

CHAPTER – II: Taxes on Sales, Trade etc.

2.1 Results of audit

Test check of records relating to assessments and refunds of sales tax in various commercial taxes circles, conducted in audit during the year 2002-2003, revealed under assessment of tax of Rs 205.14 crore in 317 cases which broadly fall under the following categories: -

(Rupees in crore)			
Sl. No.	Category	No. of cases	Amount
1	Irregular determination of gross turnover	37	19.77
2	Irregular grant of exemption	65	56.68
3	Non-levy of penalty	49	14.96
4	Non/short levy of additional tax/ surcharge	50	10.03
5	Irregular allowance of concessional rate of tax	59	4.84
6	Application of incorrect rate of tax	20	26.37
7	Review: Accountal and utilistion of Declaration Forms/ Certificates	1	53.35
8	Other cases	36	19.14
Total		317	205.14

During the year 2002-2003, the concerned Department accepted under assessment, etc. of Rs 58.27 crore involved in 18 cases of which 14 cases involving Rs 58.24 crore had been pointed out in audit during 2002-2003 and rest in earlier years.

A few illustrative cases including a Review, **Accountal and Utilisation of Declaration Forms/ Certificates** involving tax effect of Rs 114.13 crore are given in the following paragraphs:-

2.2 Review: Accountal and Utilisation of Declaration Forms/ Certificates

Highlights

- In nine circles, 1,19,434 obsolete/invalid forms were in stock. No initiative had been taken by the Department to destroy these forms. Misuse of these forms cannot be ruled out.

[Paragraph 2.2.6]

- In 11 circles, suppression of purchase turnover valued at Rs 10.19 crore by 26 dealers was not detected due to non- existence of system of cross verification and resulted in underassessment of tax of Rs 4.85 crore (including penalty).

[Paragraph 2.2.15]

- In six circles, 17 dealers suppressed purchase turnover valued at Rs 19.22 crore which was not detected due to non-verification of utilisation certificate of declaration forms at the time of finalisation of assessment. This resulted in under assessment of tax amounting to Rs 5.23 crore including penalty.

[Paragraph 2.2.18]

Introduction

2.2.1 Under provisions of the Bihar Finance (BF) Act, 1981, as adopted by Government of Jharkhand, and the Central Sales Tax (CST) Act, 1956 and rules/ notifications issued thereunder, different declaration forms are prescribed for claiming exemption from levy of tax or to be taxed at concessional rate of tax and for movement of goods from one place to another. Certificates i.e. non-statutory forms are prescribed in pursuance of the provisions of different industrial policies for claiming exemption from levy of sales tax on purchase of raw materials as well as on finished products. The statutory forms are printed in the security press and issued to the divisions/ circles by the Commissioner, Commercial Taxes Department of the State for issuing them to the registered dealers. The non-statutory forms i.e. certificates bearing printed book number is printed locally by the circles. These are authenticated by the incharge of the circle. Both the dealer and the Department are responsible for keeping records of the non-statutory forms.

The CST (Bihar) Rules, 1957 and the Bihar Sales Tax Rules, 1983 provide for the custody and maintenance of records of statutory forms and matter incidental thereto with the Department. The dealer using declaration forms issued to him against transactions made within the state or between states is

required to maintain and submit an account of receipt, issue and use of such declaration forms to the circles.

Audit Objectives

2.2.2 Records maintained in the offices of the Commissioner of Commercial Taxes of Jharkhand and three¹ out of five divisions including 10² out of 28 circles were test checked in audit between January and August 2003 with a view to:-

- evaluate the adequacy, reliability and effectiveness of the system of receipt, issue and use of declaration³ forms/certificates and
- ascertain whether sufficient internal controls exist to ensure proper use of the forms in order to avoid leakage of revenue.

Organisational set up

2.2.3 At the apex level, the Commissioner of Commercial Taxes (CCT) assisted by Joint Commissioner of Commercial Taxes (JCCT) and Deputy Commissioner of Commercial Taxes (DCCT) at the headquarters is responsible, *inter alia*, for the administration of printing, receipt and distribution of declaration forms to all the circles of Jharkhand. The State is divided into five divisions, each under the charge of a JCCT who is responsible for receipt and issue of statutory declaration forms to the circles. The divisions are further divided into 28 commercial taxes circles, each under the charge of a DCCT/ Assistant Commissioner of Commercial Taxes (ACCT), assisted by Commercial Taxes Officer (CTO) who is responsible for receipt and distribution of declaration forms to dealers as well as for watching use of these forms. The DCCT is also responsible for authentication and issue of certificates i.e. non-statutory forms to dealers as well as for watching the use of such certificates. Apart from this, there is an Investigation Bureau (IB) headed by a JCCT to assist the CCT at Headquarters level for verification of

¹ Dhanbad, Jamshedpur and Ranchi,

² Adityapur, Dhanbad, Dhanbad Urban, Jamshedpur, Jamshedpur Urban, Ranchi (East), Ranchi South, Ranchi Special, Ranchi (West) and Singhbhum

³ 'Ga'- Form of declaration given by owners of industries for purchase of raw materials free of sales tax or purchase tax.

C- Form of declaration given by purchasing dealer to selling dealer in inter-State trade.

D- Form of declaration used for transaction entered with government

IX – 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.

IXC- Form of declaration issued by the seller to the purchaser as a proof that sales tax had been levied at first point of sale.

'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 such product.

central declaration forms/ certificates, and a DCCT (IB) at divisional level to assist the JCCT (Administration) for a verification of state declaration forms/certificates.

Lack of internal control in monitoring receipt, issue and maintenance of accounts of declaration form

2.2.4 Non-prescription of reports/returns

Test check of accounts of receipt, issue and use of declaration forms/certificates revealed that neither any report/ returns were prescribed by the Department for submission to the JCCT (Admn.) of a division or to the CCT of the state regarding receipt, issue and use of declaration forms/certificates by the circle nor was any report in this regard found to have been furnished by the circle to the above authorities. In the absence of these returns/ reports, monitoring of accountal and utilisation of declaration forms was lacking as would be revealed from the following paragraphs .

Mistake in maintenance of records

A stock register is to be maintained separately for each set of forms by the CCT, JCCT at divisional level and by each circle. Through this register, receipts, issue and balance of these forms are watched. On receipt from the press, declaration forms are entered in stock registers. Accounts of such receipt are maintained in each division and each circle, and contain details like number of books, forms' serial number, the total number of forms etc. Circle incharge is responsible for correct accountal of these forms.

Non-accountal of forms

2.2.5 During the course of audit, it was noticed that there was shortage of 240 declaration forms, 50,861 declaration forms were not carried forward in the relevant registers as detailed below:

Sl. No	Name of the Circle	Nature of stock register	Discrepancies / irregularities noticed in audit
<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>
1	Jamshedpur	Form IX	325 leaves were shown as closing balance on 30.12.1997 but the balance was not carried over subsequently, though these became obsolete w.e.f. 1.2.1998.
		Form IX	7,500 leaves, being part of the balance on 31.12.1997 was not carried over. These became obsolete vide SO 10 with effect from dated 1.2.1998. These were also not destroyed.

1	2	3	4
2	Adityapur	Form C	Opening balance of leaves was shown as 4,687 as on 14.5.1999, 4,682 leaves were distributed between 16 May 1999 to 31 March 2000, however, the closing balance was shown as 'Nil'. Thus there was a discrepancy of 5 forms.
		Form IX	12,245 leaves were shown as closing balance as on 29.1.1998 which became obsolete with effect from 1.2.1998 but the closing balance of the obsolete form was 12,010 leaves on 10.10.1998. Thus, there was a discrepancy of 235 leaves.
		Form IX	250 leaves received on 13.08.1998 from Singhbhum Circle were issued to a dealer without entering the transaction into stock register.
3	Jamshedpur Urban	Form IX	3,375 leaves of obsolete Form IX were taken into account by the ACCT on 27.05.1999 but while handing over charge on 24.07.2001, the position of the old stock was not mentioned.
		Form IX	12,688 leaves of obsolete Form IX were taken into account by the ACCT on 27.05.1999 but while handing over charge on 24.07.2001 the position of the old stock was not mentioned.
4	Ranchi East	Form IX	Balance of old obsolete forms on 20.02.1998 was 8,823 which was not taken into account in OB of new forms.
		Form IX C	Balance of old obsolete form, on 20.02.1998 was 9,236 which was not taken into account in OB of new forms.
		Form XVIII B	Balance of old obsolete forms on 20.02.1998 was 8,914 which was not taken into account in OB of new forms.

No system was found in the Department for periodical verification and reconciliation of declaration forms. The non- accountal of declaration forms is fraught with the risk of their misuse which could lead to loss of substantial government revenue. The Department should devise a method for correct accounting of these declarations.

Declaration form declared obsolete but not destroyed

2.2.6 Total number of forms declared invalid was not made available to audit. A test check of nine circles revealed that though 1,19,434 forms were declared invalid, these were not destroyed. There was nothing on record to indicate whether these had even been marked cancelled or invalid. No time limit had been fixed for destruction of obsolete forms.

It was further noticed that 480 obsolete forms IX and IXC and 1340 obsolete road permits were issued to different dealers between 1 and 24 February 1998 in the concerned tax circle at Ranchi which was irregular. This indicates that the Department lacked control over the obsolete forms and further misuse could not be ruled out. The Department should develop a proper system for monitoring the cancellation /destruction of these forms.

Non furnishing of utilisation certificates

Under the provisions of the CST Act, 1956 and BF Act, 1981 and rules made and notifications issued thereunder, no fresh form is to be issued to a dealer unless he furnishes the utilisation certificates of forms issued earlier.

2.2.7 Scrutiny in audit of ledger and folder of dealers revealed that a dealer of the commercial taxes circle at Jamshedpur surrendered his registration certificate (RC) on 31 March 2000 without furnishing the utilisation certificate of two IX C forms and 50 XXVIII B forms issued to him on 10 March 2000 and 16 March 2000 respectively. Again on 5 March 2002, i.e. after surrendering his RC, five IX C forms were found to have been issued to the dealer without obtaining the utilisation certificate for forms already issued.

2.2.8 A registered dealer is authorised to use declaration forms for availing of exemption from levy of tax or for availing of special/concessional rate of tax by issue of the same to another registered dealer within/ outside the state. He is required to furnish utilisation certificate against the use of such declaration forms/ certificates.

In seven circles⁴, it was noticed from the folders of declaration forms of 116 out of 200 dealers test checked, that the dealers did not furnish utilisation certificate for the forms issued to them. These included Form C, Form IX, Form IXC, Form F and Form E₁. The delay ranged between 3 and 16 years. In the absence of utilisation certificate, it was not clear as to how the Department ensured proper usage.

Misuse of declaration forms

2.2.9 Under the CST Act, 1956, if a registered dealer falsely represents, when purchasing any goods, that the said goods are covered by his registration certificates, or after purchasing such goods for any purpose mentioned in his registration certificate utilises the same for some other purposes, he is liable to be prosecuted. The authority competent to grant the registration certificate may, in lieu of the prosecution, impose penalty for a sum not exceeding one

⁴ Dhanbad, Dhanbad Urban, Jamshedpur, Ranchi East, Ranchi South, Ranchi West and Ranchi Special.

and a half times the tax which would have been levied had the sale been a sale not supported by the prescribed declaration in form 'C'.

Information collected from commercial taxes circle, Singhbhum, revealed that three manufacturing dealers of mustard oil and timber purchased mustard seeds and timber at concessional rate for use in manufacture against Form C from outside the state during the period 1997-1998 to 2000-2001, which was assessed between October 1999 and October 2001. However, instead of utilising the same in manufacture, the dealers sold the goods valued at Rs 75.93 lakh on consignment basis/at concessional rate of tax to other manufacturer outside the state/within the state respectively instead of using them in the manufacture of the goods. The assessing authority failed to detect this while finalising the assessment resulting in non-levy of tax of Rs 28.44 lakh including penalty of Rs 16.83 lakh.

2.2.10 In two commercial taxes circles of Dhanbad and Ranchi Special, four dealers were allowed exemption between 1996-97 and 2000-01 on the sale of vanaspati valued at Rs 2.84 crore, on the ground that the goods were exempted from levy of sales tax. However, no certificate 'Cha' was furnished in support of the sale. This resulted in non-levy of tax of Rs 28.36 lakh.

2.2.11 As per government notifications issued in December 1997 and January 1998 under the BF Act, 1981, on sale of shoe brush and polish, indigo, robin blue, watches, conveyor belt, old drum, brass, bronze and part thereof, tax is leviable at the first point of sale in the state at the prescribed rate. Form IX is used in case of goods taxable at the last point of sale.

In three circles⁵, in case of three dealers on sale of shoe, brush and polish indigo, robin blue, watches, conveyor belt, old drum, brass and bronze valued at Rs 1.34 crore on the strength of form IX, during the period 1997-1998 and 1999-2000, assessed between August 2001 and March 2002, tax was not levied at the first point of sale. The sale of goods against form IX was incorrect and resulted in non-realisation of Rs 16.91 lakh including additional tax and surcharge.

Inadmissible allowance of concessional rate of tax

2.2.12 Under provisions of the BF Act, 1981 registered dealers are allowed to purchase goods required by them directly for use in manufacture or processing or for use in mining of goods for sale, at concessional rate of tax on furnishing prescribed declaration in form IX. It has been judicially held⁶ that goods which are supporting devices in the process of mining cannot be treated as raw materials.

⁵ Dhanbad Urban, Jamshedpur Urban and Ranchi East.

⁶ In the case of Rewa Coal Field Vrs. C.C.T. Madhya Pradesh.

In two commercial taxes circles of Dhanbad Urban and Hazaribagh, two dealers purchased shovel and diesel generating sets valued at Rs 64.06 crore during the period 1995-1996 to 1997-1998 at concessional rate of tax on the strength of form IX. Since the goods cannot be treated as raw material in the process of mining, the application of concessional rate of tax was incorrect. This resulted in short levy of tax amounting to Rs 3.56 crore.

2.2.13 If the goods purchased on Form IX are utilised by the purchaser for any purpose other than those specified in his registration certificate, the purchaser is liable to pay the differential rate of tax after deducting the concessional rate of tax from the specified rate of tax under section 12 of the BF Act, 1981.

In Ranchi South Circle, a manufacturer and seller of timber reel purchased timber reel valued at Rs 72.27 lakh at concessional rate of tax as the sales were supported by Form IX during the period 1996-1997 to 1998-1999. However, he sold the same at concessional rate of tax instead of utilising them in manufacture of timber reel in contravention of the provisions. The Assessing Officer while finalising the assessment order did not levy the differential tax of Rs 4.01 lakh.

Incorrect grant of exemption from levy of tax

2.2.14 In seven commercial taxes circles, in case of 14 dealers, incorrect allowance of exemption during the period 1997-1998 to 2001-2002, assessed between January 2001 and November 2002, on goods valued at Rs 110.96 crore resulted in non- levy of tax amounting to Rs 7.13 crore as detailed below:-

(Rupees in crore)						
Sl. No.	Circle No. of dealer	Period Date of assessment	Name of declaration form	Amount of irregular exemption	Non/short levy of tax	Nature of observation
1	2	3	4	5	6	7
1	Jamshedpur 1	1999-2000 02/ 2002	IX D	8.13	0.90	Exemption was incorrectly allowed without production of form IX D / certificate from the transferee dealer though the assessments were completed after declaration form IX D was prescribed in February 2000. Moreover, there was nothing on record to indicate that the dealers had transferred goods to their branches.
	Ranchi (Spl.) 1	1997-98 & 1998-99 02 & 05/ 2002				

<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>	<i>6</i>	<i>7</i>
2	<u>Dhanbad</u> 2	<u>2001-02</u> 9/ 01 & 11/02	IX C	9.33	1.87	Exemptions were incorrectly allowed on invalid and duplicate form IX C which were liable to be rejected.
	<u>Ranchi Special</u> 1	<u>1998-99</u> 06/2001				
	<u>Singhbhum</u> 1	<u>2000-01</u> 02/ 2002				
	<u>Giridih</u> 4	<u>2000-01</u> between 11/2001 & 5/2002				
3	<u>Ranchi Special</u> 2	<u>1997-98 to</u> <u>1999-2000</u> between 1/01 and 9/01	Cha	9.82	0.98	Exemption was allowed on sales not supported by certificate 'Cha' though it was mandatory.
	<u>Ranchi East</u> 1	<u>1998-99</u> 05/2001	Ga	0.63	0.06	Exemption was incorrectly allowed on declaration form 'IX' instead of certificate 'Ga'.
4	<u>Bokaro</u> 1	<u>1997-98</u> 3/02	Certificate Ga	83.05	3.32	Exemption was incorrectly allowed on invalid/ defective certificate 'Ga' which was liable to be rejected.
Total				110.96	7.13	

Suppression of sales turnover

2.2.15 Under the BF Act, 1981 read with CST Act, 1956 as amended, every registered dealer shall furnish a true and complete return in respect of all his transaction. If the prescribed authority is satisfied that reasonable grounds exist to believe that any turnover of a dealer has escaped assessment, the said authority may, within eight years from the date of assessment or reassessment, assess or reassess the amount of tax due from the dealer in respect of such turnover. 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. The dealer shall also be punishable with imprisonment for a term which shall not be less than six months but which may extend to one year and/or fine not exceeding rupees one thousand five hundred.

Cross verification of records of 26 dealers of 11 circles⁷ with the information collected from 15 manufacturers of six states⁸, revealed that the dealers purchased goods valued at Rs 16.64 crore between 1995-1996 and 2000-2001, assessed between November 1997 and September 2002, from the manufacturers but accounted for Rs 6.45 crore in their books. The Department failed to detect the suppression of turnover valued at Rs 10.19 crore. This resulted in short levy of tax amounting to Rs. 1.30 crore. Penalty of Rs 3.55

⁷ Chaibasa, Dhanbad, Dhanbad Urban, Giridih, Hazaribagh, Jamshedpur, Jharia, Katras, Koderma, Ranchi Special and Singhbhum.

⁸ Andhra Pradesh (5), West Bengal (2), Tamil Nadu (2), Karnataka (1) Madhya Pradesh including Chattisgarh (5).

crore was also leviable for suppression of turnover. Thus, inaction on the part of the Department to get the declaration forms cross verified resulted in short levy of tax of Rs 4.85 crore.

Unauthorised declaration forms used by registered dealers

2.2.16 Under the Central Sales Tax Rules, 1957, if any declaration form is lost, destroyed or stolen, it is mandatory to issue public notice of the loss, destruction or theft. The commissioner, thereafter, by notification declares the forms invalid with effect from such date as may be specified in the notification. The receipt of goods against such declaration will, in addition to tax, attract penalty to the extent of three time but not less than an amount equal to the amount of tax leviable on such turnover.

In two circles of Jharia and Singhbhum, two dealers received vanaspati and fire works valued at Rs 21.50 lakh during 1995-96 to 1997-98, assessed between November 1998 and May 2000, from three manufacturers of West Bengal and Tamil Nadu against unauthorised declaration forms⁹. The dealers were liable for levy of tax amounting to Rs 8.69 lakh including penalty of Rs 6.37 lakh.

Invalid/fake forms used by unregistered dealers

2.2.17 It was noticed that eight unregistered consignees/purchasers falling under the jurisdiction of four circles¹⁰ received goods¹¹ from four manufacturers of Madhya Pradesh and Tamil Nadu during 1995-96 to 1999-2000 against fake declaration forms/road permits. The dealers were not taxed at all. Thus, failure of the Department to detect the unregistered dealers resulted in a turnover of Rs 2.18 crore escaping assessment and consequent non levy of tax of Rs 32.93 lakh including penalty of Rs 9.81 lakh.

Non-verification of utilisation certificate of different declaration forms at the time of finalisation of assessment

2.2.18 Under provisions of the BF Act, 1981, read with the CST Act, 1956 and rules made thereunder, every registered 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 an utilisation certificate to the issuing circle.

⁹ Unauthorised declarations forms are those declaration forms which were not issued to the dealers as per the records maintained in the circle and found to have been used by the dealer against purchase of goods from outside State.

¹⁰ Giridih, Hazaribagh, Jharia and Koderma.

¹¹ turmeric, fire works and soap and detergent.

A cross verification of utilisation certificates¹² with the trading account of 17 dealers in six commercial taxes circles¹³ revealed that the dealers purchased goods¹⁴ valued at Rs 19.22 crore during the period 1996-97 to 2000-2001, and were assessed between July 1998 and May 2002. The dealers did not show the sales in their returns. Thus, turnover of Rs 19.22 crore was suppressed by the dealers. The Department failed to detect the suppression. Consequently there was short levy of tax amounting to Rs 5.23 crore including penalty of Rs 3.84 crore.

Non-enforcement of mandatory provision of cross verification of intra-state transactions

2.2.19 Under provisions of the BST Rules, 1983, made under provisions of the BF Act, 1981, purchases/sales made against issue of declaration in Form IX and IX C is to be accompanied by a statement in Form XIII and XIII A in duplicate to be furnished by the selling dealers with their returns. One copy of the statement is to be forwarded to the circle of the purchasing dealers to be placed on his record on the basis of which quantum of purchases is determined.

In the course of review, it was noticed that not in a single case test checked was such statement in Form XIII¹⁵ & XIII A¹⁶ were found to have been placed on record and transactions cross verified. This reflects that though the provisions as enshrined in the rules are mandatory, these are not complied with indicating their non-enforcement by the Department.

However, cross verification by audit in respect of declaration form IX and IXC revealed fraud and evasion of tax amounting to Rs 2.24 crore including penalty of Rs 1.66 crore as pointed out in the following cases.

- Cross verification of records of three purchasing dealers of three commercial taxes circles¹⁷ with the selling dealers revealed that the dealers purchased goods valued at Rs 88.56 crore while they accounted for Rs 80.24 crore in their accounts. The dealers were assessed accordingly between March 2002 and March 2003. Thus, failure of the Department to cross check the transactions resulted in non-levy of tax of Rs 1.47 crore including penalty of Rs 1.10 crore.

¹² Utilisation certificate furnished in support of Form "F", "C" and "Road permit"

¹³ Chirkunda, Dhanbad Urban, Jamshedpur Urban, Ranchi East, Ranchi Special and Singhbhum.

¹⁴ Iron and steel, food products, bearings, motor parts, electrical goods, scooter & parts, motor car, dairy products, cement, watches and *mahua* flower.

¹⁵ Statement of sales to registered dealers.

¹⁶ Statement of purchases from registered dealer.

¹⁷ Bokaro, Ranchi South and Singhbhum.

- Cross verification of form IXC, 'Cha', submitted by purchasing dealers with the records of selling dealers revealed that in three commercial taxes circles,¹⁸ five dealers purchased goods valued at Rs 2.90 crore during the period 1997-98 to 2000-01 against which goods valued at Rs 41.71 lakh were accounted for. This resulted in non-levy of tax amounting to Rs 77.23 lakh including penalty of Rs 56.53 lakh.

Loss of revenue due to incorrect interpretation of notification

2.2.20 As per notification issued under the BF Act, 1981, inter-state sales of vanaspati are exempted from tax so long as they fulfill the provisions of CST Act, 1956. One of the conditions of CST Act is furnishing of 'C' form.

In Deoghar Circle, a dealer engaged in manufacturing and selling of vanaspati was allowed exemption on sales made in the course of inter-State trade and commerce valued at Rs 64.90 crore during 1995-96 to 1999-2000, assessed between August 2000 and June 2001, without production of Form 'C'. This resulted in under assessment of tax amounting to Rs 7.20 crore.

Non-levy of Entry Tax

2.2.21 Under provisions of the Bihar Tax on Entry of Goods Act, 1993 (BTEG), as adopted by the Government of Jharkhand and rules made thereunder, entry tax on motor vehicles is leviable at the rate of four per cent upto 24 May 2001 and five per cent thereafter.

Cross verification of information gathered from Central Coalfields Ltd., Ranchi with the records of five commercial taxes circles revealed as under:

- In two commercial taxes circles¹⁹, four dealers engaged in mining of coal, purchased dumper valued at Rs 18.90 crore during 2001-02 against use of form C without payment of entry tax. The Department also failed to levy the same while finalising the assessment. Thus, non-levy of entry tax resulted in loss of revenue amounting to Rs 94.50 lakh.
- Further, in five commercial taxes circles²⁰, 12 dealers purchased dumper valued at Rs 262.24 crore during 1995-96 to 2001-02 against use of declaration form 'C' and road permit Form XXVIII B. The dealers had not paid any entry tax on the purchase of goods. The Department also failed to detect non-payment of entry tax. This resulted in non-levy of entry tax of Rs 10.49 crore.

¹⁸ Bokaro, Dhanbad Urban and Jamshedpur

¹⁹ Dhanbad Urban and Hazaribagh.

²⁰ Chaibasa, Dhanbad Urban, Giridih, Hazaribagh and Tenughat.

Potential loss of revenue due to non - production of utilisation certificate

2.2.22 Under provisions of the BF Act, 1981 read with the CST Act, 1956 and rules made thereunder, every registered dealer is required to maintain a register of declaration forms which *inter alia* would contain all the details of such declaration forms. The dealers are also required to furnish the utilisation certificate for all the declaration forms issued by the circle.

During the course of review it was noticed that in the commercial taxes circle, Jamshedpur, the Assessing officer, while finalising the assessment of a dealer for 1997-98 on 26 March 2002, raised an additional demand of Rs 10.51 crore as the purchases were not supported by utilisation certificates for 70,519 declaration forms IX, XXVIII B, C and F issued to the dealer during the year. Aggrieved by this, the dealer went for appeal wherein it was decided in January 2003 that the additional demand raised should be withdrawn as the dealer in his letter dated 31 January 2002 had stated that the utilisation certificates were being submitted. A perusal of the records revealed that no such certificates were placed on record. The Department neither went for an appeal nor re-assessed the case which might result in a potential revenue loss of Rs 10.51 crore.

Recommendation

2.2.23 The audit findings revealed that the Administrative Authorities were not enforcing the statutory provisions regarding allowances of deduction on the strength of various forms. Deductions were allowed against unsigned, invalid and incomplete forms without proper scrutiny/ cross verification.

Government may consider evolving a sound mechanism-

- to ensure prompt dissemination of information in respect of invalid declarations forms with a view to curb their misuses;
- for scrutiny and cross verification of forms before allowance of exemptions or concessional rate of tax.

The above findings were reported to the Government in September and December 2003; their final reply is awaited (October 2004).

2.3 Irregularities in supply of goods to Railways by the suppliers/contractors

Suppression of sales turnover

The Bihar Finance Act, 1981 as adopted by Jharkhand Government, read with the Central Sales Tax Act, 1956, provides that if assessing authority has reason to believe that a dealer has wilfully concealed any amount of turnover to deprive the Government of tax due, the dealer shall be liable to pay a sum not exceeding three times but not less than the amount of tax leviable or assessed on the escaped turnover.

Supply of Railway Sleepers

2.3.1 As per the records of South Eastern Railway, Kolkata, 8,25,456 concrete sleepers valued at Rs 68.94 crore were supplied by three manufacturers of railway concrete sleepers registered in two commercial taxes circles (Dhanbad Urban and Singhbhum) during the period 1997-98 to 2001-02. However, the manufacturers, assessed between September 2000 and July 2002, disclosed sale value of concrete sleepers at Rs 56.25 crore. Thus, sale of Rs 12.69 crore was suppressed by them by short accounting the sale value of goods in their accounts which resulted in under assessment of tax amounting to Rs 4.72 crore including penalty of Rs 3.46 crore.

On this being pointed out, the Assessing Officers stated that necessary action would be taken after examination of the cases.

Escaped turnover before assessment

2.3.2 In the commercial taxes circle at Adityapur, a dealer filed his return for the year 2002-03 for supply of stone ballast valued at Rs 3.11 lakh to the South Eastern Railway. However, as per information obtained from South Eastern Railway, Kolkata the dealer had supplied stone ballast valued at Rs 1.16 crore. This resulted in short payment of tax amounting to Rs 46.86 lakh including penalty of Rs 34.29 lakh.

On this being pointed out, the department partially raised an additional demand of Rs 1.03 lakh in November 2003. Further reply and report on realisation are awaited (October 2004).

Short accountal of stone ballast

2.3.3 In the commercial taxes circles at Adityapur and Chakradharpur, cross verification of records of two suppliers of stone ballast to the Railways for the period 1999-2000 to 2001-02, assessed in 2001 and January 2002, with the supply figures obtained from Adra and Chakradharpur Divisions of South Eastern Railway, Kolkata, revealed that turnover valued at Rs 2.74 crore was suppressed by them by short accounting of goods in their accounts. This resulted in under assessment of tax amounting to Rs 1.13 crore including penalty of Rs 82.93 lakh.

On this being pointed out in April 2003 the Assessing Officer, Adityapur Circle revised the assessment and raised additional demand of Rs 1.34 lakh in September 2003.

Non- registration of dealers

2.3.4 Under provisions of the Bihar Finance Act, 1981 and instructions issued thereunder, a dealer whose gross turnover exceeds the specified quantum during twelve months is required to get himself registered with Sales Tax Department. The Department is also required to conduct market survey in its territorial jurisdiction to unearth the defaulting dealers. If a dealer fails to apply for registration on his turnover exceeding the specified quantum, he is liable to pay penalty at the rate of Rs 50 for each day of default or an amount equivalent to the amount of tax assessed whichever is less, in addition to tax.

In three commercial taxes circles²¹, 10 suppliers supplied stone metals valued at Rs 5.25 crore during the years 1997-98 to 2002-2003 to the South Eastern Railway without having valid registration certificate. The Department failed to detect these cases through market survey which was required to be carried out for bringing such defaulting dealers into the tax net. This resulted in turnover of Rs 5.25 crore escaping assessment and consequent evasion of tax amounting to Rs 65.26 lakh including penalty of Rs 7.05 lakh.

On this being pointed out, the Department raised an additional demand of Rs 5.77 lakh in November 2003 in case of one supplier of Adityapur Circle. Replies in respect of other cases and report on realisation are awaited ([October 2004](#)).

The above cases were reported to the Government in July 2003; their final reply had not been received ([October 2004](#)).

²¹ Adityapur, Bokaro and Chakradharpur.

2.4 Non-levy of tax and penalty due to non-registration of dealers of IMFL²²

As per notification dated June 1985, effective from July 1985, IMFL is leviable to tax i.e. value added tax at all the points of sale within the State. By another notification dated September 1990, quantum of turnover for liability to tax in respect of the sale of IMFL was declared as nil. Thus, all dealers of IMFL irrespective of amount of their turnover are liable to be registered. The rate of tax on IMFL is 25 per cent besides two per cent additional tax on turnover.

Information collected from the Excise Department of Jharkhand and their cross verification with the records of four commercial taxes circles²³ revealed that 68 dealers sold IMFL valued at Rs 4.89 crore during 1999-2000 and 2000-01. The dealers neither applied for registration with the Commercial Taxes Department nor the Department took any action to get them registered. Thus, the dealers though liable to pay value added tax of Rs 24.17 lakh including penalty of Rs 11.25 lakh did not pay any tax.

On this being pointed out between May and June 2003, the Department accepted the audit observation and stated that action would be taken to get them registered.

The cases were reported to the Government in July 2003; their final reply is awaited (October 2004).

2.5 Incorrect determination of gross turnover

Under the BF Act, 1981, “gross turnover” 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 during any given period.

In three commercial taxes circles, in case of three dealers gross turnover was incorrectly determined at Rs 10,475.32 crore as against 11,003.22 crore during 1996-97 and 1997-98. This resulted in short determination of gross turnover by Rs 527.90 crore and consequential short levy of tax amounting to Rs 21.96 crore (including additional tax and surcharge) as detailed below:

²² India Made Foreign Liquor.

²³ Ranchi Special, Ranchi East, Ranchi West and Ranchi South.

(Rupees in crore)					
Sl. No	Name of Circle	Period of assessment Month/ year of assessment	Nature of objection	Name of goods Rate of tax	Short levy of Tax
1	Jamshedpur Urban	1996-97 & 1997-98 March 2002	The dealer claimed deduction of Rs 513.02 crore for sale in Singapore. Since the deduction was not covered by export sale claimed by the assessee, the deduction allowed from turnover was incorrect.	<u>Iron and Steel</u> @ 4%	20.52
2	-do-	1996-97 March 2001	Taxable turnover of 'canteen' sale was determined at Rs 2.38 crore but tax was incorrectly levied on Rs 0.42 crore only.	<u>Canteen Sale</u> 6%+ 1%+SC	0.15
3	Ranchi south	1997-98 January 2002	Purchase turnover of Rs 10.32 crore was shown as intertransfer in trading account by the dealer. However, the details of purchase turnover was neither discussed in the assessment order nor was it claimed as a deduction by the dealer. Assessing Authority while finalising the assessment did not include this turnover for the purpose of levy of tax.	Engineering <u>component</u> @ 8% +1% + S.C.	1.03
4	Jamshedpur	1997-98 January 2000	As per return of the company the turnover was determined at Rs 141.45 crore while as per audited annual report of the Company, the turnover was Rs 144.03 crore. Thus there was short turnover of Rs 2.59 crore .	Tapered roller bearing and <u>component</u> @ 8%+1%+SC	0.26
Total					21.96

On this being pointed out between October 2001 and April 2003, the Department stated that the cases would be reviewed.

The cases were reported to the Government in July 2003; their final reply is awaited (October 2004).

2.6 Suppression of sales/ purchase turnover

Under the BF Act, 1981, read with the CST Act, 1956, 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 re-assess the amount of tax due from the dealer in respect of such turnover and shall direct the dealer to pay, besides the tax assessed on escaped turnover, penalty not exceeding three times but not less than an amount equivalent to the amount of tax on the escaped turnover.

In five commercial taxes circles, it was noticed from the assessment records assessed between November 1998 and August 2002 and utilisation certificate

of declaration forms²⁴, trading account, annual audited accounts, etc. that 17 dealers purchased and sold goods valued at Rs 665.75 crore during the years between 1995-96 and 1999-2000. However, the dealers filed their returns for Rs 539.88 crore only which were assessed as such by the assessing authority. Thus, the dealers concealed turnover of Rs 125.87 crore having a tax effect of Rs 19.99 crore. The failure of the Department to cross examine the documents of the dealers available with the Department with the returns filed by the dealers resulted in short levy of tax of Rs 10.40 crore. Penalty of Rs 9.59 crore could also have been levied as detailed below:

(Rupees in crore)							
Sl. No.	Name of Circle No. of Dealers	Period of assessment Month /Year of assessment	Commodity	Actual purchase/ Sale Purchase / Sale accounted for	Amount concealed	Amount of tax Penalty	Total
1	2	3	4	5	6	7	8
1	Jamshedpur 9	Between 1997-98 & 1999-2000 Between 1/2000 & 8/2002	Cement, Machine Parts, Scrap, Wire rods, Nails, Electronic Goods, Tiles, Sanitary Fittings, White Cement, Bicycle and Auto Parts.	<u>318.28</u> 227.40	90.88	<u>7.86</u> 7.22	15.08
2	Ranchi South 3	Between 1995-96 & 1997-98 between 11/1998 and 3/2002	Jelly filled cables, Diesel Engine, Machine & Spare parts, Tower materials and OHF.	<u>255.31</u> 237.59	17.72	<u>1.77</u> 1.61	3.38
3	Ranchi West 3	Between 1996-97 & 1999-2000 Between 4/2000 & 2/2001	Iron Ingot, Steel Bar, Aluminum Rolls, Sports Goods and Scientific Apparatus.	<u>73.88</u> 57.43	16.45	<u>0.69</u> 0.68	1.37
4.	Singhbhum 1	1999-2000 5/2001	Auto Wheels.	<u>2.88</u> 2.40	0.48	<u>0.05</u> 0.04	0.09
.5	Chakradharpur 1	1996-97 3/2001	Hydrogenated vegetable oil, Packing of material and Atta.	<u>15.40</u> 15.06	0.34	<u>0.04</u> 0.03	0.07
Total				<u>665.75</u> 539.88	125.87	<u>10.40</u> 9.59	19.99

On these being pointed out, the Department raised additional demand of Rs 8.41 lakh in December 2002 and November 2003 in two cases and in other cases stated that the same would be reviewed.

The cases were reported to the Government in July 2003; their final reply is awaited (October 2004).

²⁴ 'IX C', 'F' and Road permits

2.7 Non-realisation of instalment of deferred tax and interest

Under the Bihar Sales Tax Supplementary (Deferment of Tax) Rules, 1990, the deferred amount of tax shall be repaid within 10 years from the date of commencement of production, in three or five annual equal instalments, as the case may be, payable by 31 March every year after the expiry of validity period. In case of default, interest at the rate of two per cent per month shall be charged on such amount of tax remaining unpaid till the date of payment. Under the provisions of the BF Act, 1981, when a dealer fails to comply with a notice of demand served, the prescribed authority may recover such amount as arrears of land revenue.

In three commercial taxes circles, four dealers who were allowed deferment of tax between 1989 and 1997 failed to repay the annual instalments payable by them. The dealers were also liable to be charged with interest for Rs 2.37 crore from the due date alongwith deferred amount of tax of Rs 3.07 crore payable by them as detailed below:

(Rupees in lakh)

Sl. No.	Name of circle Number of dealer	Period of deferment	Date from which payable	Amount of deferred tax	Amount paid	Amount due on account of deferred tax	Amount of interest	Total
1	<u>Adityapur</u> 1	1990-91 to 1994-95	31 March 1996 to 31 March 2000	51.60	Nil	51.60	58.82	110.42
2	<u>Deoghar</u> 2	1990-91 to 1995-96	31 March 1996 to 31 March 2000	10.13	7.24	2.89	1.72	4.61
3	<u>Bokaro</u> 1	1989 to 1994 and 1992 to 1997	31 March 1996 to 31 March 2000	252.63	Nil	252.63	176.25	428.88
Total				314.36	7.24	307.12	236.79	543.91

On these being pointed out, the Department raised an additional demand of Rs 1.71 crore in September 2003 on account of interest in one case of Bokaro Circle. Replies in respect of other cases and report on realisation are awaited (October 2004).

The cases were reported to the Government in July 2003; their final reply is awaited (October 2004).

2.8 Short institution of certificate proceedings

Under the provisions of the BF Act, 1981 the amount of tax together with penalty if any, which remains unpaid after the date specified in the notice shall without prejudice to any other mode of recovery, be recoverable as if it were arrears of land revenue.

In the commercial taxes circle, Adityapur, it was noticed that certificate proceedings against a dealer were instituted in July 2000 for non-payment of tax of Rs 7.75 crore for the assessment period 1987-88 to 1992-93 against the actual amount of Rs 9.75 crore due. This resulted in short institution of certificate proceedings by Rs 2.00 crore.

On this being pointed, the Department instituted revised certificate case in August 2003.

The case was reported to the Government in July 2003; their final reply is awaited (October 2004).

2.9 Underassessment of tax under CST

Under the CST Act, 1956, and the rules framed thereunder, submission of declaration forms E1 and C is mandatory in case of any subsequent sale made in the course of movement of goods from one state to another and no exemption shall be allowed if the sales are not supported by the required declaration forms.

In two commercial taxes circle (Bokaro and Chirkunda), it was noticed that two dealers made transit sale of goods valued at Rs 31.39 crore during the years 1995-96 and 1997-98 assessed in December 1998 and July 2001 respectively. However, the sale was not supported by declaration form E1. Thus, exemption from levy of tax allowed was incorrect and resulted in under assessment of tax amounting to Rs 1.62 crore.

On these being pointed out, the Department stated in one case that the case would be verified and in the other case it stated that the transaction was not intra-State sale and tax was correctly levied at four per cent. The reply is not tenable as in the absence of form E1, the transaction would be deemed to be intra-state sale and tax levied accordingly.

The cases were reported to the Government in July 2003; their final reply is awaited (October 2004).

2.10 Incorrect grant of exemption from levy of tax

Under the provisions of the BF Act, 1981, sale means any transfer of property in any goods, otherwise than in pursuance of a contract and transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash or deferred payment or other valuable consideration. In two commercial taxes circles in case of two dealers, incorrect allowance of exemptions from levy of tax on sale of Rs 6.59 crore resulted in non-levy of

tax amounting to Rs 65.92 lakh including additional tax and surcharge for reasons shown against them as detailed below: -

(Rupees in lakh)

Sl. No.	Name of the circle Number of dealers	Period of assessment Month/Year of assessment	Commodity	Value of goods	Rate of tax leviable (per cent)	Non-levy of tax	Nature of observations
1.	<u>Jamshedpur</u> 1	1998-99 and <u>2000-01</u> March 2002	Service provided	208.25	8+1+SC	20.80	The dealer transferred the rights to use of computer, internet facility for a specified period to other users. It was incorrectly treated as service charge instead of sale.
2.	<u>Ranchi South</u> 1	1997-98 and <u>1998-99</u> June and September 2001	Goods supplied in works contract	451.19	10	45.12	The dealers supplied goods for use in works contract outside the State i.e. Orissa and West Bengal. He was liable to pay tax under CST Act, 1956 @ 10% but was incorrectly exempted from payment of tax.
Total				659.44		65.92	

On these being pointed out, the Department stated that the cases would be reviewed.

The cases were reported to the Government in July 2003; their final reply is awaited (October 2004).

2.11 Incorrect allowance of exemption under CST

2.11.1 Under the provisions of the CST Act, 1956, turnover means aggregate of the sale price received or receivable by a dealer in respect of sales of any goods in the course of inter-state trade or commerce made during any prescribed period. Further it has been judicially²⁵ held that deduction on account of freight charges is not admissible if in accordance with the sale agreement, the price is all-inclusive such as FOR destination etc. In such cases, even if the actual freight or delivery charge is paid to the transporter by the buyer, it becomes only a part of the price payable to the seller but paid on his behalf to the transporter and it is so even if the sale invoices show the payment as a separate item.

In Commercial Taxes Circle, Ranchi (South) it was noticed that a dealer was allowed exemption on freight charges on FOR basis amounting to Rs 1.08 crore, Rs 2.17 crore and Rs 3.12 crore during 1993-94, 1994-95 and 1995-96 assessed between March and December 1998 and reassessed between September and November 2001 respectively. Since the price of goods transported was inclusive of freight charges, the allowance of exemption under

²⁵ M/s Hindustan Sugar Mills vrs State of Rajasthan, [1978] 43 STC, 13 SC.

CST was incorrect and resulted in under assessment of tax amounting to Rs 63.75 lakh.

On this being pointed out, the Department stated that action would be taken after verification.

The case was reported to the government in July 2003; their final reply is awaited (October 2004).

Non –levy of tax under CST

2.11.2 Under the provisions of the CST Act, 1956, on the inter-state sale of goods, tax is leviable at the rate of four per cent, provided the sale is supported by the prescribed forms. In case of inter-state sale of goods which are not supported by prescribed declaration forms, tax is leviable at the rate of 10 per cent or at the rate applicable in the state, whichever is higher. *Kendu* leaf is taxable at the rate of 12 per cent in the state.

In commercial taxes circle, Daltonganj, on inter-State sale of *Kendu* leaves valued at Rs 56.85 lakh made by a dealer during 1995-96 and 1996-97, tax was not levied by the Assessing Authority while finalising the assessment in November 1999. Out of this, only sales valued at Rs 42.56 lakh were supported by the declaration form. This resulted in non-levy of tax amounting to Rs 3.59 lakh.

On this being pointed out in April 2002, the Department stated that the case would be reviewed.

The case was reported to the Government in July 2003; their final reply is awaited (October 2004).

2.12 Non- levy of penalty

Under the provisions of the BF Act, 1981, if a registered dealer fails to make payment of admitted tax due from him on the due date, the prescribed authority shall impose a penalty at prescribed rates.

In two commercial taxes circles, two dealers failed to deposit admitted tax according to monthly statement/quarterly return on or before due dates and thus were liable to pay Rs 42.86 lakh by way of penalty as detailed below:-

(Rupees in lakh)

Sl. No.	Name of Circle	Period of assessment	Amount of admitted tax	Period of default	Amount of Penalty leviable
1	Dhanbad Urban	1997-98 February and March 2000	302.45	Between 1 day and 32 months 13 days	7.34
2	Adityapur	1997-98 March 2002	27.69	Between 3 days and 50 months 5 days	35.52
Total					42.86

On this being pointed out, the Assessing Authority of one circle raised an additional demand of Rs 7.27 lakh in May and July 2003 while in other circle additional demand for entire amount was raised in August 2003.

The cases were reported to the Government in July 2003; their final reply is awaited (October 2004).

2.13 Application of incorrect rate of tax

Under the provisions of the BF Act, 1981 on sale of cement in Poly Vinyl Chloride (PVC) bag tax is leviable at the rate of 11 per cent, on sale of lubricant tax is leviable at the rate of 16 per cent.

In two commercial taxes circles, in the case of two dealers tax was levied at incorrect rates on sale of goods valued at Rs 8.01 crore resulting in short levy of tax amounting to Rs 37.70 lakh including additional tax and surcharge as mentioned below :-

(Rupees in lakh)

Sl. No.	Name of Circle Number of dealers	Name of commodity	Assessment Year Date of Assessment	Total value of sales	Rate of tax (Per cent)		Short levy of tax
					Levi-able	Levied	
1.	Jamshedpur Urban 1	PVC Bags	1997-98 March 2002	737.03	11	7	32.75
2.	Ranchi West 1	Lubricants	1997-98 October 2001	63.68	16	9	4.95
Total				800.71			37.70

On this being pointed out, the Department stated that the cases would be examined.

The cases were reported to the Government in July 2003; their final reply is awaited (October 2004).

2.14 Non/ short levy of surcharge

Under provisions of the BF Act, 1981, with effect from 11 August 1989, every dealer whose gross turnover during a year exceeds Rs 10 lakh shall pay a surcharge at the rate of 10 per cent of tax including additional tax payable by him.

In two commercial taxes circles (Bokaro and Jamshedpur), the assessing authorities while finalising the assessments in March 2001 of three dealers engaged in the sale of motor vehicles, spare parts, designing, engineering, supply and manufacture and sale of chassis for the years 1996-97 and 1997-98 levied surcharge of Rs 0.87 lakh instead of Rs 29.32 lakh payable by them. This resulted in short levy of surcharge of Rs 28.45 lakh.

On this being pointed out, the department raised an additional demand of Rs 11.96 lakh in September 2003 in two cases of Bokaro circle. The reply in respect of one case and report on realisation are awaited (October 2004).

The cases were reported to the Government in July 2003; their final reply is awaited (October 2004).

2.15 Short levy of tax on liquor

By a notification issued in June 1985, effective from 1 July 1985, under provisions of the BF Act, 1981, tax on sale of IMFL is leviable at every stage of sale at the rate of 25 per cent of the sale price, and additional tax is leviable at the rate of two per cent on the total sales turnover including tax. However, the amount of sales tax paid at each preceding stage of sale would be adjusted against the amount of tax payable at each subsequent stage of sale.

In the commercial taxes circle at Dumka, it was noticed that in the case of a dealer, tax on sale of liquor worth Rs 3.26 crore made during the period between 1997-98 and 1999-2000 worked out to Rs 9.20 lakh against which tax of Rs 2.54 lakh only was levied in June 2001. This resulted in short levy of tax amounting to Rs 6.66 lakh.

On this being pointed out, the Department revised the assessment and raised additional demand for the entire amount in September 2003.

The case was reported to the Government in July 2003; their final reply is awaited (October 2004).

2.16 Misclassification of goods

Under the provisions of the BF Act, 1981, the Government may specify in respect of any goods or a class or description of goods that sales tax shall be levied only at that point or points in the series of sales as may be specified. As per notifications issued in December 1977, chemical (ferrous sulphate) and glassware were leviable to tax at the rate of eight per cent at the first point of sale in the State.

In two commercial taxes circles of Deoghar and Jharia, two dealers sold ferrous sulphate and glassware valued at Rs 63.96 lakh during the years between 1995-96 and 1999-2000 on which sales tax was not levied treating the commodity as taxable at the last point of sale in the state . This resulted in under assessment of tax of Rs 6.24 lakh including additional tax and surcharge.

On this being pointed out in August and September 2001, the Department stated that the cases would be reviewed.

The cases were reported to the Government in July 2003; their final reply is awaited (October 2004).