.07 *Application of incorrect rates of tax*

Under the Bihar Finance Act, 1981, the State Government may from time to time, by notification, specify the rate of tax on any class or descriptions of goods. Footwear is unspecified items and leviable to tax at the rate of 8 per cent.

In Special Circle, Patna a dealer sold footwear amounting to Rs. 1.85 crore during 1997-98 and 1998-99 against which tax was levied (November 1999 and January 2000) at the rate of 4 per cent instead of 8 per cent resulting in short levy of tax of Rs. 10.24 lakh.

On this being pointed out in audit (March 2001) the department stated (March 2001) that the case would be reviewed. Further reply has not been received (November 2002).

The case was reported to the Government (February 2002); their reply has not been received (November 2002).

2.08 *Non- levy of penalty for excess collection of tax*

Under the provisions of Bihar Finance Act, 1981, no registered dealer shall collect from any person, any tax on sale of goods in excess of tax liability under the said Act. In the event of any contravention to the provision of the Act, the prescribed authority shall direct the dealer to pay, by way of penalty, a sum equal to twice the amount of tax, so collected.

In Special Circle, Patna it was noticed (March 2001) that a dealer submitted return for realisation of tax of Rs. 10.57 lakh during 1996-97 and accordingly assessment was made (September 1998). But a perusal of the audited Annual Accounts of the dealer revealed that he actually realised tax worth Rs. 14.78 lakh. Thus the dealer had collected tax in excess of his liability by Rs. 4.21 lakh and was liable to pay penalty of Rs. 8.42 lakh which was, however, not levied.

On this being pointed out (March 2001), the department stated (March 2001) that the case would be examined. Further reply has not been received (November 2002).

The case was reported to the Government (April 2002); their reply has not been received (November 2002).