

CHAPTER II - TAXES ON SALES, TRADE etc.

2.1 Results of audit

Test check of the records of the Commercial Taxes Department during 2007-08 revealed non/short levy of tax and penalty, irregular allowance of exemption/concession/application of incorrect rate of tax etc. amounting to Rs. 663.08 crore in 446 cases, which fall under the following categories:

(Rupees in crore)

Sl. No.	Category	No. of cases	Amount
1.	“Evasion of Sales tax on goods received from outside/within the State” (A review)	1	73.61
2.	Non/short levy of tax	156	304.81
3.	Irregular allowance of exemption from tax	109	33.16
4.	Non-levy of penalty	14	15.02
5.	Irregular allowance of concessional rate of tax	26	6.79
6.	Non/short levy of additional tax/surcharge	13	1.16
7.	Application of incorrect rate of tax	24	15.11
8.	Short levy due to incorrect determination of turnover	25	55.10
9.	Non-levy of penalty for excess collection of tax	30	0.15
10.	Other cases	47	13.10
11.	Short levy of tax due to non-verification of inter-departmental transactions	1	145.07
Total		446	663.08

During 2007-08, the department accepted non/short levy of tax and penalty, irregular allowance of exemption/concession/application of incorrect rate of tax etc. of Rs. 171 crore in 109 cases of which 83 cases involving Rs. 138.40 crore were pointed out in audit during 2007-08 and rest in earlier years.

A few illustrative cases involving loss of revenue of Rs. 294.95 crore including review of **“Evasion of Sales tax on goods received from outside/within the State”** are discussed in the succeeding paragraphs:

2.2 Evasion of Sales tax on goods received from outside/within the State

Highlights

- Cross verification of assessment records of 78 dealers in 16 commercial taxes circles with the information obtained from dealer/manufactures located outside the state and with the documents filed by the dealers alongwith their returns revealed short levy of tax of Rs. 70.05 crore including penalty of Rs. 50.83 crore.

(Paragraph 2.2.10)

- In Jamshedpur commercial taxes circle, incorrect exemption of goods valued at Rs. 26.91 crore resulted in short levy of tax of Rs. 1.08 crore.

(Paragraph 2.2.11)

- In Chaibasa commercial taxes circle, non-detection by assessing authority of incorrect transfer of road permits by a manufacturer to a supplier for importing components of boilers valued at Rs. 9.15 crore resulted in non-levy of penalty of Rs. 2.49 crore.

(Paragraph 2.2.12)

2.2.1 Introduction

Under the provisions of the Central Sales Tax Act, 1956, read with the Jharkhand Finance Act, 2001 and Rules made/instructions issued thereunder, goods are received by the dealers of Jharkhand from outside the State against declaration forms¹ either on purchase after payment of tax by issuing declaration in form 'C' or on stock transfer from any place of his business or his agent or principal or otherwise, without payment of tax by issuing the declaration in form 'F' to substantiate the claim. However, on sale of such goods, tax is leviable in Jharkhand at the rate specified under the State tax laws, unless the goods are exempted specifically from levy of tax.

Goods are received within the State by paying tax at the first point of sale against declaration form 'IXC'². Further, for resale of goods, by paying additional tax, if leviable, declaration form 'IX'³ is used. Goods are also received for use as a raw material at concessional rate of tax against form 'IX'. Goods are received on stock transfer from within the State against declaration

¹ 'C'- Declaration issued by purchasing dealer to selling dealer in course of inter state trade and commerce.

'F'- Declaration for stock transfer from any place outside the State of his business or his agent or principal or otherwise, without payment of tax by issuing the declaration.

² 'IXC'- Form of declaration issued by the seller to purchaser as a proof of levy of sales tax at first point of sale.

³ 'IX'- Form of declaration submitted by owners of manufacturing unit against purchase of raw materials at concessional rate of tax to the dealer from whom the material is purchased.

form 'IXD'⁴. Small scale industrial units, which have been granted a certificate for purchase of raw materials free of tax, receive goods against issue of certificate in 'GAA'⁵. Finished products of small scale industries are received for resale against receipt of certificate in 'CHA'⁶.

These declaration forms ceased to be applicable after implementation of Jharkhand Value Added Tax (JVAT) Act, 2005 with effect from 1 April 2006. The declaration form 'IXC' has been substituted by form 'JVAT 403'⁷, 'JVAT 404'⁸ and 'JVAT 410'⁹. However, existing central sales tax declaration forms are still applicable.

The dealers receiving the goods retain the counterfoil of such declaration forms/certificates issued to them against transactions made within the State or between States and are required to maintain and submit an account of receipt, issue and use of such declaration forms to the concerned circles.

Audit reviewed the functioning of Commercial Taxes Department relating to system of assessment, levy and collection of sales tax on goods received from outside/within the state. It revealed a number of deficiencies which have been mentioned in succeeding paragraphs.

2.2.2 Organisational Setup

The Secretary, Commercial Taxes is responsible for the administration of Act and Rules in the Commercial Taxes Department at the Government level and the Commissioner of Commercial Taxes is responsible for administration of Act and Rules at the apex level of the department including printing, receipt and distribution of declaration forms to each circle. Both the posts are presently held by the Secretary cum Commissioner. The Commissioner of Commercial Taxes is assisted by Additional Commissioner and Joint Commissioners of Commercial Taxes, Vigilance and Monitoring along with other Joint Commissioners of Commercial Taxes and Deputy/Assistant Commissioners of Commercial Taxes at the headquarters.

The State of Jharkhand is divided into five commercial taxes divisions¹⁰ and 28 Circles¹¹, each under the charge of a Joint Commissioner (Administration)

⁴ 'IXD' - Form of declaration for stock transfer from any place within the State of his business, his agent, principal or otherwise, without payment of tax by issuing the declaration.

⁵ 'GAA' - Form of declaration given by owners of industries for purchase of raw materials free of sales tax or purchase tax.

⁶ 'CHA' - Form of declaration given by owners of industries against sale of finished product free of sales tax as a proof that sales tax is not leviable at the subsequent point of sale of the finished product.

⁷ JVAT 403 - Form of declaration under the Jharkhand Value Added Tax Act, 2005 for goods on which more than 12.5 per cent tax has been levied.

⁸ JVAT 404 - Form of declaration under the Jharkhand Value Added Tax Act, 2005 for goods on which tax levied have been 1, 4 or 12.5 per cent.

⁹ JVAT 410 - Form of declaration under the Jharkhand Value Added Tax Act, 2005 for goods on which tax has been levied at maximum retail price.

¹⁰ Dhanbad, Dumka, Jamshedpur, Hazaribag and Ranchi.

¹¹ 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.

and Deputy/Assistant Commissioners of Commercial Taxes respectively. The incharge of the circle is assisted by commercial tax officers, who are responsible for market survey, besides assessment and collection of amounts due to the Government.

A Deputy Commissioner of Bureau of Investigation is posted in each division to assist Joint Commissioners of Commercial Taxes (Administration) and a Deputy Commissioner of Commercial Taxes of vigilance and monitoring is posted under the direct charge of Commissioner of Commercial Taxes in each division.

2.2.3 Audit Objectives

The review was conducted to ascertain whether there:

- was prompt, efficient and effective enforcement of provisions of the Act and rules made/executive instructions issued thereunder; and
- existed an internal control mechanism in the department to prevent evasion of sales tax in receipt of goods from outside/within the State and to ensure that the internal controls were being exercised.

2.2.4 Audit scope and methodology

A review was conducted between February and June 2008 in 16¹² out of 28 commercial taxes circles, in all the five commercial taxes divisions and office of the Commissioner of Commercial Taxes for the period 2002-03 to 2006-07. Data/information collected from Chhattisgarh, Haryana, Orissa, Punjab, Uttar Pradesh and West Bengal as well as from Central Excise Department in Haryana, Punjab, Uttar Pradesh and West Bengal were cross verified with the records of commercial taxes circles of the Government of Jharkhand.

2.2.5 Acknowledgement

Indian Audit and Accounts Department acknowledges the co-operation of the Commercial Taxes Department in providing necessary information and records for audit. An entry conference was held with Secretary, Department of Commercial Taxes in February 2008. She was apprised of the audit objectives, scope and methodology of the review. Audit findings as a result of test check of records were reported to the Government in June 2008. The findings were discussed in the Audit Review Committee meeting held on 9 September 2008. The Secretary-cum-Commissioner of Commercial Taxes, Jharkhand attended the meeting. The Government accepted all the recommendations. The response of the Government to the audit observations have been appropriately incorporated in the review.

¹² Adityapur, Chaibasa (Chakradharpur), Deoghar, Giridih, Hazaribag, Jamshedpur, Jamshedpur Urban, Palamu, Ramgarh, Ranchi East, Ranchi South, Ranchi Special, Ranchi West, Sahebganj, Singhbhum and Tenughat.

Audit findings**2.2.6 Trend of revenue**

Under the Bihar Financial Rules Vol-I (adopted by the Government of Jharkhand), the responsibility for the preparation of the statement of the estimated revenue and expenditure as well as any supplementary estimates or demand of extra grant lies with the Finance Department. The material on which such estimates are based is obtained from the concerned administrative department, which is responsible for correctness of materials itself.

The variations between the budget estimates and actual receipts in respect of sales tax revenues during 2002-03 to 2006-07 are mentioned below:

(Rupees in crore)				
Year	Budget estimates	Actual	Variation	Percentage of variation
2002-03	1,621.52	1,366.14	(-)255.38	(-)16
2003-04	1,675.65	1,601.02	(-)74.63	(-) 5
2004-05	1,782.47	1,881.53	(+)99.06	(+) 6
2005-06	2,142.95	2,212.03	(+)69.08	(+) 3
2006-07	2,458.00	2,556.90	(+)98.90	(+) 4

The variations ranged between (-) 16 and (+) 6 *per cent*. The department, despite being requested, did not produce the budget estimates prepared by it and sent to the Finance Department. The extent to which the preparation of budget estimates was based on scientific methods could not, therefore, be assessed.

2.2.7 Market survey and registration

The Commissioner of Commercial Taxes issued instructions in April 1990, April 1997 and March 1999, for conducting market survey in every circle during the period between April and June every year, to unearth unregistered dealers, for registration of eligible dealers and for ascertaining whether any class of dealers had escaped the liability for taxation. Further, under the Jharkhand Finance Act read with the 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 seven days from the date of his becoming liable for payment of tax. The prescribed authority shall grant him registration certificate within a period of 30 days from the date of receipt of the said application.

Test check revealed that no mechanism was put in place by the Commissioner of Commercial Taxes to ensure follow up action on the executive instruction for widening the tax base. Consolidated position of market survey and registration was not available in the office of Commissioner of Commercial Taxes. However, information obtained from five commercial taxes circles¹³ revealed that in two commercial taxes circles, Godda and Palamu no market survey was conducted between 2003-04 and 2006-07, while in other three

¹³ Chaibasa, Godda, Palamu, Ranchi Special and Singhbhum.

commercial taxes circles¹⁴ only 468 dealers were registered out of 879 dealers recommended for registration. The details are as under:

Table-1: Market survey

Year	No. of surveys conducted during the year	No. of dealers found due for registration	No. of dealers recommended for registration	No. of dealers actually got registered	Percentage of column 5 to 4
1	2	3	4	5	6
2002-03	438	378	332	182	55
2003-04	272	194	159	114	72
2004-05	222	139	118	50	42
2005-06	360	358	193	81	42
2006-07	193	97	77	41	53
Total	1,485	1,166	879	468	

Table- 2: Application pending for registration

Year	Opening balance	No. of applications received	Total	No. of registration certificates issued	No. of applications rejected	Closing balance
1	2	3	4	5	6	7
2002-03	218	727	945	890	6	108
2003-04	171	644	815	649	19	149
2004-05	263	561	824	676	59	89
2005-06	226	1,075	1,301	1,155	33	109
2006-07	225	1,061	1,286	1,218	26	45

Table- 3: Growth in number of assessees during 2002-07 was as under:

Year	Number of assessees	Percentage (+) increase (-) decrease
2002-03	49,136	
2003-04	52,315	(+) 6
2004-05	55,388	(+) 6
2005-06	60,691	(+) 10
2006-07	51,168	(-) 16

From the tables 1, 2 and 3 above, audit observed that:

- On an average 53 per cent dealers were registered and the percentage of dealers registered against the dealers recommended for registration after

¹⁴ Chaibasa, Ranchi Special and Singhbhum.

market survey varied between 42 and 72. The number of market survey conducted decreased to 193 during 2006-07 against a high of 438 in 2002-03. Reasons for non-registration of dealers recommended for registration, on the basis of market survey, were not furnished by the circles, though called for in audit.

- The closing balance and the opening balance of applications pending for registration during 2002-07, did not tally as there was difference of figures of registration furnished by Ranchi Special Circle. No reason for rejection of applications and application pending for registration beyond the time prescribed were furnished to audit, though called for in August 2008.
- The number of assesseees increased from 49,136 in 2002-03 to 60,691 in 2005-06 but declined sharply to 51,168 in 2006-07. The growth rate of tax base varied between (+) 6 and (-) 16 *per cent*. Reasons for decline in number of assesseees were not furnished by the department.

The absence of a system to monitor the registration of dealers by conducting regular market surveys reflected lack of initiative on the part of the department to bring the unregistered dealers into tax net to widen the tax base.

Mention regarding loss of revenue due to fewer market survey and registration of dealers and consequential loss of revenue was made in previous Audit Reports of the Comptroller and Auditor General of India. The irregularities still persisted as also indicated in paragraphs 2.3.1 and 2.3.2 of this report.

The Government may evolve a system to ensure that regular market survey are conducted by the department and prompt action for registration of dealers is taken by all the commercial taxes circles to widen its tax base. The monitoring for watching the progress made in surveys at apex level also needs strengthening.

System deficiencies

2.2.8 Working of bureau of investigation

By a notification issued in August 1984, the department prescribed a minimum of 35 inspections of business premises and 60 inspections of vehicles per month by the investigation bureau wing. The reports were required to be received in the office of the Commissioner of Commercial Taxes, Jharkhand by 10th/25th of the following month for business premises and vehicles respectively.

By other instructions of May 1990 and June 1991, the Commissioner of Commercial Taxes directed the circle offices/bureau of investigation to collect data/information regarding sales/purchases made by dealers from the Income Tax Department and other Central/State Government departments for cross verification with their sales tax returns/records, besides verification of transactions against declaration forms 'C', 'F', 'H'¹⁵ and formulation of procedure for market survey to check evasion of tax.

¹⁵ 'H' - Form of declaration for claiming exemption from levy of sales tax on the sale in course of export.

Information regarding verification of declaration form 'C' and 'F' and action taken on the discrepancies noticed as a result of such verification, the Commissioner of Commercial Taxes stated that this wing is not functioning at its optimum. However, the information obtained from the Deputy Commissioners of Commercial Taxes, Bureau of Investigation, Hazaribagh and Dumka and Assistant Commissioner of Commercial Taxes, Bureau of Investigation, Jamshedpur Division indicated that no verification of declaration forms was conducted during 2002-03 to 2006-07 and the investigation bureau wing was non-functional. This defeated the very purpose for which it was constituted.

The Government may take immediate steps to strengthen the bureau of investigation and ensure collection of data/information in respect of incoming goods and cross verification with sales tax returns.

After this was pointed out, the Government stated in September 2008 that the department was contemplating a self enforcing system of cross verification of declaration forms.

2.2.9 Internal audit, vigilance and monitoring

2.2.9.1 Internal audit is generally defined as the control of all controls, as it is a means of an organisation to assure itself that the prescribed systems were functioning reasonably well. The Finance Department ordered in May 1960 that internal audit of the Commercial Taxes Department would be conducted by the former's audit wing. The internal audit parties are required to conduct *cent per cent* audit of all demands, collection of revenue and verification of deposit of amount in treasury.

Test check revealed that no internal audit was conducted in any of the circles and in the office of Commissioner, Commercial Taxes during 2002-07. In absence of internal audit, the department remained unaware of the areas of malfunctioning of the systems and did not, therefore, have any opportunity of taking remedial action.

2.2.9.2 A monitoring wing was set up in the Commercial Taxes Department. Each of the five commercial taxes divisions has a monitoring cell under the direct charge of the Commissioner of Commercial Taxes. According to the Government order of February 1986 and March 1997, each Deputy Commissioner incharge of the cell was to examine at least 20 assessments in each month. Besides, the Deputy Commissioner, Vigilance and Monitoring was required to check inspection registers, cheque registers, returns, issue of demand notices etc. and send a report on compliance relating to registration, non-levy of penalty and realisation of tax. This wing was required to issue its report to Joint Commissioner of Commercial Taxes (Administration) who at the divisional level was required to review the position of pending monitoring reports quarterly and send a report to Commissioner of Commercial Taxes. However, it was noticed that no staff was provided to this wing as such it remained non-functional.

This indicates absence of vigilance and monitoring system in the department and thereby non-functioning of a vital component of internal control mechanism, which needs to be addressed urgently.

The Government may consider reviving the internal audit wing of the Finance Department and make Vigilance and Monitoring wing effective to ensure timely prevention of evasion of revenue. Further, the Government may also consider establishing a separate internal audit wing in the Commercial Taxes Department.

2.2.10 Monitoring of inter state transactions

By an executive order of June 1991, Bureau of Investigation wing was assigned the work of verification of declaration forms 'C', 'F' and 'H'. Neither any return was prescribed by the department to monitor the verification of the declaration forms at the apex level nor was any norm fixed for cross verification of the declaration form for the investigation bureau wing.

Information obtained indicated that verification of forms was not conducted inspite of the departmental instructions. Cross verification of information collected by audit in respect of incoming goods from six States¹⁶ against declaration forms 'C'/'F'/invoices and utilisation certificate of declaration forms revealed evasion of tax as discussed in the succeeding paragraphs:

2.2.10.1 Under the Jharkhand Finance Act read with the Central Sales Tax Act, every registered dealer shall furnish a true and complete return in respect of all his transactions, failing which, and if the assessing authority is satisfied that reasonable ground exists to believe that any turnover of a dealer has escaped assessment, the said authority may, within four years from the date of the order of the assessment or re-assessment, assess or re-assess the amount of tax due from the dealer in respect of such turnover. The dealer shall also be liable to pay, by way of penalty, a sum not exceeding three times but not less than an amount equivalent to the amount of tax assessed on the turnover which escaped taxation.

Cross verification of the data of goods received from the records of 16 manufacturers of five States¹⁷ and from the Central excise offices in Haryana, Punjab and West Bengal with the records of 19 dealers, assessed between May 2004 and October 2007, in 12 commercial taxes circles¹⁸ of Jharkhand revealed non/short accounting of goods valued at Rs. 13.91 crore relating to the period from 2001-02 to 2005-06 received by way of purchase against declaration in form 'C' or by stock transfer against form 'F'. This resulted in under assessment of tax of Rs. 5.01 crore including penalty of Rs. 3.67 crore.

2.2.10.2 Under provisions of Bihar Finance Act, 1981, read with the Central Sales Tax Act and Rules made thereunder, every registered dealer who issues declaration forms is required to furnish utilisation certificates thereof to the issuing circle.

Test check of the utilisation certificates of declaration forms, the trading accounts and other documents available in the assessment records of 35 dealers in 10 commercial taxes circles¹⁹ revealed that the dealers purchased

¹⁶ Chhatisgarh, Haryana, Orissa, Punjab, Uttar Pradesh and West Bengal.

¹⁷ Haryana, Orissa, Punjab, Uttar Pradesh and West Bengal.

¹⁸ Adityapur, Chaibasa (Chakradharpur), Hazaribag, Jamshedpur, Palamu, Ranchi East, Ranchi South, Ranchi Special, Ranchi West, Sahebganj, Singhbhum and Tenughat.

¹⁹ Adityapur, Deoghar, Jamshedpur, Koderma, Palamu, Ranchi East, Ranchi Special, Ranchi West, Singhbhum and Tenughat.

goods valued at Rs. 642.69 crore during 1999-2000 to 2005-06. But, the value of goods purchased was shown as Rs. 488 crore in their returns on the basis of which the dealers were assessed to tax between February 2004 and January 2008. Thus, turnover of Rs. 154.69 crore was suppressed by the dealers. This resulted in short levy of tax of Rs. 61.94 crore including penalty of Rs. 45.32 crore.

2.2.10.3 Evasion of tax due to use of unauthorised declaration forms

Declaration forms 'C' and 'F' are issued to the dealer by the competent authority for use in the course of inter state purchase or receipt by stock transfer. Use of any declaration form which is either stolen or not issued to the dealer is illegal and the receipt of goods against such declaration will, in addition to tax, attract penalty on such suppressed turnover.

Cross verification of the information obtained from six manufacturers/dealers of three States²⁰ with the records of 23 dealers in nine commercial taxes circles²¹ revealed that the dealers purchased goods valued at Rs. 3.45 crore against unauthorised declaration form 'C' but did not account for the value of goods in their books during 2002-03 and 2005-06. This resulted in evasion of tax of Rs. 1.55 crore including penalty of Rs. 65.41 lakh.

2.2.10.4 Purchase turnover not included in return under Jharkhand Value Added Tax Act

Under the Jharkhand Value Added Tax Act, if the prescribed authority is satisfied that the dealer, in order to evade or avoid payment of tax, has furnished incomplete or incorrect returns for any period he shall direct that the dealer shall pay, by way of penalty, a sum equal to twice the amount of additional tax assessed on account of the said reasons.

Cross verification of data/information collected from Central Excise Department in Punjab and Uttar Pradesh with the records of two assesseees of Ranchi East and Ranchi South Commercial Taxes Circles revealed that the dealers purchased electronics goods and motor cycles valued at Rs. 8.70 crore during 2006-07 against which only Rs. 8.27 crore were accounted for by them. This resulted in suppression of purchase turnover of Rs. 42.83 lakh on which penalty of Rs. 10.71 lakh, though leviable, was not levied.

2.2.10.5 Turnover escaping assessment

Cross verification of purchases made by a manufacturing dealer of iron and steel in Giridih Commercial Taxes Circle with the records of another dealer of the same circle revealed that the purchasing dealer had returned purchase turnover of Rs. 34.50 crore during 2004-05 and 2005-06 against the actual purchase of goods valued at Rs. 43.48 crore made on form 'GAA' and road permits. The assessing authority, while finalising the assessment in December 2006 and January 2007 did not detect the suppression of turnover of Rs. 8.98

²⁰ Orissa, Punjab and West Bengal.

²¹ Adityapur, Chaibasa, Jamshedpur, Palamu, Ramgarh, Ranchi East, Ranchi South, Singhbhum and Tenughat.

crore which resulted in short levy of tax of Rs. 1.44 crore including penalty of Rs. 1.08 crore.

The Government may prescribe a return to monitor the progress made from time to time in cross verification of transactions against declaration forms at CCT's level and enforce strict adherence to the internal control measures provided in the Act/Rules/Government instructions. Besides, norms for carrying out cross verification of declaration forms may be prescribed for each assessing authority.

Compliance deficiencies

2.2.11 Incorrect allowance of exemption from levy of tax

Under the Jharkhand Finance Act and notification issued thereunder, exemption from levy of sales tax on the sale of raw materials which is required directly for conversion of raw material into finished goods is granted subject to submission of form 'GAA'. It was judicially held²² that cutting and processing of raw material does not amount to manufacture.

In Jamshedpur commercial taxes circle a dealer purchased cold rolled coils/hot rolled coils of iron and steel valued at Rs. 26.91 crore during 2002-03 to 2003-04 against issue of certificate in declaration form 'GAA' and sold cold rolled sheets/hot rolled sheets of iron and steel as manufactured goods after cutting and processing of the coils which cannot be treated as manufactured goods. The assessing authority while finalising the assessment incorrectly exempted the goods from levy of tax. This resulted in underassessment of tax of Rs. 1.08 crore.

2.2.12 Misuse of declaration forms

Under the provisions of Jharkhand Finance Act and Rules made thereunder, no registered dealer to whom road permit has been issued by the appropriate authority shall either personally or through any other person, transfer the same to another person. In case of transfer it will be treated as misuse of declaration form and penalty is leviable in such cases as if the dealer had furnished incorrect return.

In Chaibasa commercial taxes circle, a manufacturer transferred road permit to a supplier for importing components of boiler valued at Rs. 9.15 crore during 2003-04 and 2004-05 from outside the State which was not permissible under the provisions of the Act/Rule. The assessing authority did not scrutinise the utilisation statement of road permit which resulted in non-levy of penalty amounting to Rs. 2.49 crore.

2.2.13 Conclusion

The instructions issued for conducting survey were not followed, which may result in a large number of dealers escaping registration. The Bureau of Investigation wing which had to cross verify various declaration forms and inspect business premises as well as vehicles for prevention of tax evasion

²² Steel India Vrs Bihar State and others 2000 117 STC 91, Collector of Central Excise Vrs East End Paper Industries 1990 77 STC 203SC.

remained non-functional. The department failed to take action in effectively enforcing existing control procedures leading to loss of revenue.

2.2.14 Summary of recommendations

The Government may consider:

- ensuring regular market survey and prompt registration of dealers by all the commercial taxes circles and ensure monitoring at apex level;
- prescribing a return to ensure verification of transactions against declaration forms and enforcing strict adherence to the internal control measures provided in the Act/Rules/Government instructions;
- instituting measures to ensure collection of data/information in respect of incoming goods and cross verification with sales tax returns; and
- strengthening Bureau of Investigation wing and Vigilance and Monitoring wing.

2.3 Failure to conduct inter departmental cross verification

The Commissioner of Commercial Taxes 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 of the department was directed in 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 Governments/Public Sector Undertakings. By a notification issued in November 1998, the assessing authority is required to review the 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.

None of the circle officers or the investigating bureau collected any data/information from different departments and thus did not carry out any cross verification of transactions shown in the returns. Test check in audit revealed short realisation of revenue of Rs. 145.07 crore as mentioned below:

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

Under the Jharkhand Finance Act, every dealer, who is a contractor, is liable to pay tax if his gross turnover 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 registration certificate. 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 data of payment received by the contractors collected from Rural Engineering Organisation, Road Construction Divisions, Building Construction Divisions and Rural Development Special Divisions with the records of nine commercial taxes circles²³ revealed that 24 contractors were liable to pay tax including additional tax and surcharge of Rs. 6.42 crore on the amount received on account of works executed for Rs. 69.59 crore during 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. Non-collection of data from different Government/Public sector undertakings by the department resulted in non-registration and non-realisation of revenue of Rs. 6.57 crore including penalty of Rs. 15.51 lakh.

The cases were pointed out to the department in May and August 2008; their reply has not been received (November 2008).

2.3.2 Non-registration of contractors under Jharkhand Value Added Tax resulted in non-levy of tax

The Jharkhand Value Added Tax Act, provides that if the prescribed authority, upon information which has come into his possession, is satisfied that any dealer who has been liable to pay tax under this Act, in respect of any period,

²³ Adityapur, Chaibasa, Gumla, Hazaribag, Jamshedpur, Jamshedpur Urban, Ranchi East, Ranchi South and Ranchi West.

has failed to get himself registered, it may after giving the dealer a reasonable opportunity of being heard, assess to the best of his judgement the amount of tax due from the dealer in respect of such period. The prescribed authority shall direct the dealer to pay by way of penalty, in addition to the tax assessed a sum equal to the amount of the tax assessed, or a sum of Rs. 10,000 whichever is greater.

Cross verification of data of payment received by contractors collected from different working divisions²⁴ with the records of four commercial taxes circles²⁵ revealed that 12 contractors received a sum of Rs 9.37 crore on account of work executed by them during 2006-07 but did not get themselves registered with the Commercial Taxes Department. Non-collection of data from different departments resulted in non-registration and non-levy of tax amounting to Rs. 2.34 crore including penalty of Rs. 1.17 crore.

The cases were pointed out to the department in May and August 2008; their reply has not been received (November 2008).

2.3.3 Non-levy of penalty

The Jharkhand Finance Act read with the Central Sales Tax Act, provides that if the assessing authority 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. The departmental instruction of November 1998 provides for initiation of penalty proceedings on the concealed turnover before assessment within three days from the date of receipt of the returns.

- Cross verification of the data of payment received by the contractors collected from four divisions²⁶ with the records of five commercial taxes circles²⁷ revealed that six registered contractors had received payment of Rs. 17.42 crore on account of works executed during 2003-04 to 2005-06, but had not filed any return. This resulted in non-levy of penalty of Rs. 4.23 crore on an estimated tax of Rs. 1.41 crore.
- Cross verification of the data of payment received by the contractors collected from five divisions²⁸ with the records of 13 commercial taxes circles²⁹ revealed that 33 contractors had returned the amount of work executed as Rs. 85.85 crore in their returns during 2003-04 and 2005-06. The actual amount of payment received on account of works executed by the contractors worked out to Rs. 253.10 crore as per the data collected from the divisions. However, penalty of Rs. 40.34 crore, though leviable for such concealment of Rs. 167.25 crore, in the returns, was not levied.

²⁴ Rural Engineering Organisation, Road Construction Divisions, Building Construction Divisions and Rural Development Special Divisions.

²⁵ Adityapur, Chaibasa, Gumla and Jamshedpur Urban.

²⁶ Rural Engineering Organisation, Road Construction Divisions, Building Construction Divisions and Rural Development Special Divisions.

²⁷ Deoghar, Palamu, Ranchi East, Ranchi South and Sahebganj.

²⁸ Rural Engineering Organisation, Road Construction Divisions, Building Construction Divisions, Rural Development Special Divisions and Drinking Water and Sanitation.

²⁹ Dhanbad, Dhanbad Urban, Deoghar, Dumka, Gumla, Hazaribag, Jamshedpur, Jamshedpur Urban, Koderma, Ramgarh, Ranchi South, Ranchi West and Sahebganj.

The cases were pointed out to the department in May and August 2008; their reply has not been received (November 2008).

2.3.4 Non-levy of penalty under Jharkhand Value Added Tax Act

Under the Jharkhand Value Added Tax Act, if the prescribed authority is satisfied that the dealer, in order to evade or avoid payment of tax has furnished incomplete and incorrect returns for any period, he shall direct the dealer to pay, by way of penalty, a sum equal to twice the amount of additional tax assessed.

Cross verification of the data of payment received by the contractors collected from four divisions³⁰ with the records of 10 commercial taxes circles³¹ revealed that 17 contractors had received payment of Rs. 51.26 crore on account of works executed during 2006-07. Out of these, 16 contractors had returned the amount of payment received as nil in their returns. The remaining contractor had returned the amount of payment received as Rs. 38.68 lakh, against Rs. 89.40 lakh actually received, in his return. This resulted in non-levy of penalty of Rs. 12.72 crore on escaped turnover.

This was pointed out to the department in May and August 2008; their reply has not been received (November 2008).

2.3.5 Suppression of turnover

Under the Jharkhand Finance Act, if the assessing authority 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 .

2.3.5.1 Cross verification of the data of payment received by the contractors collected from seven divisions³² with the assessment records of 75 dealers of 19 commercial taxes circles³³, revealed that the contractors had received payment of Rs. 231.25 crore against Rs. 61.52 crore shown by them in their sales tax returns between 2001-02 and 2005-06 assessed between June 2003 and April 2008. This resulted in suppression of taxable turnover of Rs. 169.73 crore and consequent short levy of tax of Rs. 60.97 crore including penalty of Rs. 44.61 crore.

³⁰ Building Construction Divisions, Drinking Water and Sanitation, Road Construction Divisions and .Rural Engineering Organisation.

³¹ Adityapur, Chaibasa, Dhanbad, Gumla, Jamshedpur, Jamshedpur Urban, Koderma, Ranchi South, Ranchi West and Sahebganj.

³² Rural Engineering Organisation, Road Construction Divisions, Rural Development Special Division, Building Construction Divisions, Drinking Water and Sanitation, Minor Irrigation and Irrigation.

³³ Adityapur, Chaibasa, Dhanbad, Dhanbad Urban, Deoghar, Dumka, Gumla, Hazaribag, Jamshedpur, Jamshedpur Urban, Koderma, Palamu, Ramgarh, Ranchi East, Ranchi South, Ranchi Special, Ranchi West, Singhbhum and Tenughat.

2.3.5.2 Cross verification of the data of sales collected from the Principal Director of Commercial Audit, Ranchi with the records of a manufacturing dealer of Ranchi South commercial taxes circle, assessed in February and March 2007, revealed that the dealer had disclosed the sales turnover of Rs. 84.98 crore and Rs. 115 crore during 2002-03 and 2003-04 respectively in the sales tax returns. The amounts of sales, as shown in its annual audited accounts of 2002-03 and 2003-04, were Rs. 108.98 crore and Rs. 123.92 crore respectively. This resulted in suppression of turnover of Rs. 24 crore and Rs. 8.92 crore respectively. Non-collection of the data of sales by the department from other departments resulted in underassessment of tax of Rs. 12.25 crore including penalty of Rs. 8.97 crore.

2.3.5.3 Cross verification of the data of payment received by the contractor collected from Income Tax Department with the sales tax returns of a contractor dealer of Ramgarh commercial taxes circle, assessed in June 2006, revealed that the contractor had reflected nil sales turnover in his sales tax return during 2003-04. But his sales turnover as per profit and loss account attached to the income tax return was Rs. 1.43 crore. The concealment of sales turnover of Rs. 1.43 crore resulted in non-levy of tax together with penalty of Rs. 53.30 lakh.

The cases were pointed out to the department in May and August 2008; their reply has not been received (November 2008).

2.3.6 Short levy of tax due to incorrect deduction

Under the Jharkhand Finance Act, certain deductions from gross turnover have been allowed to works/supplies contractors to compute their taxable turnover. Exemption is not admissible on tax deducted at source, royalty, income tax, security deposit and gross profit.

Cross verification of the data/information collected from four divisions³⁴ with the sales tax records of 36 contractors of 12 commercial taxes circles³⁵, assessed between February 2004 and April 2008 revealed that the contractors had claimed deduction of Rs. 51.84 crore from gross turnover on account of tax deducted at source, royalty, income tax, security deposit and gross profits etc. during 2000-01 to 2006-07. The assessing authorities allowed these deductions though these were not permissible under the provisions of Act/Rules. This resulted in short levy of tax of Rs. 5.12 crore including additional tax and surcharge.

After the matter was reported in May 2008, the Government accepted the audit observations in September 2008 and stated that remedial measures in this regard would be taken. Further reply has not been received (November 2008).

2.4 Suppression of sales/purchase turnover

Under the Jharkhand Finance Act, read with the Central Sales Tax Act, if the prescribed authority has reason to believe that the dealer has concealed,

³⁴ Rural Engineering Organisation, Road Construction Divisions, Rural Development Special Divisions and Building Construction Divisions.

³⁵ Adityapur, Deoghar, Dhanbad Urban, Hazaribag, Jamshedpur, Jamshedpur Urban, Palamu, Ranchi East, Ranchi South, Ranchi Special, Ranchi West and Tenughat.

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.

Test check of the records³⁶ of 19 dealers in nine commercial taxes circles³⁷ revealed that the dealers filed their returns for a taxable turnover of Rs. 156.55 crore during 2001-02 to 2005-06. The assessments were finalised on the basis of returns filed by them between December 2004 and July 2007 by the assessing authorities. However, as per the information available in the assessment records of the dealers, the dealers had actually sold and purchased goods worth Rs. 240.68 crore. Thus, the dealers concealed taxable turnover of Rs. 84.13 crore. This resulted in short levy of tax of Rs. 29.83 crore including penalty. A few cases by way of illustration are mentioned below:

(Rupees in crore)

<u>Name of the circle</u> <u>Registration</u> <u>number of the</u> <u>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</u> <u>of tax and</u> <u>minimum</u> <u>penalty</u>
<u>Ranchi South</u> RN(S)-480(R)	<u>2004-05 and</u> <u>2005-06</u> March 2007	The administrative expenses and manufacturing expenses of Rs. 27.45 crore were excluded from the sales turnover.	27.45	14.41
<u>Ranchi East</u> RN (E)-1379 (R)	<u>2001-02,</u> <u>2003-04 and</u> <u>2004-05</u> Between January 2005 and June 2007	As per the utilisation certificate of blue road permits ³⁸ , the dealer had transferred petrol and diesel valued at Rs. 21 crore outside the State but the same was neither accounted for in the returns nor any declaration in form 'F' was furnished.	21.00	8.43
<u>Ranchi East</u> RN(E)-1382 (R)	<u>2002-03</u> November 2006	As per the utilisation certificate of form 'IXC', the dealer had sold refrigerator, television, washing machine etc. valued at Rs. 18.69 crore but had accounted for only Rs. 12.52 crore.	6.17	1.70
<u>Adityapur</u> AP 1501 (R)	<u>2002-03 and</u> <u>2004-05</u> March 2005 and August 2005	As per the annual return furnished by the dealer, the dealer had purchased taxable goods valued at Rs. 35.51 crore but had shown Rs. 27.66 crore in the trading account and was assessed accordingly.	7.85	1.49

³⁶ Utilisation certificate of declaration forms, audited annual accounts, trading and manufacturing accounts.

³⁷ Adityapur, Chirkunda, Dhanbad, Giridih, Koderma, Palamu, Ranchi East, Ranchi South and Singhbhum.

³⁸ Permits issued for transportation of goods outside the State.

Chirkunda CK 58 (R)	2002-03 February 2007	As per the utilisation certificate of blue road permit, the dealer had sold electrical goods valued at Rs. 4.42 crore but accounted for only Rs. 40 lakh and was assessed accordingly.	4.02	1.10
------------------------	--------------------------	--	------	------

After the matter was reported in May 2008, the Government accepted the audit findings in September 2008 and stated that remedial measures in this regard would be taken. Further reply has not been received (November 2008).

2.5 Irregular grant of exemption under Jharkhand Sales Tax

Under the Jharkhand Finance 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.

Test check of the records of Ranchi East and Ranchi South commercial taxes circles revealed that the assessing authorities while finalising the assessments of two dealers between January 2005 and June 2007 for 2001-02 to 2004-05, allowed exemption of tax on intra-State sale of petrol and high speed diesel valued at Rs. 77.91 crore. It was, however, noticed that these sales were not supported by the prescribed declarations in form 'IXD'. The exemption allowed was, therefore, irregular and resulted in short levy of tax of Rs. 14.04 crore.

After the matter was reported in May 2008, the Government accepted the audit observation in September 2008 and stated that remedial measures would be taken for their settlement. Further reply has not been received (November 2008).

2.6 Irregular grant of exemption/concessional rate of tax under Central Sales Tax

Under the Central Sales Tax Act, on inter-State sale of goods which are not supported by the prescribed declaration forms, tax is leviable at twice the rate applicable in the State on the declared goods and at the rate of 10 *per cent* or at the rate applicable in the State whichever is higher in case of other than declared goods. Submission of declaration in form 'C' had been made mandatory from 11 May 2002 even if the sales of goods are exempted from levy of tax or a rate lower than four *per cent*.

Test check of the records of seven dealers in four commercial taxes circles³⁹ revealed that the dealers made inter state sale of briquettes, excavators, coal and iron and steel valued at Rs. 51.19 crore during 2002-03 to 2005-06. Though the sales were not supported by declaration in form 'C', the assessing authorities while finalising the assessment between April 2005 and March 2007, levied tax either at lower rate or allowed exemption from levy of tax. This irregularity resulted in short levy of tax of Rs. 3.05 crore.

³⁹ Giridih, Jamshedpur, Jharia and Tenughat.

After the matter was reported in May 2008, the Government accepted the audit findings in September 2008 and stated that remedial measures would be taken. Further reply has not been received (November 2008).

2.7 Irregular grant of exemption on export sale

Under the Central Sales Tax Act and Rules framed thereunder, no tax shall be payable on the sale or purchase of goods which have taken place in course of export out of territory of India, if the sale or purchase, either occasions such export or is effected by a transfer of documents of title of the goods, provided the sale is substantiated by a certificate in form 'H' issued by the exporter alongwith other documentary evidences of export of such goods.

Test check of the records of Adityapur commercial taxes circle revealed that a dealer made export sale of drills and spares valued at Rs. 58.81 crore during 2003-04 and 2004-05 through different export agencies and claimed exemption on the export sale though the sale was not supported by the prescribed declaration in form 'H'. The assessing authority while finalising the assessment in January and March 2006, allowed exemption from levy of tax. This resulted in allowance of irregular exemption and consequent non-levy of tax of Rs. 5.88 crore.

After the matter was reported in May 2008, the Government accepted the audit findings in September 2008 and stated that remedial measures would be taken. Further reply has not been received (November 2008).

2.8 Non-levy of additional tax and surcharge

Under the Jharkhand Finance Act read with Central Sales Tax 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. Additional tax and surcharge is also leviable on inter state sale of goods not supported by declaration forms.

Test check of the records of five commercial taxes circles⁴⁰ revealed that in the case of five dealers the assessing authorities while finalising the assessments between March 2006 and March 2007 for 2001-02 to 2004-05, did not levy additional tax and surcharge on sale/stock transfer of motor vehicles, cement, diesel and lubricant valued at Rs. 282.87 crore which were not supported by declaration forms. This resulted in non-levy of additional tax and surcharge of Rs. 6.28 crore.

After the matter was reported in May 2008, the Government accepted the audit findings in September 2008 and stated that remedial measures in this regard would be taken. Further reply has not been received (November 2008).

2.9 Allowance of excess exemption of sales tax

Under the Jharkhand Finance Act, read with the Central Sales Tax Act and notifications issued thereunder, the Government exempted manufacturing units from levy of sales tax on sale of finished goods within the state and in the course of inter state trade or commerce for a specified period or prescribed

⁴⁰ Dumka, Jharia, Ranchi East, Ranchi West and Singhbhum.

monetary limit whichever is earlier. Assessments of exempted units are to be completed notionally at the prescribed rate of the goods to watch the prescribed monetary limit of exemption.

Test check of the records of three commercial taxes circles⁴¹ revealed that the assessing authorities while finalising the assessments of six assesseees for 1998-99 to 2005-06 between June 2001 and November 2007 allowed exemption of sales tax of Rs. 25.93 crore on the sale of finished goods beyond the prescribed monetary limit of Rs. 20.40 crore. This resulted in allowing of excess exemption of sales tax of Rs. 5.53 crore.

After the matter was reported in May 2008, the Government accepted the audit findings in September 2008 and stated that remedial measures would be taken. Further reply has not been received (November 2008).

2.10 Incorrect determination of gross turnover

Under the Jharkhand Finance Act, gross turnover 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.

Test check of the records of four commercial taxes circles⁴² revealed that in case of four dealers, gross turnover for 2002-06 was determined as Rs. 138.34 crore instead of Rs. 165.93 crore. The taxable turnover of Rs. 26.59 crore on account of MODVAT receipts were incorrectly excluded by the assessing authorities while finalising the assessments between January 2005 and July 2007. This resulted in short levy of tax of Rs. 3.78 crore.

After the matter was reported in May 2008, the Government accepted the audit findings in September 2008 and stated that remedial measures in this regard would be taken. Further reply has not been received (November 2008).

2.11 Mistake in computation of tax

Test check of the records of Jharia and Singhbhum commercial taxes circles revealed that in case of two dealers, assessed between March 2006 and February 2007 for 2002-03 and 2003-04, the tax was erroneously levied as Rs. 9.04 crore instead of correct amount of Rs. 12.06 crore due to mistake in computation. This resulted in short levy of tax of Rs. 3.02 crore.

After the matter was reported in May 2008, the Government accepted the audit findings in September 2008 and stated that remedial measures in this regard would be taken. Further reply has not been received (November 2008).

2.12 Application of incorrect rate of tax

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

Test check of the records of Jamshedpur and Ranchi West commercial taxes circles revealed that in case of three dealers, the assessing authorities while

⁴¹ Adityapur, Deoghar and Giridih.

⁴² Adityapur, Godda, Jamshepur and Jharia.

finalising the assessment for 2002-03 to 2004-05 between November 2005 and February 2007 levied tax at incorrect rate on sale of goods valued at Rs. 83.22 crore. This resulted in short levy of tax of Rs. 2.85 crore as mentioned below:

(Rupees in lakh)

Sl. No.	Name of circle No. of dealers	Assessment year Month of assessment	Nature of observation	Short levy of tax + AT+SC
1.	Jamshedpur 1	2002-03 June 2006	The dealer sold chemicals valued at Rs 38.89 crore. The dealer was liable to pay tax at the rate of three <i>per cent</i> instead of two <i>per cent</i> levied by the assessing authority.	43.21
2.	Ranchi West 1	2003-04 and 2004-05 Between May and November 2005	The dealer sold food products valued at Rs. 1.59 crore. The dealer was liable to pay tax at the rate of 12 <i>per cent</i> instead of 10 <i>per cent</i> .	3.52
3.	Jamshedpur 1	2002-03 February 2007	The dealer sold machine and store valued at Rs. 42.74 crore. The dealer was liable to pay tax at the rate of eight <i>per cent</i> instead of four <i>per cent</i> .	237.97
Total				284.70

After the matter was reported in May 2008, the Government accepted the audit findings in September 2008 and stated that remedial measures in this regard would be taken. Further reply has not been received (November 2008).

2.13 Irregular allowance of concessional rate of tax

Under the Jharkhand Finance Act, registered dealers are allowed to purchase goods for use in manufacture or processing or for use in mining of goods for sale at concessional rate of tax on furnishing declaration in form 'IX'. It has been judicially held⁴³ that the goods, which are not directly consumed/used in the process of manufacture of other goods, cannot be treated as raw material.

Test check of the records of Ranchi East and Singhbhum commercial taxes circles revealed that the assessing authorities while finalising assessment of six dealers for 2001-02 to 2005-06 between January 2006 and June 2007, incorrectly allowed concessional rate of tax on sale of light diesel oil, cement, spare parts of excavator and heavy earth moving machines and gear box valued at Rs. 16.52 crore on production of declaration in form 'IX' by the assesseees. Since light diesel oil, cement, spare parts of excavator, heavy earth moving machines and gear box were not directly used in the process of mining, the assesseees were liable to pay tax on these items. The incorrect grant of concessional rate of tax resulted in short levy of tax of Rs. 1.10 crore.

⁴³ Commissioner of sales tax Vrs Rewa Coal Field (1999) civil appeal No. 3319 of 1981, 22 April 1999 (SC).

After the matter was reported in May 2008, the Government accepted the audit findings in September 2008 and stated that remedial measures would be taken for their settlement. Further reply has not been received (November 2008).

2.14 Non-levy of penalty for excess collection of tax

Under the Jharkhand Finance Act, 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 of the said provision, the prescribed authority shall direct the dealer to pay, by way of penalty, a sum equal to twice the amount of tax so collected.

Test check of the records of four commercial taxes circles⁴⁴ revealed that in case of five dealers, tax collected was in excess of their tax liability by Rs. 21.81 lakh during 2002-03 and 2004-05. The assessing authorities while finalising the assessments between July 2006 and April 2007, did not levy penalty. This resulted in non-levy of penalty of Rs. 43.62 lakh.

After the matter was reported in May 2008, the Government accepted the audit findings in September 2008 and stated that remedial measures in this regard would be taken. Further reply has not been received (November 2008).

2.15 Short levy of tax

Under the provisions of the Jharkhand Finance Act, sale tax on goods shall be levied only at that point or points in the series of sales as may be specified by the State Government. By a notification issued in December 1977, petrol, high speed diesel, light diesel oil and aviation spirit are exempted from levy of tax on sale to other oil manufacturing companies, but superior kerosene oil has not been included under this notification.

Test check of the records of Ranchi East commercial taxes circle revealed that the assessing authority while finalising the assessment of a dealer for 2001-02 and 2004-05 between January 2005 and June 2007, irregularly allowed exemption from levy of tax on sale of superior kerosene oil valued at Rs. 2.55 crore to other oil manufacturing companies. This resulted in short levy of tax of Rs. 18.94 lakh.

After the matter was reported in May 2008, the Government accepted the audit findings in September 2008 and stated that remedial measures in this regard would be taken. Further reply has not been received (November 2008).

2.16 Irregular allowance of exemption

Under the Jharkhand Finance Act, where exemption from levy of tax on any sale or purchase of goods is claimed by dealer, the burden of proof shall lie on such dealer and the prescribed authority may require the dealer to substantiate the claim in the prescribed manner. It has been judicially held⁴⁵ that coal and coal briquettes are two different commercial commodities and briquettes, made from tax suffered coal, are taxable separately.

⁴⁴ Adityapur, Deoghar, Ranchi East and Singhbhum.

⁴⁵ Sonebhadra Fuels Vrs. Commissioner of Trade Tax UP 147 STC 594 SC (2006).

Test check of the records of Tenughat commercial taxes circle revealed that two dealers had sold briquettes valued at Rs. 2.31 crore between 2004-05 and 2005-06. The assessing authorities while finalising the assessment between February 2006 and January 2007, irregularly allowed exemption from levy of tax on the ground that briquette was made out of tax paid slurry. But briquettes made out of tax suffered slurry, being a different commodity, is taxable at the rate of eight *per cent*. Incorrect allowance of exemption resulted in non-levy of tax of Rs. 18.45 lakh including surcharge.

After the matter was reported in May 2008, the Government accepted the audit findings in September 2008 and stated that remedial measures in this regard would be taken. Further reply has not been received (November 2008).

2.17 Short imposition of penalty for non-payment of admitted tax

Under the Jharkhand Finance Act, if a registered dealer 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 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 part thereof.

Test check of the records of Singhbhum commercial taxes circle revealed that an assessee did not pay the admitted tax of Rs. 7.57 lakh for 2002-03. The assessing authority while finalising the assessment in May 2005, imposed lumpsum penalty of Rs. 1.50 lakh. The amount of penalty worked out to Rs. 11.04 lakh for non-payment of the admitted tax as per provision of the Act. This resulted in short levy of penalty of Rs. 9.54 lakh

After the matter was reported in May 2008, the Government accepted the audit findings in September 2008 and stated that remedial measures in this regard would be taken. Further reply has not been received (November 2008).