

CHAPTER – II: Taxes on Sales, Trade etc.

2.1 Results of audit

Test check of the records relating to assessments and refunds of sales tax in the Commercial Taxes Department, conducted during 2006-07, revealed irregularities in assessment, levy and collection of tax of Rs. 428.80 crore in 262 cases which broadly fall under the following categories:

(Rupees in crore)

Sl. No.	Category	No. of cases	Amount
1	“Assessment, levy and collection of sales tax on works/supplies contracts” (A review)	1	95.52
2	Non/short levy of tax	76	45.20
3	Short levy due to incorrect determination of turnover	20	24.06
4	Non-levy of penalty for excess collection of tax due to mistake in computation	06	11.88
5	Irregular allowance of exemption from tax	54	6.84
6	Non-levy of penalty	15	5.46
7	Irregular allowance of concessional rate of tax	16	0.08
8	Non/short levy of additional tax/surcharge	8	0.69
9	Application of incorrect rate of tax	29	1.01
10	Other cases	37	238.06
Total		262	428.80

During 2006-07, the concerned department accepted cases of non/short levy of tax, penalty, additional tax/surcharge; irregular allowance of exemption from tax/concessional rate of tax; application of incorrect rate of tax etc. of Rs. 48.66 crore involved in 102 cases of which 36 cases involving Rs. 36.66 crore were pointed out in audit during 2006-07 and the rest in the earlier years.

A few illustrative cases including review of **“Assessment, levy and collection of sales tax on works/supplies contracts”** involving Rs. 338.59 crore are mentioned in the following paragraphs:

2.2 Review of “Assessment, levy and collection of sales tax on works/supplies contracts”

2.2.1 Highlights

- Failure of the department to institute control measures for registration of works/supply contractors resulted in loss of revenue to the State which cannot be quantified in the absence of data. Audit could detect some cases of unregistered contractors through cross verification of records which resulted in non-realisation of revenue of Rs. 98.48 lakh including penalty of Rs. 6.75 lakh.

[Paragraph 2.2.7.2]

- Failure to verify the various declaration forms *vis-à-vis* the claims/utilisation certificates as well as inter departmental cross verification resulted in non/short levy of tax and penalty of Rs. 70.11 crore.

[Paragraph 2.2.8]

- Irregular allowance of deduction of Rs. 54.61 crore from gross turnover in case of 16 contractors of six commercial taxes circles resulted in short levy of tax of Rs. 5.76 crore.

[Paragraph 2.2.13]

- Misuse of declaration forms by four contractors in five cases in four commercial taxes circles resulted in non-levy of tax of Rs. 14.81 crore, including penalty.

[Paragraph 2.2.14]

- Incorrect allowance of concessional rate of tax in case of three contractors in three commercial taxes circles resulted in short levy of tax of Rs. 1 crore, including additional tax and surcharge.

[Paragraph 2.2.15]

2.2.2 Introduction

The assessment, levy and collection of sales tax on works/supplies contracts is governed by the Jharkhand Finance Act, (JF Act) 2001, Central Sales Tax Act (CST Act), 1956, Rules made and notifications issued thereunder. **No specific Act/Rule has been enacted/made by the Government for this purpose as has been done in other States e.g. Maharashtra (1986).**

Works contract as defined in the JF Act, includes the supply of material for a price with ancillary works. Taxable turnover is defined as the gross turnover (GTO) received/receivable by a contractor for executing the contract less the amount of labour and service charges as provided in the bill of quantity and agreement.

According to the provisions of the JF Act, every dealer engaged in the execution of a works contract in the State and whose GTO exceeded

Rs. 25,000 in a year was liable to obtain a certificate of registration and pay tax at the rates prescribed in the Act. However, in case of a supplier, the specified quantum of GTO for registration was Rs. 1 lakh upto October 2004 and Rs. 7 lakh thereafter. The ceiling of GTO was nil for the purpose of tax in case of dealers engaged in the transfer of property as a result of transfer of right to use any goods.

According to the JF Act, a dealer can opt for payment of tax in one lump sum by way of composition as a percentage of the total contract value as notified from time to time. JF Act provides for deduction of tax at source in case of works/supplies contracts as notified by the Government from time to time. In order to expedite the process of collection and remittance of tax to the Government account and to prevent evasion of tax by contractors, the Act imposes a duty on every person of the Central and State Government departments or public/private sector undertakings responsible for making payments to such contractors, to deduct the sales tax at source (TDS) while making payment to contractors and remit it to Government account.

Audit reviewed the system of assessment, levy and collection of sales tax on works/supplies contracts and noticed a number of system and compliance deficiencies which have been discussed in paragraphs 2.2.7 to 2.2.17 of this report.

2.2.3 Organisational setup

The assessment, levy and collection of sales tax on works/supplies contracts 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 Commissioners of Commercial Taxes (JCCT), Bureau of Investigation (IB) alongwith other JCCTs and Deputy/Assistant Commissioners of Commercial Taxes (DCCT/ACCT) at the headquarter level.

The State of Jharkhand is divided into five commercial taxes divisions[#] and 28 commercial taxes circles^ψ, each under the charge of a Joint Commissioner (Administration) and DCCT/ACCT respectively. The incharge of the circle, who is assisted by commercial tax officers (CTOs), is responsible for market survey, besides levy and collection of amounts due to the Government.

2.2.4 Audit objectives

The review was conducted to ascertain whether there:

- was prompt, efficient and effective enforcement of provisions of the JF Act and rules made/executive instructions issued thereunder; and

[#] Dhanbad, Dumka, Jamshedpur, Hazaribag and Ranchi

^ψ Adityapur, Bokaro, Chaibasa (Chakradharpur), Chirkunda, Deoghar, Dhanbad, Dhanbad Urban, Dumka, Giridih, Godda, Gumla, Hazaribag, Jamshedpur, Jamshedpur Urban, Jharia (Sindri), Katras, Koderma, Lohardaga, Pakur, Palamu, Ramgarh, Ranchi East, Ranchi South, Ranchi Special, Ranchi West, Sahebganj, Singhbhum and Tenughat.

- existed an internal control mechanism in the department which was adequate to monitor assessment, levy and collection of sales tax on works/supplies contracts.

2.2.5 Audit scope and methodology

The review of assessment, levy and collection of sales tax on works/supplies contracts was conducted in 12[∇] out of 28 commercial taxes circles, in five commercial taxes divisions and office of the CCT between July 2006 and May 2007 for the period 2001-02 to 2005-06. During the course of audit, data/information obtained from the Central/State Government departments and public/private undertakings were also cross verified with the sales tax records. An entry conference was held with Secretary, Department of Commercial taxes in July 2006 bringing out the audit objectives, scope and methodology.

2.2.6 Acknowledgement

Indian Audit and Accounts Department acknowledges the co-operation of the Commercial Taxes Department in providing necessary information and records for audit. Audit findings as a result of test check of the records were reported to the Government in May 2007. The findings were discussed in the Audit Review Committee meeting held on 2 August 2007. The Secretary cum Commissioner of Commercial Taxes, Jharkhand attended the meeting. The Government accepted most of the recommendations. The response of the Government to the audit observations have been appropriately incorporated in the review.

Audit findings

System deficiencies

2.2.7 Market survey, detection and registration

2.2.7.1 The CCT issued instructions in April 1997 and March 1999 for conducting of market survey during April to June every year to unearth unregistered dealers for their registration and widen the tax base. Audit, however, noticed that these general instructions were not followed by the department for conducting of market survey in respect of works/supplies contractors. No data regarding the unregistered suppliers/works contractors unearthed, who was eligible or had applied for registration/granted registration certificate (RC) as a result of market survey was available in any of the test checked 12 circles or in the office of the CCT. There was nothing in the records maintained in the office of the CCT Jharkhand relating to market survey or any other effort, like writing to the departments and undertakings of the Union and State Governments or bringing it to the notice of public at large through the media, print or electronic or both, to detect unregistered contractors engaged in contracts of works/supplies. **The failure of the**

[∇] Adityapur, Bokaro, Chaibasa, Chirkunda, Deoghar, Dhanbad, Jamshedpur Urban, Ranchi South, Ranchi Special, Ranchi West, Singhbhum and Tenughat.

department to institute control measures for registration of works/supply contractors resulted in loss of revenue to the State which cannot be quantified in the absence of data. Audit could detect some cases of unregistered contractors through cross verification of records as discussed in paragraph 2.2.7.2.

2.2.7.2 Non-registration of contractors resulting in non-levy of tax

Under the provisions of the JF 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 or purchase goods, unless he has been granted and is in possession of a valid RC. Failure to apply for registration may render him liable 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.

Cross verification of the records of four[∇] commercial taxes circles with the data collected from Bokaro Steel Limited, Bokaro (BSL), Public Works Department, (PWD), Rural Engineering Organisation (REO), Central Public Works Department (CPWD) and Railways revealed that 10 contractors were liable to pay tax of Rs. 91.73 lakh on a turnover of Rs. 9.37 crore for the period from 2001-02 to 2005-06. None of these contractors were, however, registered with the Commercial Taxes Department and hence they could not be assessed. **Failure to register the contractors by conducting a survey resulted in non-realisation of revenue of Rs. 98.48 lakh including penalty of Rs. 6.75 lakh in these cases alone.**

After these cases were pointed out, the Government agreed to take action for reassessment and recover the tax due. Further, the Government assured that it would cross verify data collected from Income Tax Department, Railways and JSEB with their assessment records.

The Government may ensure conducting of regular market surveys, inter departmental cross verification of data/records and instituting other suitable measures for registration of works/supplies contractors.

2.2.8 Suppression of turnover

Under the provisions of the JF Act, if the AA has reason to believe that a dealer has concealed, omitted or failed to disclose wilfully the particulars of turnover or has furnished incorrect particulars of such turnover and thereby returned figures below the real amount, the said authority shall assess or reassess the amount of tax due from the dealer in respect of such turnover and shall direct the dealer to pay, beside 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 AAs were required to verify the utilisation certificates of various declaration forms furnished by the contractors/suppliers before finalising their assessments. Every registered

[∇] Bokaro, Jamshedpur Urban, Ranchi South and Ranchi Special.

dealer, who issues declaration forms, is required to issue the portion marked as original and duplicate to the purchasing/selling dealer as the case may be and retain the counterfoil with him and furnish a utilisation certificate of the forms to the issuing circle. **No system was prescribed for monitoring the receipt, issue and use of declaration forms/certificates by the superior authorities.**

Further, by a notification of May 1990 the circles were required to collect the data of works executed/supplies made and cross verify them with the sales tax returns/records. The IB was entrusted in June 1991 with the task of verification of various declaration forms as well as inter departmental cross verification of data/information. **The IB did not carry out any inter departmental cross verification and cases of non/short levy and evasion of taxes remained undetected.** Few instances of failure to comply with the provisions of Act and notifications issued thereunder, resulting in short/non levy of tax and penalty, are discussed below:

2.2.8.1 Cross verification of the utilisation certificates[∇] with the annual returns furnished by 15 works contractors of eight commercial taxes circles[♥], revealed that the contractors purchased bitumen, hydraulic excavators, transformers, air conditioners, building/road construction materials etc. valued as Rs. 109.32 crore during 2001-05, but reflected the purchase of only Rs. 54.56 crore in their returns. While finalising the assessment between July 2003 and June 2006, the AA failed to detect the mistake though the returned figure was less than the actual purchase by Rs. 54.76 crore. This resulted in short levy of tax of Rs. 24.26 crore including penalty[•] of Rs. 17.75 crore. A few illustrative cases are mentioned below:

(Rupees in crore)						
Sl. No.	Name of circle No. of contractors	Period Date of assessment	Commodity	Nature of observation	Concealed amount	Short levy of tax including penalty
1	Chirkunda 1	2001-02 March 2006	Iron & steel, stone chips, cement, marble & tiles, transformers and air conditioners	As per the utilisation statement of green road permit, the dealer had purchased goods valued as Rs. 36.18 crore but had accounted for only Rs. 9 crore in his returns.	27.18	13.99
Remarks: After the case was pointed out, the department stated in August 2007 that action was being taken.						
2	Jamshedpur Urban 1	Between 2002-03 & 2004-05 Between February 2004 & February 2006	HSD, bitumen, power breaker & steel	The contractor had shown purchase of goods in his returns as Rs. 4.66 crore instead of actual amount of Rs. 6.22 crore as per the utilisation certificate of declaration form 'C'.	1.56	0.61

- [∇] Utilisation certificates of declarations form 'C' and green road permits
- [♥] Chaibasa, Chirkunda, Dhanbad, Jamshedpur Urban, Ranchi South, Ranchi West, Singhbhum and Tenughat.
- [•] Penalty has been arrived at only on sales tax plus additional tax excluding surcharge while in calculating total tax, surcharge has been included.

3	<u>Dhanbad</u> 1	2002-03 & <u>2003-04</u> Between April 2005 & March 2006	Building and road construction material and hydraulic excavator	The contractor had purchased goods valued as Rs. 21.90 crore by using green road permit and declaration form 'C' but had showed only Rs. 8.38 crore in his returns.	13.51	5.03
4	<u>Ranchi</u> <u>West</u> 1	<u>2001-02</u> March 2006	Building and road construction material	As per the accounts furnished by the contractor, total receipts from the execution of works contracts was Rs. 5.43 crore but the contractor was assessed to tax at Rs. 3.17 crore.	2.26	0.84
Remarks: After the cases were pointed out, the department stated in August 2007 that GTO was determined after enhancing 10 per cent on the turnover returned by the contractor, implying that GTO returned was not correct. The reply is not tenable as items includable as per the accounts furnished worked out to Rs. 5.43 crore, which was not taken into account and the enhancement was made suo motu.						
5	<u>Singhbhum</u> 1	<u>2003-04</u> October 2005	Building and road construction material	The contractor had not shown the work done for BSTDC at Ranchi for Rs. 39.93 lakh in his returns as per tax deducted at source.	0.40	0.15
Remarks: After the cases were pointed out, the department stated in August 2007 that GTO had been determined on the basis of payment certificate issued by the concerned contractees. The reply is not tenable as the works executed by contractor for BSTDC, valued at Rs. 39.93 lakh, was not accounted for in his GTO, although the payment certificate was issued by the contractee.						

2.2.8.2 Cross verification of the data collected from the Income Tax Department; offices of the Principal Director, Commercial Audit, Ranchi and Divisional Railway Managers, Ranchi and Chakradharpur, South Eastern Railway (Railways) and Jharkhand State Electricity Board (JSEB) with the records of 21 contractors available in seven commercial taxes circles,* assessed between March 2002 and April 2007, revealed that goods valued as Rs. 259.30 crore were consumed/supplied by the contractors/suppliers during 1999-2000 to 2005-06 but they had accounted for only Rs. 152.82 crore in their returns concealing sales turnover by Rs. 106.48 crore. This resulted in short levy of tax of Rs. 42.53 crore including penalty of Rs. 31.12 crore. A few illustrative cases are mentioned below:

(Rupees in crore)

Sl. No.	Name of circle No. of contractors	Period date of assessment	Commodity Rate of tax (%)	Nature of observation	Short levy of tax including penalty
1	Jamshedpur <u>Urban</u> 2	Between 2000-01 and <u>2004-05</u> Between March 2005 and January 2006	Building/road construction <u>material</u> 8	As per the data/information collected from the Income Tax Department and SE Rly, the contractors consumed/ supplied goods valued as Rs. 1.85 crore but showed Rs. 1.06 crore in their returns, resulting in concealment of Rs. 79 lakh.	0.28
Remarks: After the cases were pointed out, the department raised demand in August 2007 for the entire amount.					

* Bokaro, Deoghar, Jamshedpur Urban, Ranchi South, Ranchi West, Singhbhum and Tenughat.

2	<u>Ranchi South</u> 2	Between 2001-02 and 2005-06 Between June 2003 and April 2007	Building/road construction <u>material</u> 8	As per the data/information collected from REO (W), BC Division, Ranchi the contractors executed works valued as Rs. 7.19 crore but did not show this in their returns, resulting in concealment of Rs. 7.19 crore.	1.57
3	<u>Bokaro</u> 1	Between 2001-02 and 2005-06 Between February 2004 and November 2006	Construction <u>material</u> 8	As per the data/information collected from BSL, Bokaro, the contractor executed work valued as Rs. 90.26 lakh but did not show this in his return, resulting in concealment of Rs. 90.26 lakh.	0.31
Remarks: After the cases were pointed out, the department stated in August 2007 that GTO was correctly determined. The reply is not tenable as the supplier supplied goods valued as Rs. 1.61 crore to BSL Bokaro, against which form IX valued as Rs. 24 lakh was found placed on record.					
4	<u>Ranchi West</u> 1	Between 1999-2000 and 2001-02 Between March 2002 and March 2003	Transmission tower & electrical <u>goods</u> 12	As per the data/information (Income tax clearance certificate) collected from the REO (W), the contractor executed works valued as Rs. 24.82 crore but showed Rs. 6.20 crore only in his return resulting in concealment of Rs. 18.62 crore.	10.01
5	<u>Singhbhum</u> 1	2001-02 December 2004	Industrial <u>chemicals</u> 8	As per the data/information collected from BSL, Bokaro, the supplier supplied goods valued as Rs. 1.61 crore but showed only Rs. 24 lakh in his return resulting in concealment of Rs. 1.37 crore.	0.51
6	<u>Tenughat</u> 1	2001-02 February.2006	Fire bricks 8	As per the data/information collected from BSL, Bokaro the supplier supplied goods valued as Rs. 36.31 crore but showed Rs. 13.49 crore in his return resulting in concealment of Rs. 22.82 crore.	8.49
Remarks: After the cases were pointed out, the department raised demand in August 2007 for the entire amount.					

There was nothing on record in the test checked circles to establish that the AA had either collected or called for any information in respect of any contractor from any concerned quarter. Further, no follow up action was taken by the IB to obtain the information about the supplies made by the contractors and levy tax after verification of the facts.

2.2.8.3 The JF Act read with the CST Act provides that if the AA has reason to believe that a dealer has wilfully concealed any amount of turnover to deprive the Government of the tax due, the dealer shall be liable to pay penalty not exceeding three times but not less than the amount of tax leviable or assessed on the escaped turnover. **By another instruction issued in November 1998, the department instituted a control measure for monitoring of returns which, *inter alia*, includes initiation of penalty proceedings within three days from the date of receipt of the returns on the concealed turnover before assessment.**

Cross verification of the records of four^Ψ commercial taxes circles with the information obtained from the Indian Oil Corporation, BSL, Bokaro, PWD, REO and CPWD, Ranchi revealed that eight contractors had shown incorrect

^Ψ Bokaro, Deoghar, Ranchi South and Ranchi Special

amount of Rs. 36.07 lakh of construction material purchased/consumed instead of the correct amount of Rs. 11.08 crore during 2003-06 in their returns. However, the penalty of Rs. 2.61 crore, though leviable for such concealment, was not levied before the finalisation of the assessments. **This indicated failure of the monitoring mechanism instituted by the department.**

2.2.8.4 Tax not deducted at source

By a notification issued in April 2002, under the provisions of the JF Act, tax is to be deducted at source from the supplier's bill at the rate of tax as specified by the Government. Tax at the rate of nine *per cent* is leviable on stone chips/ballast. **Failure of the AAs and IB to collect information from other departments resulted in the irregularity remaining undetected and Government revenue unrecovered.**

Information collected from the Principal Director of Audit, SE Railway, Kolkata revealed that the Railways had paid Rs. 7.92 crore during 2004-06 to five suppliers of stone ballast. Tax of Rs. 71.27 lakh, though deductible at source, was not deducted by the office of the Deputy Chief Engineer (Construction), SE Railway, Ranchi Division. Scrutiny further revealed that out of these five contractors, four were not registered with the Commercial Taxes Department while the remaining contractor had not filed any return. The department failed to detect these irregularities resulting in non-recovery of Government revenue.

After the cases were pointed out, the Government agreed in August 2007 that action would be taken as per the provisions of the Act.

The Government needs to ensure verification of various declaration forms *vis-a-vis* the claims/utilisation certificates as well as inter-departmental cross verification of data/information.

2.2.9 Monitoring of returns/registers

As per the JF Act, the CST 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 XI A. In addition, every contractor is required to submit a quarterly return in form XI and annual return in form XII to its concerned AA. The returns are to reflect the total amount of receipts on account of sales made, amount paid on purchases, tax paid/payable etc. The monthly abstract and quarterly returns were required to be submitted by the last day of the month following the end of the month/quarter along with the proof of payment on due date i.e. fifteenth day of the month following the end of the month/quarter. Annual return is to be furnished by the 31 July, following the close of the financial year. The AA, for specific reasons to be recorded in writing, may extend the date of filing of quarterly returns/payment of tax, only once, for a period not exceeding 30 days. The CCT may allow a further extension of 30 days. On the basis of the return, the AA is required to

complete the assessment within four years after the expiry of the assessment period.

Records like register VI* and register VIII♦, required to be maintained by the circles under the executive instructions issued in April 1985, are the internal controls to facilitate monitoring of the receipt of returns and collection of admitted tax respectively. By another instruction, issued in November 1998, the prescribed authority was authorised to initiate proceedings against the defaulting dealers for delay in submission of returns, belated payment of admitted tax and turnover escaping assessment within three days of due date for filing the returns.

Test check revealed that register VI was incomplete, particularly in case of works/supplies contractors. **There was no column in the register for indicating the date of completion of assessment.** There was nothing on record to indicate that all contractors had filed their returns or had been assessed. The entries of collections in register VIII were not authenticated by the AA and cross verified with reference to the corresponding entries made in the register VI for dues and collection. In no case the entries of receipts as entered in the registers were found to have been verified and authenticated by the treasury officer as prescribed. The succeeding paragraphs bring out the impact of non-observance of this major internal control.

2.2.9.1 Non-filing of returns

Cross verification of data/information of REO, Ranchi and BSL, with the records of the circles revealed that four contractors executed works valued at Rs. 4.71 crore in the commercial taxes circles, Bokaro, Ranchi South and Ranchi West during 2002-03 to 2005-06. However, perusal of records revealed that none of the contractors had filed any return. Despite these contractors being registered, their non-filing of returns remained undetected by the concerned DCCTs. Further, the department had also not called for any information or data regarding payments made to the contractors by contractees. This resulted in non-levy of penalty amounting to Rs. 1.19 crore on a minimum tax of Rs. 39.61 lakh.

After the cases were pointed out, the Government accepted the observation and assured (August 2007) that appropriate action would be taken by the concerned circles against the contractors who do not file returns and do not pay the admitted tax.

2.2.9.2 Non-imposition of penalty for delayed payment of admitted tax

Under the provisions of the JF Act, if a registered contractor fails to pay the admitted tax by the due date, the prescribed authority shall impose a penalty for such delay. The amount of penalty may extend to five *per cent* per month but not less than two and half *per cent* per month of the amount of tax

* Demand, Collection & Balance Register
♦ Daily Collection Register

admitted for each of the first three months following the due date. After three months, the minimum amount of penalty shall not be less than five *per cent* per month and not more than 10 *per cent* per month or a part thereof.

In the commercial taxes circle, Jamshedpur urban, it was noticed that a contractor did not pay the admitted tax, although reflected in register VI, of Rs. 2.65 lakh for 2001-03. The AA, while finalising the assessment in June 2005, failed to impose penalty of Rs. 4.26 lakh for non-payment of the admitted tax.

After the case was pointed out, the department stated in August 2007 that a certificate case had been instituted for recovery of Rs. 43.26 lakh and Rs. 24.71 lakh for 2001-02 and 2002-03 respectively. It was stated further that the company went into liquidation, hence proceedings for belated payment of admitted tax and non-payment of assessed tax was not necessary. The reply of the department is not tenable as the department failed to invoke the provisions of the Act at the time of finalising the assessment.

The Government may consider measures for ascertaining the payment made to the contractors/suppliers by the contractees through inter departmental cross verification of data/records.

2.2.10 Weak internal controls

Every department is required to institute appropriate internal controls for its efficient and cost effective functioning by ensuring proper enforcement of laws, rules and departmental instructions. The internal controls also help in creation of reliable financial and management information system for prompt and efficient services and for adequate safeguard against non/short collection or evasion of taxes. The internal controls instituted should also be reviewed and updated from time to time to keep it effective. Deficiencies noticed in the maintenance of different registers, absence of inter departmental cross verifications have been commented in the preceding paragraphs. Observations relating to working of IB and of vigilance and monitoring wing are brought out in the succeeding paragraphs.

2.2.10.1 Working of bureau of investigation (IB)

By a notification issued in June 1991, the IB of the department was entrusted with the task of collection of data from PWD and public/private sector undertakings regarding purchase/sale by contractors/ suppliers and cross verify the data with the sales tax returns/records of the contractors/suppliers.

Information, made available to audit, revealed that no data was collected by IB inspite of the departmental instructions, thus defeating the very purpose for which the IB was constituted. The failures of IB have also been commented upon in the preceding paragraphs.

After this was pointed out, the Government agreed in August 2007 to deploy the officers of IB for collection of data/information in respect of contractors from other departments and to get them verified with sales tax records.

The Government may institute measures to ensure collection of data/information from the other departments and cross verification with sales tax records.

2.2.10.2 Working of vigilance and monitoring wing

In the office of the CCT Jharkhand there is a vigilance and monitoring wing. The department framed guidelines in February 1986 and March 1997 for the working of the wing. According to the guidelines, the work entrusted to this wing included checking of 20 assessment records every month. Selection of records was to be made on the basis of the GTO. Besides, the DCCT (vigilance and monitoring) was required to check inspection registers, cheque registers, returns, issue of demand notices etc. and send a report on the compliance regarding registration, levy of penalty for belated payment of admitted tax/assessed tax and realisation of assessed tax. **No specific norms for checking of assessment records relating to works/supplies contracts out of 20 assessment records were laid down.**

The absence of a benchmark in respect of the checking of the assessment records of works and supplies contractors by vigilance and monitoring wing constituted lax internal control which also rendered the monitoring difficult. Moreover, as per information obtained from the department, all the five posts of the DCCT monitoring and vigilance were vacant due to stated reasons of shortage of officers. This exhibited that the work assigned to these officers were not carried out during the period under audit scrutiny.

It is recommended that the Government may consider making the vigilance & monitoring wing functional and effective.

2.2.11 Internal audit

Internal audit is generally defined as the control of all controls as it is a means for an organisation to assure itself that the prescribed systems were functioning reasonably well. The Finance (Audit) Department works as internal auditor of the Finance (Commercial Taxes) Department and is required to conduct internal audit of the Commercial Taxes Department. 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 and verification of deposit of amount in treasury.

Information, as made available to audit, revealed that no internal audit had been conducted in the office of the CCT and in circles for last five years. **In total 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 reviving the internal audit in an effective form to ensure timely detection and correction of errors in assessment, levy and collection of revenue.

Compliance deficiencies

2.2.12 Under determination of gross turnover resulted in short levy of tax

Under the JF Act, GTO for the purpose of levy of sales tax in respect of sales of goods means aggregate of sales prices received and receivable by a dealer including the gross amount received or receivable for executing of works contract or for the transfer of the right to use any goods for any purpose during any given period.

In the commercial taxes circle, Ranchi west, GTO of a contractor, as per the annual return of 2001-02, was Rs. 48.41 lakh but the AA while finalising the case in March 2006 incorrectly assessed the GTO as Rs. 24.75 lakh. This resulted in under determination of GTO by Rs. 23.66 lakh and consequential short levy of tax by Rs. 3.41 lakh.

After the case was pointed out, the department raised a demand for the entire amount in August 2007 including penalty.

2.2.13 Incorrect allowance of deduction

Under the provisions of the JF Act, certain deductions from gross turnover have been allowed to works/supplies contractors to compute their taxable turnover. In case of contracts, where the contractee supplies goods to the contractor, the prices of which are recovered from the contractors, it is a sale of goods if he subsequently includes the price in the cost of work. Exemption is not admissible on TDS and the value of works executed by the petty contractors, if not supported by their names and registration numbers.

2.2.13.1 In five commercial taxes circles^φ, 13 contractors assessed between June 2001 and June 2006 were incorrectly allowed deduction from the GTO of Rs. 44.22 crore by the AA on account of works executed by petty contractors without furnishing their names and registration numbers, receipt of hire charges, TDS, depreciation, carriage inward, income tax, security deposits and gross profits during 1997-98 to 2004-05. This resulted in short levy of tax of Rs. 4.34 crore including additional tax and surcharge.

After these cases were pointed out, the department stated, in August 2007, in case of a contractor of the commercial taxes circle, Ranchi south, that exemption on TDS and value of work executed by petty contractors was correct. The reply is not tenable, as exemption is not admissible on TDS as

^φ Dhanbad, Jamshedpur Urban, Ranchi South, Ranchi Special and Tenughat.

well as value of works executed by petty contractors, if not supported by their names and registration numbers.

In another case of the commercial taxes circle, Jamshedpur urban, the department stated in August 2007 that exemption was correctly allowed on depreciation and hire charges. The reply is not tenable, as depreciation is not exempted from levy of tax and hire charges shown on the receipt side is a receipt of transfer of right to use goods and is a deemed sale.

The Government agreed in August 2007 that rectification would be made as per the provisions of the Act/Rules.

2.2.13.2 In the commercial taxes circle, Dhanbad, the GTO of a contractor as per the annual return filed for 2002-03 was Rs. 25.38 crore. However, the AA while finalising the case in April 2005 incorrectly determined it as Rs. 19.17 crore by allowing deduction on account of tax deducted at source, carriage inward, office expenses etc. This resulted in under determination of GTO by Rs. 6.21 crore and consequential short levy of tax of Rs. 84.10 lakh.

After the case was pointed out, the department stated in August 2007 that action was being taken.

2.2.13.3 In commercial taxes circles, Adityapur and Ranchi south, two works contractors supplied bitumen and electrical goods valued as Rs. 4.18 crore during 1997-98 to 2003-04. The cost of material was deducted from the bills of the contractors by the contractees. The transactions were to be treated as sale and tax was to be levied accordingly. However, the AA while finalising the assessment between June 2001 and March 2006, incorrectly deducted the amount from the GTO. This resulted in short levy of tax of Rs. 57.89 lakh including additional tax and surcharge.

After the cases were pointed out, in case of the contractor of the commercial taxes circle, Adityapur, the department raised a demand for the entire amount of Rs. 5.41 lakh in July 2007 and in the other case reply had not been received (November 2007).

2.2.14 Misuse of declaration forms

Under the CST Act, if a registered dealer misrepresents while purchasing any goods covered by his RC, or utilises such goods for any purpose other than that mentioned in his RC, he is liable to be prosecuted. The authority competent to grant the RC may, in lieu of prosecution, impose penalty of a sum not exceeding one and a half times of the tax leviable as if the sale is not supported by the prescribed declaration in form 'C'. It has been judicially held[≈] that a works contractor is eligible to purchase goods from outside the state at concessional rate by using form 'C' provided the goods are intended for resale.

[≈] BeeKay Engineering Corporation Vrs State of Bihar (1992) 87 STC 509 Patna.

In four commercial taxes circles[♦], four contractors in five cases purchased high speed diesel (HSD), light diesel oil (LDO) and lubricants from outside the state for Rs. 37.20 crore during 2001-06 by using form 'C' and consumed these in execution of works contract. None of the above purchased goods was resold. Of these, in one case the AA had categorically stated in the RC of the contractor that HSD and LDO would not be used as fuel. However, it was used as fuel for transportation of coal which the AA failed to detect. In the remaining four cases, the contractors consumed the entire quantity of HSD and LDO in construction and maintenance of roads and buildings, which was not admissible as indicated in the RC. The mistakes resulted in non-levy of tax amounting to Rs. 14.81 crore including penalty of Rs. 8.55 crore.

After the cases were pointed out, in case of one contractor of the commercial taxes circle, Tenughat, the department raised an additional demand of Rs. 10.74 lakh in August 2007 and in another case of a contractor in the commercial taxes circle, Dhanbad, the department stated in August 2007 that action was being taken. In case of one contractor of commercial taxes circle, Ranchi west, the department stated in August 2007 that the exemption was correctly allowed. However, the Secretary cum Commissioner commercial taxes has agreed to review the case on the basis of documents made available by audit.

Similarly, in case of one contractor of the commercial taxes circle, Jamshedpur urban, the department stated in August 2007 that the exemption was correctly allowed. The reply is not tenable as the contractor can purchase HSD and LDO against declaration form 'C' for resale and not for use in execution of works contract. The Government agreed in August 2007 to take action as per provisions of the Act and Rules.

2.2.15 Application of incorrect concessional rate of tax

By an amendment made in the BF Act, in February 1990, as adopted in the JF Act, 2001, tax is leviable at general rate of tax of eight *per cent* with effect from 14 February 1990 on the purchases and sales of goods for use in execution of works contract. Prior to this, the contractors were eligible to concessional rates of tax at two *per cent* and three *per cent*.

In three commercial taxes circles[♦], three contractors/suppliers supplied diesel engine spares, computers etc. valued as Rs. 15.28 crore during 2002-04. The AA while finalising the assessments between September 2004 and February 2006 incorrectly levied tax at concessional rates of two and three *per cent* instead of eight *per cent*. This resulted in short levy of tax of Rs. 1 crore including additional tax and surcharge.

After the cases were pointed out, in case of a supplier of commercial taxes circle, Ranchi west, the department stated, in August 2007, that the concessional rate of tax was correctly allowed. The reply is not tenable, as it

[♦] Dhanbad, Jamshedpur Urban, Ranchi west and Tenughat.
[♦] Ranchi South, Ranchi West and Tenughat.

has been judicially held^o that concessional rate of tax is not admissible on supporting devices as it is not a raw material for direct use in mining. Diesel engine is a supporting device for generating electricity and is not directly used for different mining operations.

The Government agreed in August 2007 to take action as per the provisions of the Act.

2.2.16 Non-recovery of assessed tax

Under the provisions of the JF Act, the dealers deposit pre-assessment tax in advance into the Government treasury by *challan* as per the returns submitted by them. The balance tax, if any, is similarly collected after finalisation of assessment and/or following an appellate order. If a dealer fails to make payment of any amount of tax by the date specified in the notice or the extended date, if any, the prescribed authority may direct the dealer to pay penalty which may extend up to five *per cent* of the tax for each of the first three months and upto 10 *per cent* thereafter. Further, the amount of tax together with penalty, which remains unpaid after the date specified in the notice shall, without prejudice to any other mode of recovery, be recoverable as arrears of land revenue. Before initiation of certificate case against the dealer, penalty is also leviable on the unpaid amount of assessed tax at the prescribed rates.

Test check of the assessment records of commercial taxes circle, Jamshedpur urban, revealed that a contractor was assessed to tax of Rs. 67.98 lakh for 2001-02 to 2002-03 in June 2005. He did not pay the tax till October 2006. No certificate case has, however, been initiated against him for realising the tax of Rs. 1.19 crore including penalty of Rs. 50.98 lakh.

After the case was pointed out, the department instituted a certificate case in August 2007 for recovery of the entire amount of assessed tax including penalty.

2.2.17 Non-levy of entry tax

Under the provisions of The Bihar Tax on Entry of Goods into Local Areas for Consumption, Use or Sale Therein Act, 1993 (BTEG Act), as adopted by the State of Jharkhand, there shall be levied and collected a tax on entry of scheduled goods into the local area for consumption, use or sale at such rate not exceeding five *per cent* on the import value of such goods. Entry tax is leviable at the rate of four *per cent* on motor vehicles. It has been judicially held[▲] that payment of entry tax on the import value of scheduled goods is mandatory as soon as these enter the territory of the State.

^o Commissioner of Sales tax Vrs M/s Rewa Coalfields and others (1999) civil appeal no. 3319 of 1981, 22 April 1999 (SC)

[▲] M/s Classic Automobiles Vrs State of Bihar and others CWJC Nos. 1052 and 1047 of 1998 (R) decided on 3 November 1998 by Patna High Court (Ranchi Bench).

In four commercial taxes circles[∞], seven contractors purchased road rollers, excavators, loaders etc. valued as Rs. 10.06 crore during 2001-05 from outside the State. None of these were registered under the BTEG Act. The AA failed to levy entry tax of Rs. 40.24 lakh on the purchase value of the goods.

After the cases were pointed out, in two cases of the commercial taxes circle, Jamshedpur urban, and in one case of the commercial taxes circle, Ranchi west, the department raised demands for the entire amount. In the remaining case of the commercial taxes circle, Dhanbad, the department stated that the action was being taken.

2.2.18 Conclusion

Survey is one of the tools used to detect errant unregistered dealers, widen the tax base and augment revenue. The instructions issued for conducting of survey in respect of works contractors were not followed which resulted in a large number of contractors escaping registration. In none of the circles test checked, the data of works executed/supplies made was collected from other departments and cross verified. The IB wing which was entrusted with the task of verification of various declaration forms as well as inter-departmental cross verification of data/information also failed in its task. These system failures led to widespread leakage of revenue which remained undetected. No specific norms for checking of assessment records relating to works/supplies contracts have been laid down. Internal audit which is a management tool for ensuring efficient functioning of the department and plugging leakages of revenue, was inoperational. Apart from the revenue leakage due to the system deficiencies, cases were also noticed involving large sums of unrealised revenue due to non-compliance by the AAs with the provisions of the Act/Rules.

2.2.19 Summary of recommendations

The Government may consider:

- conducting of regular market surveys, inter departmental cross verification of data/records and instituting other suitable measures for registration of works/supplies contractors;
- ensuring verification of various declaration forms *vis-a-vis* the claims/utilisation certificates as well as inter departmental cross verification of data/information;
- strengthening the IB and ensuring that the inter departmental verification is conducted for plugging leakages of revenue;
- making the vigilance & monitoring wing functional and effective; and
- reviving the internal audit in an effective form to ensure timely detection and correction of errors in assessment, levy and collection of revenue.

[∞] Deoghar, Dhanbad, Jamshedpur Urban and Ranchi West

2.3 Failure to conduct inter departmental cross verification

The Commissioner of Commercial Taxes (CCT) issued instructions in May 1990 to the circle offices to collect data/information regarding sales/purchase made by dealers from the Income Tax Department and other Central/State Government departments for cross verification with their sales tax returns/records to check evasion of tax. The Investigation Bureau (IB) of the department was asked (June 1991) to cross verify the data/records of the department with those of the Income Tax Department and various departments of the Central/State Government/Public Sector Undertakings. By a notification issued in November 1998, the AA is required to review returns and initiate proceedings within three days against the defaulting dealers for delay in submission of returns, belated payment of admitted tax and turnover escaping assessment.

The department did not follow the instructions. No cross verification of transactions shown in the returns was conducted either by the circle officers or by the IB. Failure of the department to do so resulted in short realisation of revenue of Rs. 179.25 crore as mentioned below:

2.3.1 Cross verification by audit of the data collected from the Principal Director of Commercial Audit, Ranchi with the records of two manufacturing dealers of Bokaro and Ranchi South commercial taxes circles, assessed in June 2005 and March 2006, revealed that the dealers disclosed the sales turnover of Rs. 9,869.37 crore during 2001-02 in their sales tax returns instead of Rs. 10,317.60 crore as shown in their annual audited accounts. This resulted in suppression of turnover of Rs. 448.23 crore. Failure of the department to obtain the data of sales from other departments and cross verify the information furnished by the dealers in their returns resulted in underassessment of tax of Rs. 163.44 crore including penalty of Rs. 119.64 crore.

2.3.2 Test check of the records of four[#] coal manufacturing dealers of an area[∞] of Central Coal fields Ltd (CCL) registered in Hazaribag commercial taxes circle, for 2003-04 assessed in December 2005 revealed that the dealers returned sales turnover as Rs. 848.74 crore in their sales tax returns. However, as per the audited annual accounts of the dealers obtained from the Principal Director of Commercial Audit, Coal, Ranchi, the sales turnover of the dealers was Rs. 908.75 crore. This revealed suppression of turnover amounting to Rs. 60.01 crore. Failure of the department to obtain data of sales from other department and cross verify the information furnished by the dealers in their returns with the audited accounts resulted in underassessment of tax of Rs. 9.60 crore including penalty amounting to Rs. 7.20 crore.

2.3.3 Cross verification by audit of the data collected from the Commissioner of Income Tax (CIT) with the assessment records of five

[#] Ashoka Project, Bachra Project, CHP/ CPP & Piparwar project
[∞] Piparwar area- Accounts are prepared areawise in CCL

dealers of Bokaro and Jamshedpur commercial taxes circles revealed that the dealers had shown sales turnover aggregating Rs. 39.63 crore in their sales tax returns between 2000-01 and 2003-04, assessed between June 2003 and January 2006, against the actual sales turnover aggregating Rs. 45.89 crore shown either in their income tax returns or detected by the Income Tax Department during search and seizure operations. This resulted in suppression of taxable turnover of Rs. 6.26 crore and consequent short levy of tax of Rs. 3.01 crore including penalty of Rs. 2.20 crore as mentioned below:

(Rupees in crore)					
Name of circle No. of dealers	Period Date of assessment	Nature of observations	Actual sales turnover sales turnover accounted for	Suppressed turnover	Short levy of tax and minimum penalty
<u>Bokaro</u> 3	Between 2001-02 and 2003-04 Between July 2005 and January 2006	There was a discrepancy between audited annual accounts furnished by the dealers to the Income Tax Department and trading accounts/returns furnished to the Sales Tax Department which resulted in concealment of turnover and consequential short levy of tax.	<u>3.32</u> 1.13	2.19	0.86
<u>Jamshedpur</u> 2	Between 2000-01 and 2002-03 Between June 2003 and February 2004	During search and seizure conducted by the Income Tax Department undisclosed sundry debtors for Rs. 2.63 crore were found in case of one dealer dealing in petrol, diesel and lubricants, and in case of another dealer dealing in furnace oil undisclosed sundry debtors for Rs. 1.44 crore were found. The dealers did not revise their sales tax return. The department also failed to detect the mistake as it did not collect or call for the data of the dealers from the Income Tax Department. This resulted in concealment of taxable turnover of Rs. 4.07 crore with a tax effect of Rs. 2.15 crore.	<u>42.57</u> 38.50	4.07	2.15
Total			<u>45.89</u> <u>39.63</u>	6.26	3.01

2.3.4 Scrutiny of the records of the Department of Mines and Geology revealed that 14 dealers registered in Pakur commercial taxes circle sold 99.89 lakh cubic feet (cft) of stone chips, 14.07 lakh cft of stone ballast and 5.61 lakh cft of stone dust during 2001-05. The value of the material sold as per rates* approved by the PWD worked out to Rs. 11.97 crore. However, the AA assessed the dealers on the value of Rs. 4.96 crore on the basis of returns filed by them. There was nothing on record to show how the price was arrived at. This resulted in short levy of tax of Rs. 2.90 crore including penalty of Rs. 2.12 crore.

* Stone chips - Rs. 310, ballast- Rs. 200 and stone dust Rs. 70 per m³

2.3.5 Cross verification by audit of the data collected from the CIT with the sales tax returns of two dealers of Bokaro commercial taxes circle revealed that one dealer had reflected sales turnover of Rs. 11.68 lakh in his sales tax returns while the other dealer had filed return for nil amount during 2003-04. Their sales turnover as per the P & L accounts attached with the income tax returns was Rs. 38.61 lakh and Rs. 59.99 lakh respectively. The AA made no effort to verify the correctness of the return. The concealment of sales turnover of Rs. 86.92 lakh resulted in non-levy of penalty of Rs. 29.50 lakh on estimated tax of Rs. 9.83 lakh.

After the cases were pointed out, the concerned DCCT accepted the audit observations and stated in August 2007 that proceedings for recovering the tax and penalty had been initiated.

The cases were reported to the Government in May 2007; their reply has not been received (November 2007).

2.4 Suppression of sales/purchase turnover

Under the Jharkhand Finance Act 2001 (JF Act), read with the Central Sales Tax Act, 1956 (CST Act), if the prescribed authority has reason to believe that the dealer has concealed, omitted or failed to disclose wilfully the particulars of turnover or has furnished incorrect particulars of such turnover, the said authority shall assess or reassess the amount of tax due from the dealer in respect of such turnover and shall direct the dealer to pay, besides the tax assessed on escaped turnover, penalty not exceeding three times but not less than an amount equivalent to the amount of tax on the escaped turnover.

In nine commercial taxes circles^Y, test check of the records^{*} of 28 dealers revealed that the dealers had sold and purchased taxable goods worth Rs. 286.71 crore during 2000-01 to 2003-04. However, they filed their returns for Rs. 160.36 crore only. The AA while finalising the assessment between February 2004 and March 2006, failed to detect the concealment of taxable turnover. This resulted in short realisation of tax of Rs. 24.03 crore including a penalty of Rs. 11.46 crore. A few cases by way of illustration are mentioned below:

^Y Chirkunda, Jamshedpur Urban, Jharia, Ranchi East, Ranchi South, Ranchi Special, Ranchi West, Sahebganj and Tenughat.

^{*} Utilisation certificate of declaration forms, trading account and audited annual accounts

(Rupees in crore)				
<u>Name of circle</u> <u>Name & Regn.</u> <u>No. of dealer</u>	<u>Period</u> <u>Date of</u> <u>assessment</u>	<u>Nature of observations</u>	<u>Suppressed</u> <u>turnover</u>	<u>Short levy of</u> <u>tax and</u> <u>minimum</u> <u>penalty</u>
<u>Tenughat</u> IEL, Gomia TG-1083 (R)	<u>2003-04</u> January 2006	As per the audited annual accounts, the dealer had sold explosives valued as Rs. 195.80 crore but had filed returns for Rs. 111.53 crore only and was assessed accordingly.	84.27	16.07
<u>Ranchi South</u> Garden Reach Ship Builders and Engineers RN (S)-56 (R)/ 160 (C)	<u>2001-02</u> March 2006	As per the utilisation certificate of blue road permit [♦] , the dealer had sold diesel engine valued as Rs. 33.11 crore but filed returns for Rs. 6.79 crore only and was assessed accordingly.	26.32	5.02
<u>Jamshedpur Urban</u> Henkel Chembend Surface Tech. Ltd JU-2104 (R)	<u>2003-04</u> March 2006	As per the utilisation certificate of green road permits ^{♦♦} , the dealer had purchased chemicals valued as Rs. 3.26 crore but had accounted for Rs. 1.05 crore only.	2.21	0.42
<u>Ranchi West</u> Republic Ltd. RN(W)-80 (R)	<u>2002-03 and</u> <u>2003-04</u> January 2005 and 2006	As per the utilisation certificate of green road permit, the dealer had purchased taxable cars valued as Rs. 1.34 crore but the purchase value of car was not accounted for in the returns.	1.34	0.34
<u>Sahebganj</u> Rajmahal Quartz Sand and Kaolin SB-1012 (R)	<u>2000-01</u> March 2005	As per the trading and profit and loss account, the sale value of quartz was Rs. 3.22 crore whereas GTO was returned as Rs. 1.55 crore and was assessed accordingly.	1.67	0.34

After the cases were pointed out between July 2006 and April 2007, the DCCTs stated between October 2006 and April 2007 that these would be reviewed. Further reply has not been received (November 2007).

The matter was reported to the Government in May 2007; their reply has not been received (November 2007).

2.5 Incorrect determination of GTO

Under the JF Act, gross turnover (GTO) for the purpose of levy of sales tax, in respect of sales of goods means aggregate of the sale price received and receivable by a dealer during any given period. Under the provisions of the Act, for the determination of net taxable turnover, a deduction from GTO is admissible, provided such turnover has already been included in the GTO.

In Jamshedpur urban commercial taxes circle, it was noticed in July 2006 that in case of a dealer, the GTO was incorrectly determined as Rs. 6,132.54 crore instead of Rs. 6,509.75 crore for 2001-02. The incorrect determination was due to non-inclusion of profit on the sale of capital assets, lease rental, miscellaneous income and incorrect deduction of sale value of coal which was

♦ Permits issued for transportation of goods to outside the State
♦♦ Permits used for purchase of goods from outside the State

not a part of GTO. The AA while finalising the assessment in January 2006 failed to detect the mistake. This resulted in short levy of tax of Rs. 15.09 crore.

After the case was pointed out in July 2006, the DCCT stated in October 2006 that it would be examined and necessary action would be taken. Further reply has not been received (November 2007).

The matter was reported to the Government in May 2007; their reply has not been received (November 2007).

2.6 Incorrect determination of taxable turnover

Under the provisions of the CST Act, a dealer may claim exemption from levy of tax in respect of any goods on the ground of movement of such goods from one State to another by reason of transfer of such goods by him to any other place of his business or to his agent or principal and not by reason of sale.

In Jamshedpur urban commercial taxes circle, it was noticed in July 2006 that during 2001-02, a dealer had made branch transfer of iron and steel valued as Rs. 4,423.99 crore. However, the AA while finalising the assessment in January 2006 allowed excess deduction by Rs. 142.29 crore on account of branch transfer. This resulted in short levy of tax of Rs. 11.38 crore.

After the case was pointed out in July 2006, the DCCT raised additional demand of Rs. 11.38 crore. Further reply has not been received (November 2007).

The matter was reported to the Government in May 2007; their reply has not been received (November 2007).

2.7 Non-realisation of deferred tax and interest

Under the Bihar Sales Tax Supplementary (Deferment of Tax) Rules, 1990, deferred amount of tax shall be repaid within 10 years from the date of commencement of production. In case of industrial units availing deferment of tax for a period of five years, the deferred tax is to be repaid in five instalments and in case of units availing deferments for seven years, the deferred tax is to be repaid in three instalments, payable by 31st March every year after the expiry of the validity period. In case of default, interest at the rate of two *per cent* per month is to be charged on such amount of tax remaining unpaid till the date of payment. Further, the PDR Act provides that any money which is declared by any law for the time being in force as arrears of revenue, is recoverable as arrears of land revenue.

In Ranchi South commercial taxes circle, a manufacturing dealer was allowed deferment of tax of Rs. 6.77 crore between September 1996 and August 2000 for five years. He failed to repay the instalment of Rs. 2.80 crore of deferred

tax on the due dates between March 2005 and March 2006. Thereafter, no action was taken to realise the amount as arrears of land revenue. Inaction on the part of AA resulted in non-realisation of tax of Rs. 6.34 crore including interest of Rs. 3.54 crore upto January 2007.

After the case was pointed out in February 2007, the DCCT stated that it would be examined. Further reply has not been received (November 2007)

The matter was reported to the Government in May 2007; their reply has not been received (November 2007).

2.8 Incorrect allowance of exemption on intra state sales

Under the JF Act and Rules made thereunder, where a dealer claims that he is not liable to pay tax in respect of any goods by reason of transfer of such goods to any other place of his business or to his agent or principal within the State, he shall furnish a declaration in form 'IX D' issued by the transferee before the prescribed authority.

In Bokaro and Jharia commercial taxes circles, it was noticed that the AAs while finalising assessment of two dealers in June 2005 and February 2006 for the year 2001-02 allowed exemption of tax of Rs. 4.68 crore on intra state sales valued as Rs. 117.07 crore. It was, however, noticed that these sales were not supported by prescribed declarations in form 'IX D'. The exemption allowed was, therefore, incorrect and resulted in short levy of tax of Rs. 4.68 crore.

After the cases were pointed out in March and November 2006, the DCCT stated that these would be examined. Further reply has not been received (November 2007).

The matter was reported to the Government in May 2007; their reply has not been received (November 2007).

2.9 Grant of incorrect exemption on inter state sale

2.9.1 Under the JF Act, read with CST Act, the Government notified in November 1990 that sale of soap and detergent powder produced or manufactured by the manufacturing units recognised by the Bihar State Khadi Gramodyog Board (BSKGB) to the consumers directly was exempted from levy of tax.

In Tenughat commercial taxes circle, it was noticed that a manufacturing unit recognised by the BSKGB made inter state sale of soap and detergent powder valued as Rs. 7.18 crore to a registered dealer in 2003-04. Since the sales were not directly made to the consumers, no exemption was admissible. However, the AA while finalising the assessment in December 2004 incorrectly allowed exemption resulting in underassessment of tax of Rs. 1.04 crore.

After the case was pointed out in April 2007, the DCCT stated in April 2007 that the matter would be examined. Further reply has not been received (November 2007).

2.9.2 Under the CST Act, on the inter state sale of goods (other than declared goods) which are not supported by the prescribed declaration forms, tax is leviable at the rate of 10 *per cent* or at the rate applicable in the State, whichever is higher. In the case of sale of declared goods not supported by declarations in the prescribed form, tax is leviable at twice the rate applicable on sale or purchase of such goods in the concerned State. Coal is taxable at the rate of four *per cent*. However, inter state sale of briquettes made out of slurry is taxable at the rate of 10 *per cent* without 'C' form. It has been judicially held* that coal and coal briquettes are two different commercial commodities and briquettes, made from tax suffered coal, are taxable separately.

In Tenughat commercial taxes circle, it was noticed that two manufacturers made inter state sale of briquettes valued as Rs. 4.97 crore without the production of 'C' forms during 2002-03 and 2003-04. The sales were liable to tax of Rs. 49.69 lakh. However, the AA incorrectly levied tax of Rs. 39.75 lakh in March and July 2005. In addition to the above, the dealer claimed and was allowed adjustment of Rs. 17.62 lakh on account of tax paid coal slurry used in the manufacture of coal briquettes which was not admissible. These irregularities on the part of AA resulted in short levy of tax of Rs. 27.55 lakh.

After the cases were pointed out in April 2007, the DCCT stated in April 2007 that notices would be served to the dealers for realisation of the amount. Further reply has not been received (November 2007).

2.9.3 According to the orders issued by the State Government in March 1986 and August 1991, for grant of exemption from levy of tax on export sale to Nepal, the claim was required to be supported by the bill of export granted by the custom officials of India.

In Ranchi West commercial taxes circle, it was noticed that the AA while finalising the assessment for 2002-03 in May 2006 of a dealer allowed exemption from levy of tax on export sale of brake oil valued as Rs. 70.64 lakh to Nepal though such sale was not supported by the bill of export required to be issued by Indian Customs Department. Non-observance of the orders of the Government resulted in short levy of tax amounting to Rs. 7.06 lakh.

After the case was pointed out in February 2007, the DCCT stated in March 2007 that it would be reviewed. Further reply has not been received (November 2007).

The matter was reported to the Government in May 2007; their reply has not been received (November 2007).

* Sonebhadra Fuels Vrs. Commissioner of Trade Tax, UP 147 STC 594 SC

2.10 Mistake in computation of tax

Under the provisions of the JF Act, the AA is to finalise the assessment with utmost care and efficiency. He should see that computation of tax has been done accurately to the best of his knowledge and belief.

In four commercial taxes circles*, in case of three assessees, assessed between June 2005 and March 2006 for 2001-02, the taxable turnover was incorrectly determined as Rs. 111.94 crore instead of the correct amount of Rs. 115.11 crore due to mistake in computation and in the case of one assessee, tax was erroneously levied on Rs. 131.28 crore instead of Rs. 131.54 crore. This resulted in short levy of tax amounting to Rs. 56.15 lakh including additional tax and surcharge.

After the cases were pointed out between July 2006 and March 2007, the DCCT stated between July 2006 and March 2007 that these would be reviewed. Further reply has not been received (November 2007).

The matter was reported to the Government in May 2007; their reply has not been received (November 2007).

2.11 Incorrect allowance of exemption from levy of tax

Under the JF Act and the notification issued thereunder, exemption from levy of sales tax on the sale of raw material, which is required directly for conversion of raw material into finished goods, is granted subject to submission of form 'GAA'. Further, coal and coke come under the category of 'fuel' and not 'raw material' for manufacture of iron and steel. It is, therefore, not exempted from levy of sales tax.

In Ranchi West commercial taxes circle, it was noticed that a dealer had sold coal valued as Rs. 3.75 crore during 2001-02 to a manufacturer of sponge iron on the strength of form 'GAA'. The dealer claimed and was allowed exemption from payment of tax by the AA in December 2003. Since coal was used as fuel, the exemption allowed was incorrect. The irregularity on the part of the AA resulted in underassessment of tax amounting to Rs. 14.98 lakh.

After the case was pointed out in March 2007, the DCCT stated in March 2007 that it would be reviewed. Further reply has not been received (November 2007).

The matter was reported to the department and the Government in May 2007; their reply has not been received (November 2007).

* Chaibasa, Jamshedpur, Jharia and Ranchi South

2.12 Loss of revenue due to assessment being barred by limitation

Under the JF Act, a proceeding for reassessment in pursuance of or as a result of an order on appeal, revision and reference or review shall be initiated and completed before the expiry of two years from the date of communication of such order to the AA.

In Dhanbad commercial taxes circle, on the appeal of an assessee, the Appellate Authority set aside an assessment order relating to a case of 2001-02, assessed in March 2003 and directed the AA to reassess the case considering the point raised in appeal. The appellate order was communicated in October 2003 but the reassessment was not completed till November 2006. Non-finalisation of the assessment within the prescribed period of two years resulted in the assessment becoming barred by limitation of time and consequential loss of revenue of Rs. 9.54 lakh.

The matter was reported to the department and the Government in May 2007; their reply has not been received (November 2007).

2.13 Non-levy of tax at the first point of sale

Under the JF Act and Rules made thereunder, goods leviable to tax at the first point of sale cannot be sold without payment of tax. Timber is leviable to tax at the first point of sale.

In Ranchi East commercial taxes circle, it was noticed between January and February 2007 that two dealers had sold timber valued as Rs. 46.62 lakh between 2001-02 and 2004-05 without payment of tax. The AA while finalising the assessment in April 2005 and June 2006 failed to detect the mistake. This resulted in underassessment of tax of Rs. 6.20 lakh.

After the case was pointed out between January and February 2007, the DCCT stated that it would be reviewed. Further reply has not been received (November 2007)

The matter was reported to the Government in May 2007; their reply has not been received (November 2007).

2.14 Short levy of additional tax and surcharge

Under the JF Act, every dealer is required to pay additional tax at the rate of one *per cent* (except on liquor) on his gross turnover. Further, a surcharge at the rate of 10 *per cent* of tax including additional tax is also payable.

In Ranchi East commercial taxes circle, it was noticed that a dealer had sold food product, detergent powder etc. valued as Rs. 7.60 crore in 2001-02. But while finalising the assessment in June 2005, the AA levied additional tax of

Rs. 3.02 lakh instead of Rs. 8.05 lakh. This resulted in short levy of additional tax of Rs. 5.03 lakh including surcharge.

After the case was pointed out in January 2007, the DCCT stated in February 2007 that it would be reviewed. Further reply has not been received (November 2007).

The matter was reported to the Government in May 2007; their reply has not been received (November 2007).