

CHAPTER- II: TAXES ON SALES, TRADE ETC.

2.1 Results of audit

Test check of the records relating to assessments and refund of sales tax in various commercial taxes circles conducted during the year 2008-09, revealed underassessment of tax and other deficiencies involving Rs. 665.33 crore in 408 cases which fall under the following categories:

(Rupees in crore)

Sl. no.	Categories	No. of cases	Amount
1.	‘Implementation of Value Added Tax in Bihar’ – A review	01	238.32
2.	Non/short levy of tax	81	11.06
3.	Irregular allowance of concessional rate of tax	03	0.82
4.	Irregular allowance of exemption from tax	90	304.09
5.	Short levy due to incorrect determination of turnover	121	22.08
6.	Non-levy of penalty	40	1.20
7.	Application of incorrect rates of tax	22	1.02
8.	Non-levy of penalty for excess collection of tax/mistake in computation	03	0.08
9.	Other cases	47	86.66
Total		408	665.33

During the year 2008-09, the department accepted underassessment and other deficiencies of Rs. 616.26 crore in 42 cases, of which five cases involving Rs. 615.10 crore were pointed out during 2008-09 and the rest during the earlier years. The department reported recovery of Rs. 7.57 lakh.

Audit findings of a review of **“Implementation of Value Added Tax in Bihar”** involving a financial impact of Rs. 238.32 crore and few other illustrative audit observations involving Rs. 381.11 crore are mentioned in the succeeding paragraphs.

2.2 Implementation of Value Added Tax in Bihar

Highlights

Deficiency in the format of the returns resulted in non-detection of application of incorrect rates and consequently there was short levy of tax of Rs. 104.55 crore.

(Paragraph 2.2.11.1)

Overall 26.41 *per cent* of the returns relating to 2005-08 submitted by the dealers were not scrutinised within the prescribed time and the number of pending cases were gradually increasing.

(Paragraph 2.2.12)

There was absence of vital information in the format of the Tax Audit Report. The returns were not self sufficient and well documented as there was no provision for submission of supporting evidence/declaration and details of tax invoices.

(Paragraph 2.2.13)

There was low coverage as well as decreasing trend of dealers selected for tax audit against the norm of maximum of 10 *per cent* of the number of registered dealers in the State.

(Paragraph 2.2.14.2)

Due to the withdrawal of the provision for cross verification of the purchase/sale figures of other dealers and absence of provisions for cross verification of returns with other records of the dealer, incorrect claim of input tax credit of Rs. 15.11 lakh as well as concealment of purchase of Rs. 79.87 crore remained undetected which resulted in short levy of tax of Rs. 23.97 crore including penalty.

(Paragraphs 2.2.15.2 and 2.2.17.3&4)

Due to absence of a monitoring mechanism for filing of the Tax Audit Report, cases of non/delayed submission of TAR by 20 dealers of 10 circles during 2005-08 escaped levy of penalty of Rs. 5.34 crore.

(Paragraph 2.2.22.1)

The internal controls were weak as evidenced by the absence of vital registers and also lack of internal audit.

(Paragraph 2.2.24)

2.2.1 Introduction

The Empowered Committee of State Finance Ministers constituted by the Government of India in its meeting held on 23 January 2002 unanimously decided to introduce VAT in all the States and Union Territories with effect from 1 April 2003. The committee issued a white paper (January 2005) defining the basic designs of the state level VAT. The white paper, however,

allowed the states to adopt appropriate variations in their VAT Acts, consistent with the basic design. The VAT system which is a destination/consumption based tax system and has provisions for set-off of the tax paid on the previous purchases seeks to address problems of double taxation of commodities, multiplicity of taxes, surcharge and additional surcharge on sales tax etc., in the sales tax structure that resulted in a cascading tax burden.

The Government of Bihar repealed the Bihar Finance Act, 1981 and enacted the Bihar Value Added Tax (BVAT) Act, 2005 with effect from 1 April 2005. Initially, no provision for the levy of surcharge and additional tax was made in the VAT Act. From September 2007, additional tax is leviable in case of dealers of specified commodity whose GTO exceeded Rs. 250 crore. Thus, though the Empowered Committee had aimed at abolition of all the other taxes, deviations have been made afterwards under the BVAT Act.

Under BVAT Act, goods are classified into four schedules based on their social and economic importance and are taxable at the rates of 'nil' (schedule I), one (schedule II), four (schedule III), at the rates as prescribed in the schedule (schedule IV) and 12.5 *per cent* for all other goods not specifically mentioned in any of the schedules.

A review of the implementation of VAT system in Bihar was conducted by audit which revealed a number of system and compliance deficiencies as discussed in the succeeding paragraphs.

2.2.2 Organisational set up

The Commercial Tax Department is headed by the Commissioner, Commercial Taxes (CCT). In the exercise of his functions, the CCT is assisted by six Additional Commissioners, three Joint Commissioners of Commercial Taxes (JCCT), and 52 Deputy Commissioners of Commercial Taxes (DCCT), 145 Assistant Commissioners of Commercial Taxes (ACCT) and 295 Commercial Taxes Officers (CTOs). For administrative convenience, the State is divided into nine¹¹ administrative divisions, seven appeal divisions¹² and four audit divisions¹³ each headed by a JCCT. The nine administrative divisions are further sub-divided into 50 circles each headed by a DCCT/ACCT and assisted by CTOs. The circle is the basic activity centre of the department.

2.2.3 Audit objectives

The review was aimed to ascertain whether:

- there was proper planning for implementation of the BVAT Act and the transition from sales tax to VAT was effected timely and efficiently;
- the provisions of the BVAT Act and Rules made thereunder were adequate and enforced properly to safeguard the revenue of the State;

¹¹ Bhagalpur, Central, Darbhanga, Magadh, Patna East. Patna West, Purnea, Saran and Tirhut.

¹² Bhagalpur, Central, Darbhanga, Magadh, Patna, Purnea and Tirhut.

¹³ Bhagalpur, Magadh, Patna and Tirhut.

- internal control mechanism existed in the department and was adequate and effective to prevent leakage of revenue; and
- the system which has been in place for more than four years has been functioning efficiently.

2.2.4 Scope and methodology

In order to ensure coverage of one third of the circles and divisions, 17¹⁴ out of 50 circles and three¹⁵ out of nine administrative divisions besides the CCT office were selected for audit. In selecting the circles, first the highest revenue earning circle of each of the nine divisions was selected for audit. At the second stage the remaining circles of all divisions were listed together in descending order of revenue and the 8 (17-9) circles with the highest revenue were selected making the total number of circles selected as 17. The review was conducted through scrutiny of records covering the period from April 2005 to March 2008.

2.2.5 Acknowledgement

Indian Audit and Accounts Department acknowledges the cooperation of the Commercial Taxes Department in providing the necessary information and records to audit. An entry conference was held with the Principal Secretary cum Commissioner, Department of Commercial Taxes in January 2009 in which the audit objectives, scope and methodology of audit were explained to the department/Government. The findings of the review were forwarded to the Government and the department in September 2009 for their response. An exit conference was held in November 2009 with the Principal Secretary cum Commissioner, Department of Commercial Taxes in which the results of audit and recommendations were discussed.

The department/Government have accepted most of the audit findings and recommendations and have assured that steps will be taken to implement them. However, in cases where the replies of the department/Government are specific or counter the audit contention, these have been appropriately included under the respective paragraphs.

Audit findings

2.2.6 Pre-VAT and post-VAT tax collection

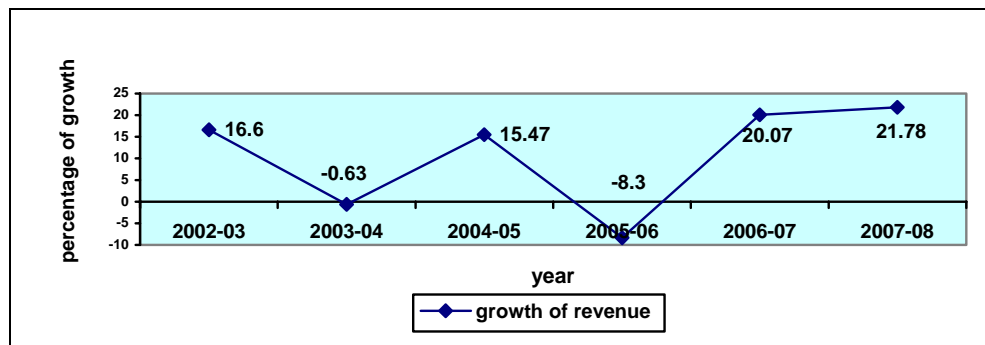
The comparative position of pre-VAT sales tax collection (2002-05) and post-VAT (2005-08) tax collection and the growth rate in each of the years is given below:

¹⁴ Bhagalpur, Danapur, Darbhanga, Gaya, Hajipur, Katihar, Motihari, Muzaffarpur East, Muzaffarpur West, Patna Central, Patna City West, Patna Special, Patna West, Patliputra, Purnea, Sasaram and Samastipur.

¹⁵ Central, Patna East and Tirhut.

(Rupees in crore)

Year	Pre-VAT		Year	Post-VAT	
	Actual collection	Percentage of growth over the year		Actual collection	Percentage of growth over the year
2002-03 ¹⁶	1,647.62	(+) 16.60	2005-06	1,733.60	(-) 08.30
2003-04	1,637.23	(-) 00.63	2006-07	2,081.49	(+) 20.07
2004-05	1,890.54	(+) 15.47	2007-08	2,534.80	(+) 21.78
Average		10.48			11.18



The average growth rate during 2002-05 was 10.48 per cent while the average growth rate for 2005-08 after the implementation of BVAT Act was 11.18 per cent. While the growth rate of revenue was negative during the first year of implementation, during the subsequent two years it was over 20 per cent annually reaching the level of 21.78 per cent during 2007-08.

2.2.7 Arrear of revenue

Under the provisions of the BVAT Act, unpaid tax including interest and penalty is recoverable as an arrear of land revenue. Further, under the BVAT Act, the prescribed authority has been vested with the powers of certificate officer under the Bihar and Orissa Public Demands Recovery Act, 1914.

It was noticed that though the powers of certificate officer are vested in the assessing officers, **yet due to lack of monitoring and not exercising the powers of certificate officer, the total arrears¹⁷ spiralled up from Rs. 669.48 crore in 2004-05 to Rs. 945.93 crore in 2008-09.** Of this, Rs. 300.38 crore (31.75 per cent) only was covered by certificate cases. Further, out of the arrears as on 31 March 2009, Rs. 445.20 crore pertained to the repealed Acts.

The Government may consider prescribing specific targets for the departmental authorities for the institution of certificate cases and disposal thereof for quick realisation of the arrears of revenue.

¹⁶ Collection of 2001-02 was Rs. 1,412.96 crore.

¹⁷ Arrears do not include arrears under CST Act.

System deficiencies

2.2.8 Survey of unregistered dealers

With a view to identify dealers who are liable to pay tax under the BVAT Act but have remained unregistered, the Act provides for a survey of unregistered dealers to bring them under the tax net.

Audit scrutiny, however, revealed that the department has not prescribed any definite time frame and target for conducting survey for detection of unregistered dealers.

Data on surveys undertaken in 49 circles during the years 2005-08 as furnished by the department revealed the following:

Year	No. of circle in which survey was conducted	No. of circles where no survey was conducted	No. of surveys conducted	No. of new registrations based on surveys
2005-06	07	42	2,609	1,106
2006-07	05	44	1,582	688
2007-08	Nil	Nil	Nil	Nil

The Government may consider prescribing a definite time frame and minimum target for conducting of the surveys to ensure that dealers liable for VAT registration are promptly detected and registered.

2.2.9 Analysis of dealers below threshold

Under the BVAT Act, every dealer whose turnover exceeds Rs. 5 lakh, is liable to pay the tax. Dealers with turnover not exceeding Rs. 40 lakh have an option to pay the tax at the rate of half *per cent* of the gross turnover under the Composition Scheme. Above this limit, the dealers are required to be registered and pay the tax at the prescribed rate. Thus, it is important to keep a close watch on the turnover of such dealers at periodic intervals.

Audit scrutiny revealed that the department has not installed any mechanism for conducting periodic analysis of the books of accounts of the dealers below the threshold limits.

From the information collected from the quarterly statements/returns of the nine dealers registered in five circles¹⁸, it was noticed that 86 purchasing dealers had a turnover exceeding Rs. 5 lakh in each case during 2005-08 but were not registered under the Act. The total purchase turnover of these dealers during this period was Rs. 21.84 crore. Thus, there was loss of revenue of Rs. 4.03 crore including penalty.

The Government may consider prescribing a system for periodic verification of the books of accounts of the dealers below the thresholds.

¹⁸ Hajipur, Muzaffarpur East, Patliputra, Patna City West and Patna Special.

2.2.10 Inadequate provision leading to turnover escaping tax net

The BVAT Act defines the sale price of goods sold to a person other than a registered dealer as the price which is declared on the package thereof or the price at which the goods would have been sold in the normal course of business to the consumer at the retail level. The CCT reiterated (May 2006) the aforesaid definition and directed that the tax will be leviable on the maximum retail price in case of direct sale to unregistered dealers/retailers.

However, by an amendment in August 2006, the aforesaid provision to levy tax on the maximum retail price/market price on all goods was withdrawn and confined to the goods as notified by the Government from time to time only. Audit observed that till date (January 2010) not a single item has been notified under this provision.

Test check of the returns/statements of 12 manufacturing dealers registered in four circles¹⁹ revealed that out of total intrastate sale of various goods valued at Rs. 127.80 crore, sales of goods of Rs. 60.63 crore (47.44 *per cent*) was made either to the unregistered dealers or directly to the consumers. As per the provision before amendment, the goods so sold directly to the unregistered dealers/consumers were to be taxed on the maximum retail price. Thus, due to withdrawing the system of taxing the goods on the maximum retail price in case of sales of goods either to the unregistered dealers or directly to the consumers, the department could not levy the VAT on the maximum retail price of the goods sold but was constrained to accept the sale price as disclosed by the dealers. Besides loss of revenue to the state this also resulted in undue benefit to the dealers.

The Government may consider either withdrawing the amendment and reinstating the earlier definition of sale price or notifying the goods on which tax on maximum retail price or market price would be levied in the interest of revenue.

2.2.11 Deficiencies in the formats of returns

2.2.11.1 Space for name of the commodity

Under the provisions of the BVAT Act, interest and penalty at prescribed rates is leviable if the dealer has wrongfully reduced the amount of tax payable.

Audit observed that the return forms do not provide space for the name of the commodities sold. Without these details, it is not possible to verify application of the correct rate of tax for that commodity during scrutiny. This resulted in evasion of tax by the dealers as discussed below.

In 12 circles²⁰, scrutiny of records and supporting documents revealed that 31 dealers had either assessed no tax or tax at the lower rate of four *per cent* on the sale of goods of Rs. 278.61 crore instead of the correct rate of 12.5 *per cent* during 2005-08. Out of these, 18 cases were finally scrutinised by the assessing authorities and partial scrutiny was done in the remaining cases. Such application of incorrect rate remained undetected by the assessing

¹⁹ Danapur, Patliputra, Patna City West and Patna West.

²⁰ Biharsharif, Buxar, Katihar, Kishanganj, Muzaffarpur West, Patliputra, Patna Central, Patna City East, Patna City West, Patna North, Patna South, and Patna West.

authorities resulting in short levy of tax of Rs. 34.68 crore including interest. Besides, the dealers were also liable for penalty of Rs. 69.87 crore.

The Government may consider prescribing space in the returns for mentioning the name of the commodities sold to enable verification of application of correct rate of tax.

2.2.11.2 Break up of deductions in case of works contractors

Under section 35 of the BVAT Act and the Rules thereunder, a works contractor is liable for deduction on the items of labour and any other charges. The total amount of deduction on account of labour and other charges of works contract is to be furnished in item IV of Box – A in the quarterly return. Audit scrutiny revealed that the list of deductions allowable includes nine items. However, in item IV of the Box – A, there is neither space for mentioning the detailed break up of deductions nor has it been prescribed to be furnished separately. **Thus, it is not possible to ascertain the exact entitlement of the deductions from the returns prescribed.**

• In six circles²¹, it was noticed that eight works contractors had availed of deductions of Rs. 18.95 crore during 2005-08 on the items which were not available for deduction under the Act. This was noticed by audit from the additional information provided voluntarily by the dealers and kept on record. Due to the absence of details, the prescribed authority failed to disallow the excess claim which resulted in short levy of tax of Rs. 2.37 crore.

The Government may consider revising the format of the return to provide space for mentioning the detailed breakup of the deductions.

2.2.11.3 Register of returns

With a view to monitoring the filing of returns, Rules provide for entering full information contained in the returns in a VR-IV register (register of returns). **No time frame has been prescribed for entering the returns as well as monitoring of the said register by the assessing authorities.** This resulted in non/improper maintenance of register. Further, the format of VR-IV itself was revised twice between May 2006 and July 2007 but there was no space provided for entering the revised returns.

After this was pointed out, the Government accepted (November 2009) the audit observation and stated that all VR-IV registers would be completed by March 2010 and suitable amendment as suggested would be made. The report on action taken has not been received (January 2010).

2.2.12 Returns pending for scrutiny

Under the provisions of the BVAT Act and Rules framed thereunder, the prescribed authority shall scrutinise the returns and statements furnished by the dealer within thirty days, before the expiry of the due date.

Audit scrutiny revealed that there was a gradual increase in the number of cases pending for scrutiny and it had reached a level of 51 *per cent* during 2007-08.

²¹ Bhagalpur, Biharsharif, Darbhanga, Gopalganj, Katihar and Patna West.

Particulars	2005-06	2006-07	2007-08	Total
No. of cases due for scrutiny under VAT	3,64,611	1,92,083	1,92,648	7,49,342
No. of cases scrutinised under VAT	3,14,694	1,37,712	92,229	5,44,635
No. of cases pending for scrutiny under VAT	49,494	49,779	98,647	1,97,920
Percentage of cases pending scrutiny	13.57	25.92	51.20	26.41

It was also noticed that out of 1,37,712 cases scrutinised during 2006-07, at least 27,458²² cases were scrutinised after the prescribed time. Belated scrutiny is a matter of concern as the cases would be barred by the limitation of time and any demand created as a result of scrutiny would not be sustainable and recoverable under the law which may lead to the loss of revenue.

After this was pointed out, the Government accepted (November 2009) the audit observation and stated that instructions had been issued for completing the scrutiny in time.

The Government may consider setting up a monitoring mechanism for regular and timely scrutiny of the cases by the assessing authorities.

2.2.13 Inadequacy of documentation

As per the BVAT Act and Rules framed thereunder, the returns filed by the dealers are treated as final and deemed as self assessed unless selected for tax audit by the department. It is, therefore, necessary that the prescribed returns and statements submitted by the dealers are well explained and documented to facilitate proper scrutiny of the returns.

2.2.13.1 It was noticed that the format of the Tax Audit Report²³-I (TAR-I) as revised in July 2007 provides for the name of the major group of commodity purchased and sold but it does not prescribe any space for mentioning the opening and closing stock, commodity-wise details of sale/purchase, payments made/received *etc.* This affects ascertaining the rate of tax.

The Government may consider revising the format of TAR-I to provide space for furnishing opening and closing stock, rate wise and quantity wise details of sale/purchase, payments made/received in respect of goods purchased/sold.

2.2.13.2 Though the dealers whose GTO does not exceed the prescribed quantum of Rs. 40 lakh are required to maintain certain accounts such as manufacturing and trading account, yet provision for submission of the said accounts has not been made except for the dealer opting for compounding.

The submission of such accounts alongwith the annual return should be made mandatory for all types of dealers having GTO below Rs. 40 lakh so that the returns are self contained and examination of these at a later date is possible.

²² Against 1,37,712 cases reported (August 2009) to have been scrutinised during 2006-07, scrutinised cases as reported in October 2008 was 1,10,254.

²³ Tax Audit Report is a report of audit by a Chartered Accountant under the provision of the Companies Act, 1956, on the accounts of a dealer.

2.2.13.3 The Act provides for self assessment by the dealers but while claiming deductions, no provision has been made for the submission of declarations or other supporting documents with the quarterly/annual return. Though the form D-III²⁴, form D-V²⁵ and credit note²⁶ has been prescribed to substantiate the claim of deductions, **yet it is not mandatory to submit these alongwith the returns.** Without these vital documents the returns are not self sufficient and no meaningful scrutiny of these returns is possible. Cases of irregular exemption without supporting declaration/evidence detected by audit are mentioned below.

- In six circles²⁷, it was noticed that seven dealers had claimed exemption on account of subsequent sale of schedule-IV commodities such as India made foreign liquor, petrol and diesel valuing Rs. 23.39 crore during 2005-06 and 2006-07, but their corresponding purchases were not supported by a declaration in form D-III. The claims were, however, accepted by the assessing authorities. Thus, failure of the prescribed authorities to disallow unsubstantiated claims resulted in short levy of tax of Rs. 8.64 crore.

- In four circles²⁸, it was noticed that eight dealers had availed of exemption on account of within the State stock transfer of goods of Rs. 33.21 crore during 2005-08 but did not produce any declaration in form D-V to substantiate their claims. Thus, failure of the prescribed authority to disallow the unsubstantiated claims resulted in short levy of tax of Rs. 4.31 crore.

- In five circles²⁹, it was noticed that 11 dealers had availed of deduction on account of goods return of Rs. 14.97 crore during 2005-08 but did not furnish any credit note to substantiate their claim. Thus, failure of the prescribed authority to disallow the claims resulted in short levy of tax of Rs. 95.16 lakh.

The Government may consider making provision for submission of relevant declarations/supporting evidence alongwith the return to substantiate the claims and making the returns self sufficient and amenable to meaningful scrutiny.

2.2.13.4 As per the provisions of the BVAT Act, no dealer shall claim an ITC in respect of inputs purchased unless he is in possession of an original copy of the tax invoice, signed and issued by the selling dealer, containing the prescribed particulars of sale. Though the format of returns has been revised twice between May 2006 and July 2007, yet no provision has been made to exhibit the details of tax invoice number and date under which sale/purchase was made which would enable cross verification with ST-I³⁰.

²⁴ Form D-III: form of declaration under section 13, which provides that no tax would be levied on the subsequent sale of schedule IV goods in the State, if the goods have already suffered the incidence of tax at the first point of sale.

²⁵ Form D-V: form of declaration for exemption on stock transferred within the State.

²⁶ For claiming deductions on account of sales returns.

²⁷ Barh, Chapra, Gaya, Nawada, Patliputra and Patna West.

²⁸ Munger, Muzaffarpur West, Sasaram and Teghra.

²⁹ Bhagalpur, Muzaffarpur West, Patliputra, Patna Central and Patna City West.

³⁰ Form containing tax invoice number and date as well as name of the issuing dealer to be submitted while claiming refund on account of ITC carried forward.

The Government may consider making provision for submission of the tax invoice number and date with the name and TIN of the selling and purchasing dealers alongwith the returns.

2.2.13.5 Though the BVAT Act provides for authentication of the declaration in the form D-IX³¹ by the concerned assessing authority and rendering of an account of the utilisation of these forms by the dealer, **yet similar provisions have not been made in respect of the forms D-VIII³² and D-X³³**. In the absence of such authentication, it is not possible to scrutinise the veracity of the accounts of such declarations being used by the dealers. This would have also facilitated cross verification of the information in respect of dealers and their submission of account of utilisation.

After this was pointed out, the Government stated (November 2009) that suitable amendment as suggested would be made.

2.2.14 Tax Audit

The BVAT Act and Rules framed thereunder provides that the CCT will select, by 31st March of the year following the financial year, registered dealers for detailed audit on the basis of a selection model incorporating suitable criteria. Such audit is to be conducted within 24 months³⁴ from the due date of filing of the annual return.

It was seen that the selection of the dealers for the year 2005-06 for the detailed audit was finalised in March 2007, while the audit wing of the department was created in July 2007 and the wing started audit in December 2007. Deficiencies in the process of tax audit are mentioned below.

2.2.14.1 Parameters for selection of dealers

The department had fixed only three criteria for the selection of dealers for detailed audit, *i.e.* (i) dealers paying tax above Rs. 5 lakh, Rs. 10 lakh, Rs. 20 lakh and Rs. 30 lakh depending upon the circle, (ii) dealers having carried over input tax of more than Rs. 1 lakh, (iii) up to top 101 negative dealers³⁵ of all circles and selected commodities. However, other factors for risk analysis *i.e.* turnover/reduction in turnover, usage of road permits/declaration forms, dealers not paying tax/filing return, etc., have not been included in the parameters.

Further, geographical dispersion of the dealers in different circles of the State was not kept in view while fixing the quantum of tax payment criteria. As a result, while in Patna special and Patliputra circles 159 and 155 dealers respectively were selected for audit during 2006-07 and no dealers were selected in Aurangabad, Bagaha, Dalsinghsarai and Jhanjharpur circles.

The Government may consider evolving suitable criteria for selection of the dealers based on risk analysis.

³¹ Form D- IX : form of declaration for bringing goods from outside the State.

³² Form D-VIII: form of declaration for within State movement of goods.

³³ Form D- X: form of declaration for transporting goods from within the State to any place outside the State.

³⁴ At present it is 36 months.

³⁵ Negative dealer means a dealer having negative growth of tax.

2.2.14.2 Low coverage of dealers selected for detailed audit

The Government has provided for the selection of maximum 10 *per cent* of the registered dealers in the State for audit. The total number of registered dealers in the State, the number of dealers selected for audit and their percentage to the total number of registered dealers in the State is given below:

Year	No. of registered dealers	No. of dealer selected for audit (in <i>per cent</i>)	No. of cases audited
2005-06	89,291	2,489 (2.79)	891
2006-07	1,05,392	2,546 (2.42)	Nil
2007-08	1,23,040	1,289 (1.05)	Nil

Thus, while very low percentage of dealers were selected for audit, only around 35 *per cent* of the cases selected were audited during 2005-06. No audit had been conducted of the cases selected in 2006-07 and 2007-08. The likelihood of completion of audit at this pace was remote.

It was further noticed that in 291 (33 *per cent*) out of 891 tax audits conducted by the department, Rs. 11.60 crore of additional demand was created. Thus, there is likelihood loss of substantial revenue due to the audit not getting completed.

After this was pointed out, the Government accepted (November 2009) the audit observation and attributed the reason for low coverage and slow progress to the shortage of manpower.

The Government needs to increase the coverage of dealers for tax audit to keep it aligned with the suggestions of the Empowered Committee.

2.2.15 Input tax credit mechanism

2.2.15.1 Input tax credit on opening stock

The BVAT Rules provides for the registered dealers to claim the ITC on the opening stock of the goods on 1st April 2005 provided that such goods have been purchased by him on or after 1st day of April 2004 and on which tax had been charged under the Bihar Finance Act, and he sells such goods or consumes it in manufacture of other goods for resale. The claims of the ITC were to be submitted in the form D-II before 16 May 2005, with the concerned monthly return supported by the declaration in the form IX C.

Audit scrutiny revealed that the Rules, however, do not prescribe the manner for claiming ITC on the opening stock of the goods subjected to multipoint tax under section 11 (3) of the Bihar Finance Act as it stood before its repeal. Besides, no provision had been made for furnishing of invoice-wise inventory statement and the copies of such invoices alongwith the declaration in the form 'IX-C' so that claims of the ITC can be verified.

In nine circles³⁶, in case of 21 dealers, it was noticed that the dealers were allowed ITC of Rs. 59.74 lakh on the opening stock of the goods of Rs. 8.41

³⁶ Danapur, Gaya, Jehanabad, Muzaffarpur West, Patliputra, Patna South, Patna Special, Saharsa and Sasaram.

crore during the year 2005-06, though, they were entitled to ITC of Rs. 19.39 lakh only. The authorities conducting scrutiny failed to verify the correct amount of entitlement which led to excess allowance of ITC of Rs. 1.61 crore including penalty of Rs. 1.21 crore. Of these 21 cases, five cases pertain to the opening stock of goods subjected to multipoint tax under the earlier Act. Had the manner of claiming of ITC on the opening stock of such goods been prescribed this could have been avoided.

2.2.15.2 Incorrect allowance of input tax credit

The BVAT Rules contain specific provisions for cross verification of transactions like sorting of information and sending them to the concerned circles, with a copy to the CCT for verification. **However, this provision was withdrawn with effect from July 2007 which** had affected the State revenue adversely as discussed below.

In seven circles³⁷, in case of 11 dealers it was noticed that the dealers were allowed ITC of Rs. 3.91 crore on the purchase value of goods of Rs. 33.16 crore during 2005-08. Cross verification of the purchases made by them with the TAR and statements filed by the same dealer as well as the TAR and statements filed by other dealers conducted by audit revealed that the dealers were entitled to an ITC of Rs. 3.76 crore only. Irregular claim of the ITC in these cases remained undetected and resulted in excess allowance of the ITC of Rs. 54.48 lakh including leviable penalty of Rs. 39.37 lakh.

The Government may consider reinstating the provision of cross verification of the transactions before allowing the input tax credits.

2.2.16 Taxation of schedule IV goods

The BVAT Act read with the Rules framed thereunder provides that tax on the goods specified in Schedule-IV is to be levied at the first point of their sale in the State of Bihar. The subsequent sales of such goods in Bihar were exempted from the levy of tax on production of declaration in form D-III by the dealer claiming the exemption.

In five circles³⁸, it was noticed that the tax of Rs. 98.92 lakh in respect of sale of Schedule-IV goods of Rs. 6.18 crore held in the opening stock as on 1st April 2005 by seven dealers was not levied as **no transitory provision was made under the BVAT Act for the taxation of the Schedule-IV goods held in the opening stock** as on the first day of April 2005. This resulted in loss of revenue of Rs. 2.53 crore.

2.2.17 Cross verification of transactions

Under the BVAT Act, if the assessing authority is satisfied that any turnover liable to tax under this Act has been underassessed/escaped assessment, he shall, assess or re-assess, the tax payable within four years and shall impose, besides tax and interest, penalty equal to three times the amount of tax which escaped assessment. Further, the BVAT Act provides that every bank,

³⁷ Bhagalpur, Danapur, Gaya, Katihar, Muzaffarpur West, Patliputra and Patna City West.

³⁸ Chapra, Nawada, Patliputra, Purnea and Samastipur.

financial institution, department of the Government, corporation, organisation, undertakings or bodies, clearing forwarding agents shall, if so required by any assessing authority, furnish any such particulars as may be required.

Audit scrutiny revealed that though the above provision exists in the Act, **the Government/department has not prescribed procedures for cross verification of the turnover as disclosed in the returns with the other records of the dealers like utilisation statements of road permits, declaration forms, etc. or information obtained from the external sources periodically.** The result of cross check exercised by Audit during review revealed the following.

2.2.17.1 A manufacturer of soft drinks registered in Patliputra circle had shown clearance/removal of goods of Rs. 25.31 crore from the factory during 2005-06 as per the records of the Central Excise Department. The dealer had, however, paid VAT on Rs. 11.03 crore only as per his returns. Thus, he had concealed the sales turnover by Rs. 14.28 crore. Failure of the assessing authority to cross check the transactions while scrutinising returns resulted in short levy of tax of Rs. 8.02 crore including leviable penalty and interest.

Further, the return under the BVAT Act concealing turnover of at least Rs. 14.28 crore was certified by a chartered accountant. **However, the BVAT Act does not contain any penal measure against such wrong certification causing loss to Government exchequer. The Government should report deliberately wrong certification to the Institute of Chartered Accountants of India (ICAI) for appropriate disciplinary action against the concerned chartered accountant.**

2.2.17.2 A dealer registered in Patliputra circle had turnover of Rs. 12.17 crore during 2005-06 as per the income tax return filed by him. However, he did not file any return under the VAT, thereby concealing the entire turnover. Thus, failure of the assessing authority to cross check the transaction resulted in short levy of tax of Rs. 6.84 crore including leviable penalty and interest.

- A dealer registered in Patna West circle had turnover of Rs. 3.25 crore during 2005-06 as per the income tax returns filed by him. But he had shown his liability from June 2006 only under the VAT. Thus, the dealer concealed the entire turnover during 2005-06. Failure of the assessing authority to cross check the transaction resulted in short levy of tax of Rs. 26.03 lakh including leviable penalty.

2.2.17.3 In 18 circles³⁹, it was noticed that 43 dealers had purchased/sold goods of Rs. 432.93 crore during the period 2005-08 as shown in their purchase/sale statements, utilisation statements of road permits/declaration forms and TAR but had accounted for Rs. 364.05 crore only in their returns etc. The dealers had thus suppressed purchase/sales of goods of Rs. 68.88 crore. The assessing authorities could not detect the suppression and consequently there was short levy of tax of Rs. 23.72 crore including penalty of Rs. 17.28 crore.

³⁹ Bhagalpur, Chapra, Danapur, Darbhanga, Hajipur, Madhepura, Munger, Muzaffarpur East, Muzaffarpur West, Patliputra, Patna Central, Patna City West, Patna North, Patna South, Patna West, Raxaul, Samastipur and Sasaram.

2.2.17.4 In six circles⁴⁰, cross verification of the returns/records of nine dealers with those of the other dealers registered in other circles revealed that they had actually purchased goods worth Rs. 128.88 crore during the period 2005-08, but accounted for purchase of Rs. 117.89 crore only thereby suppressing the purchase by Rs. 10.99 crore which could not be detected by the assessing authorities. This resulted in short levy of tax of Rs. 24.83 lakh including penalty.

The Government may consider evolving a comprehensive mechanism for cross verification of the returns with other sources. They may also consider prescribing strict penal measures for wrong certification of the accounts/filing of incorrect returns.

2.2.18 Provisions governing tax deducted at source

The BVAT Act and Rules made thereunder provide for deduction of tax at source from the bills of the contractors/suppliers at the rate specified and depositing the amounts in Government account failing which penalty equal to twice the amount of tax was imposable. The person from whom tax has been deducted at source is to submit the original copy of the form C-II to the assessing authority as evidence of payment of tax.

Audit scrutiny revealed that though the provision for sending quarterly statements (in form RT-VI) and returns (in form RT-VII) by the deductor of tax exists in the Act and Rules, **this was not being adhered to by the works departments of Bihar in most of the cases. Besides, there was no provision for maintaining any register showing the details of statements and returns received in the circles and further action taken on these. Also, there was no mechanism for co-ordination between the assessing authority and the tax deductors in case of non-receipt of the quarterly statements and returns.**

2.2.18.1 Scrutiny of records revealed that 17 dealers registered in six⁴¹ circles and engaged in works contract did not disclose in their return the payments received by them during 2005-08, thereby suppressing their turnover by Rs. 96 crore. This remained undetected due to non-conducting of cross verification of the records/returns by the assessing authorities resulting in short levy of tax of Rs. 28.83 crore including penalty of Rs. 21.62 crore.

2.2.18.2 In three circles, it was noticed that three dealers had shown tax deducted at source in the column provided for the payment details in their return without submitting the original copy of the form C-II. The persons deducting tax at source did not send the third copy with the form RT-VII to the concerned circle in-charge, neither was any action taken by the circle in-charge to verify it with the concerned works departments. Details of such cases are given below:

⁴⁰ Motihari, Muzaffarpur East, Muzaffarpur West, Patliputra, Patna city West and Samastipur.

⁴¹ Danapur, Gaya, Kishanganj, Muzaffarpur West, Nawada and Saharsa .

(Rupees in lakh)

Sl. No.	Name of circle Number of dealers	Year	Amounts of TDS claimed	Amount mentioned in the form C-II submitted	Difference
1.	Danapur 01	2005-06	3.05	1.37	1.68
2.	Muzaffarpur East 01	2007-08	581.75	Nil	581.75
3.	Muzaffarpur West 01	2006-07 and 2007-08	124.68	Nil	124.68
Total			709.48	1.37	708.11

2.2.18.3 In Patliputra and Patna West circles, it was noticed that two dealers had actually deducted tax of Rs. 18.82 lakh at source from the bills of the contractors engaged by them but deposited Rs. 12.31 lakh only in the Government account during 2005-06 and 2006-07. The short deposit of tax of Rs. 6.51 lakh by the tax deducting dealers attracted imposition of penalty of Rs. 12.60 lakh.

2.2.18.4 In Patna West circle, it was noticed that a dealer working as an agency as well as works contractor had engaged contractors/sub-contractors. As per the return and turnover summary, the dealer had made gross payment of Rs. 268.33 crore to the contractors/sub-contractors engaged by him during 2005-06 and 2006-07. But the dealer had deducted tax on the gross payment of Rs. 193.54 crore only as per the statement in the form RT-VI furnished by the dealer. Thus, the dealer did not deduct tax of Rs. 2.99 crore on the payment of Rs. 74.79 crore made to the contractors/sub-contractors, which made him liable for penalty of Rs. 5.98 crore also.

In the absence of a provision for cross verification of the returns with the statement in the form RT-VI, the above discrepancies could not be detected in time.

The Government may consider prescribing a system of periodic cross verification of the records of the works departments and a penal provision for non-submission of the returns by the works departments.

2.2.19 Avoidable accrual of liability to refund

The BVAT Act and the Rules made thereunder provide for adjustment of the amount of tax deducted at source from the bills of the works contractors against the amount of tax finally assessed. As per the Bihar Tax on Entry of Goods into local areas (BTEG) Act and Rules made thereunder, the amount of entry tax paid on import of the scheduled goods is also adjustable from the liability of the VAT. The excess amount of tax is to be refunded to the works contractors/dealers.

In case of seven dealers of four circles⁴², against the output tax of Rs. 12.04 crore, the dealers had credit of Rs. 23.77 crore at the end of years 2005-08. Thus, Rs. 11.73 crore (being 49.34 per cent of credits available to them)

⁴² Bhagalpur, Muzaffarpur East, Muzaffarpur West and Patna Central.

remained unadjusted which is a liability of the department. The unadjusted credits accruing every year as liability may prove burdensome in the future.

After this was pointed out, the Government accepted (November 2009) the audit observation and stated that a new policy of compounding was under consideration.

The Government may consider bringing a policy for compounding of tax for the works contractors.

2.2.20 Payment of deferred tax and interest

Under the provisions of the BVAT Act and Rules made thereunder, any dealer who has been granted the facility of exemption from payment of tax under the Bihar Finance Act and who has on the commencement of this Act not availed of the full entitlement, shall be allowed to opt for deferment of his tax liability under this Act subject to the fulfillment of the entitlement. Further, the amount of tax deferred shall be paid in five equal instalments payable by 31st March of every year commencing after the expiry of the year during which the unavailed entitlement terminated, failing which interest at the rate of one and half *per cent* per month or part thereof shall be payable on such amount of default till the date of its payment.

Audit scrutiny revealed that no specific register has been prescribed to monitor the deferred amount and its repayment. Due to the absence of such vital register, the management was not able to monitor the deferment cases and could not provide their details although called for (January 2009) by audit. Deficiencies noticed in the management of deferred cases are mentioned below.

2.2.20.1 In Patna West Circle, it was noticed that a dealer whose tenure of exemption ended in March 2006 had availed of deferring of tax of Rs. 50.31 lakh during 2005-06 but did not pay his instalments due in March 2007 and March 2008. In the meantime his exemption certificate was cancelled in January 2009 with retrospective effect. Consequently, his entitlement for deferring of tax ceased to exist and he was liable to pay the entire deferred amount of Rs. 50.31 lakh and interest of Rs. 27.17 lakh immediately. But no demand notice was issued to the dealer as of August 2009.

2.2.20.2 In three circles⁴³, it was noticed that though the Act provided for the deferring of tax payable under the VAT Act only, three dealers had availed of deferring of tax of Rs. 11.76 lakh payable under the CST Act during 2005-08. This resulted in short levy of tax of Rs. 16.72 lakh including leviable interest.

2.2.20.3 In Patna City East circle, it was noticed that a dealer whose tenure of exemption ended in March 2006 had availed of deferring of tax of Rs. 72.26 lakh during 2005-06 and he had to pay the first instalment of deferred tax of Rs. 14.45 lakh in March 2007. But the dealer had paid the deferred tax of Rs. 2.25 lakh only. Due to lack of monitoring, the department could not detect non-payment of tax which resulted in non-payment of deferred tax of Rs. 12.20 lakh as well as interest of Rs. 1.46 lakh calculated up to the date of audit.

⁴³ Bhagalpur, Katihar and Patna City East.

The Government may consider prescribing a register of deferred cases to be maintained by the circles.

2.2.21 Acceptance and disposal of the appeal cases

Under the provisions of the BVAT Act and Rules made thereunder, any dealer objecting to an order of assessment or an order levying interest or penalty passed by the prescribed authority against him may appeal to the JCCT or the DCCT specially authorised on this behalf, within 45 days of the receipt of the notice of the demand.

Audit scrutiny revealed that though the Rules provide a time frame for admission or rejection or issue of stay orders **but no time frame for issue of the final orders has been prescribed.**

Test check of the records revealed that the number of disposal of cases during the years 2005-06 to 2007-08 showed a decreasing trend (2,624; 2,542 and 1,995 respectively) and at the end of 2007-08, 2,049 cases remained outstanding.

The Government may consider prescribing a time frame for disposal of the cases in appeal.

2.2.22 Deterrent measures

The BVAT Act and Rules like all other fiscal statutes provides for imposition of minimum penalty for failure to carry out statutory obligations. Some illustrative cases of deficiencies noticed are given below.

2.2.22.1 Penalty for non/delayed submission of tax audit report

Under the provision of the BVAT Act, every registered dealer (not covered under compounding of tax), whose GTO exceeds Rs. 40 lakh is required to get his annual accounts audited by an accountant and submit the TAR to the prescribed authority on or before the due date, failing which a sum by way of penalty equivalent to two *per cent* of the tax is payable for every month or part thereof, of such default.

In 10 circles⁴⁴, it was noticed that 20 dealers either did not submit the TAR or submitted with delay during the year 2005-08. The delay in submission of the TAR ranged from 14 days to 31 months. The assessing authorities either did not levy any penalty or levied it short on the tax of Rs. 25.71 crore. This resulted in non/short levy of penalty of Rs. 5.34 crore.

Further, it was also noticed that this provision is limited to the tax payable under the VAT Act only and such dealers who have the tax liability only under the CST Act escapes from imposition of such penalty.

The Government may consider incorporating a penal clause for cases under the CST Act.

⁴⁴ Bhagalpur, Katihar, Motihari, Muzaffarpur West, Patliputra, Patna City West, Patna Special, Patna West, Samastipur and Sasaram.

2.2.22.2 Penalty for delayed submission of returns

Under the provision of the BVAT Act, if a dealer fails to furnish monthly⁴⁵/quarterly returns within the time specified, the prescribed authority shall, after giving such a dealer an opportunity of being heard, impose a penalty at the rate of Rs. 25 for every day of such failure.

In six circles⁴⁶, it was noticed that 14 dealers filed their returns with delay during 2005-08. The assessing authorities either did not levy any penalty or levied it short. This resulted in non/short levy of penalty of Rs. 5.73 lakh.

It was noticed that no penalty was prescribed for non-submission of annual return by the due date.

The Government may consider prescribing penal provision for non/delayed filing of annual return.

2.2.23 TINXSYS

With a view to help the tax collecting departments of various States and Union Territories in monitoring the sales/purchases made in the course of interstate trade and commerce, the Empowered Committee of State Finance Ministers had recommended the maintaining of database on interstate dealers commonly known as TINXSYS (Taxation Information Exchange System). The States were asked to upload information on the website named TINXSYS.com.

As per the information furnished by the department in November 2009, details of 75,454 'C' forms pertaining to the year 2007-08 and 22,188 'F' forms pertaining to the years 2005-06 to 2008-09 were to be uploaded to the site. Delayed uploading of the details on TINXYS would defeat the purpose of creation of the site as the assessing officers of the other States would not be able to verify the particulars of these forms online.

Besides, the department has not made it mandatory for the assessing officers of the State to verify the information available on the site before allowing concessional rate/exemption of tax.

2.2.24 Internal control mechanism

Internal controls are intended to provide reasonable assurance of proper enforcement of laws, rules and departmental instructions. Scrutiny of the records indicated following internal control deficiencies.

2.2.24.1 Maintenance of vital registers

- **DCB register and register of TAR**

Demand, collection and balance (DCB) register is a register to watch the details of tax admitted/assessed, collection made and any dues to be realised from the dealers.

⁴⁵ From 1-04-2006 monthly return has been dispensed with and the dealers are required to submit quarterly returns.

⁴⁶ Bhagalpur, Danapur, Darbhanga, Muzaffarpur East, Muzaffarpur West and Patliputra.

Under the provision of the BVAT Act, every registered dealer whose GTO exceeds Rs. 40 lakh is required to get his annual accounts audited by an accountant and submit the TAR to the prescribed authority on or before the due date, failing which a sum by way of penalty equivalent to two *per cent* of the tax is payable for every month or part thereof of such default.

Audit scrutiny revealed that DCB register/register to watch submission of TAR have not been prescribed in the BVAT Act. In the absence of these vital registers, it was not possible to monitor the realisation of tax/penalty and interest from the dealers and the actual date of submission of the TARs.

- **Register of certificate of non-deduction**

Under the provisions of BVAT Rules no tax shall be deducted from the bills of the supply contractors if the supplier being a registered dealer produces before the deducting authority a certificate in form C-III issued by the in-charge of the circle in which he is registered.

Audit scrutiny revealed that no register regarding issue of C-III has been prescribed. In the absence of such register it is difficult to ascertain the authenticity and period for which the said form was issued and also the name and TIN of the dealer to whom the forms were issued.

After this was pointed out, the Government accepted (November 2009) the audit observation and stated that suitable amendment would be made.

The Government may consider prescribing the aforesaid registers to strengthen the internal control measures.

2.2.24.2 Internal Audit

Internal audit, commonly known as control of all controls, functions as the 'eyes' and 'ears' of an organisation and enables it to ascertain whether its functioning is on reasonably sound footing.

The Finance (audit) Department works as internal auditor for the Finance (Commercial Taxes) Department. Information made available to audit revealed that the Commercial taxes Headquarter and Bhagalpur division only were audited during 2005-06 and 2006-07 by the Finance (Audit) Department. No audit had been conducted of the circles which was the basic activity centre during the period 2005-06 to 2007-08.

The Government may install an appropriate mechanism that ensures an effective internal audit of the functions of the various offices of the Taxation Department including its headquarters.

Compliance deficiencies

2.2.25 Deductions on account of interstate transactions

The BVAT Act provides for the assessing authority to scrutinise every return filed to ascertain, *inter alia*, that deductions claimed are substantiated in the manner and form prescribed under the Act or any other law for the time being in force. In case of any error, difference of tax including interest at the rate of

1.5 per cent per month is payable by the dealer. As per the amended provision of the CST Rules, the declaration forms are required to be submitted within three months after the end of the quarter to which those relate.

2.2.25.1 In 13⁴⁷ circles, it was noticed that 32 dealers had claimed exemption/concessional rate of tax on account of interstate sales/stock transfer of goods worth Rs. 244.50 crore during the period 2005-08. Of this, sales/transfer of goods of Rs. 31.45 crore only was supported by the prescribed declarations in forms 'C' and 'F'. However, the assessing authorities failed to levy tax on the unsubstantiated claims of sales/transfer of Rs. 213.05 crore. This resulted in short levy of tax of Rs. 22.59 crore.

2.2.25.2 In Patliputra circle, it was noticed that a dealer had claimed exemption on account of transit sale of goods of Rs. 42.98 lakh during 2005-06 and it was allowed by the assessing authority on the production of two certificates in E-1 and E-2 for Rs. 40.25 lakh. But no declaration in form 'C' or certificate in form 'D' was produced by the dealer to substantiate the claim. Thus, the assessing authority allowed the claim in violation of the provision which resulted in short levy of tax of Rs. 5.37 lakh besides interest of Rs. 2.66 lakh.

2.2.26 Mistake in computation of tax

In Muzaffarpur West circle, it was noticed that a dealer having gross turnover of Rs. 41.95 crore and taxable turnover of Rs. 38.40 crore during the first quarter of 2007-08 calculated his tax at Rs. 51.81 lakh instead of the correct amount of Rs. 4.51 crore. While scrutinising the return the assessing authority failed to detect such mistake. This resulted in short levy of tax of Rs. 3.99 crore.

2.2.27 Short/non-calculation of reverse credit

2.2.27.1 Under the provision of BVAT Rules, a manufacturing dealer shall incur reverse credit when he sells Schedule-I goods and makes interstate or and within State stock transfer of the goods which was manufactured by him from the inputs other than those specified in Schedule-I. The amount of ITC for which a dealer is entitled will be arrived at after the deduction of the reverse credit from the amount of the input tax paid on the purchases.

In six circles⁴⁸, it was noticed that seven manufacturing dealers had made stock transfers (either within the State or interstate) of taxable goods and sale of Schedule-I (tax-free) goods of Rs. 62.26 crore. The inputs for these goods were purchased from within the State after paying tax thereon during 2005-08 but reverse credit of Rs. 33.26 lakh was either not calculated or calculated short by these dealers while claiming the ITC. The assessing authorities failed to detect the omission which resulted in excess allowance of ITC of Rs. 1.33 crore including leviable penalty of Rs. 99.79 lakh.

2.2.27.2 The BVAT Act and Rules framed thereunder provides that a non-manufacturing dealer shall incur reverse credit if he makes stock transfer of

⁴⁷ Aurangabad, Barh, Danapur, Munger, Muzaffarpur West, Patliputra, Patna City West, Patna South, Patna West, Purnea, Saharsa, Samastipur and Teghra.
⁴⁸ Danapur, Katihar, Patna City East, Patna City West, Patna North and Patna West.

the goods purchased from within the State after paying the tax leviable either under the Act or the earlier law or the goods so purchased on payment of tax is lost, stolen or destroyed.

In three circles⁴⁹, it was noticed that three dealers made interstate/intrastate stock transfer of goods of Rs. 5.37 crore out of the goods purchased from within the State after paying the tax leviable during 2005-08. In case of one dealer registered in Patna West circle, goods worth Rs. 10.34 lakh were reported stolen during 2005-06. Full ITC was claimed on the purchases made by these dealers and no reverse credit was calculated in spite of the stock transfer made by them/goods being stolen. The departmental authorities conducting scrutiny failed to detect the omission which resulted in excess allowance of ITC of Rs. 84.34 lakh including leviable penalty of Rs. 66.35 lakh.

2.2.28 Adjustment of entry tax towards payment of VAT

Under the provision of the BTEG Rules, 1993, tax paid under the BTEG Act shall be adjusted against the liability under the BVAT Act provided that the said reduction in tax shall be available to the manufacturer if the imported schedule goods are used or consumed in the manufacture of goods for resale. In case only a part of the goods manufactured out of the imported scheduled goods is sold within the State of Bihar or in the course of interstate trade and commerce or in the course of export out of the territory of India, the claim for the reduction in tax liability shall stand proportionately reduced.

In four circles⁵⁰, it was noticed that six manufacturers who had paid entry tax of Rs. 2.37 crore on the value of imported scheduled goods had fully adjusted it against the VAT payable on the sale of goods manufactured during 2005-06 and 2006-07. Since, the dealers had made interstate stock transfer of goods of Rs. 20.62 crore, the claim for reduction in tax (VAT) liability was required to be proportionately reduced. Non-adherence to the aforesaid provision by the assessing authorities resulted in excess allowance of adjustment of entry tax of Rs. 43.32 lakh towards VAT.

2.2.29 Establishment of check posts

The State Government has issued a notification in September 2006 for setting up of six⁵¹ check posts. Though the implementation of VAT is in its fifth year, none of these check posts have been made operational as yet. In the absence of check posts, monitoring the consignments entering the territory of the State in course of transit was not possible.

After this was pointed out, the Government accepted (November 2009) the audit observation and stated that work was in progress at all the places and two check posts at Rajauli (Nawada) and Dobhi (Gaya) would start functioning soon.

⁴⁹ Danapur, Muzaffarpur West and Patliputra.

⁵⁰ Danapur, Patliputra, Patna Central and Patna City West.

⁵¹ Ahirauli (Buxar), Dalkola (Purnea), Dobhi (Gaya), Jalalpur (Gopalganj), Karmanasha (Bhabhua) and Rajauli (Nawada).

2.2.30 Conclusion

Analysis of the implementation of BVAT Act revealed various deficiencies in the process and lacunae in the BVAT Act and the Rules. Inaction by the assessing authorities in exercising the powers of recovery officer vested in them led to large arrears. Due to the absence of a system of periodic surveys/analysis of books of accounts of the dealers below the prescribed threshold, the Department could not detect unregistered dealers. Irregular amendments withdrawing the provision to levy tax on the maximum retail price, lack of cross verification of the records of other dealers and absence of a provision for cross verification of records of the dealers with other sources resulted in leakage of revenue. The format of the returns was deficient leading to insufficiency of information due to which no meaningful scrutiny could be conducted. Improper/delayed scrutiny of the returns, low coverage of dealers in tax audit coupled with inadequate documentation furnished with the returns led to many cases of non/short realisation/loss of revenue. Deductions were claimed and allowed without proper evidence. There was undue delay in setting up of check post. The overall internal control mechanism was weak as evidenced by the above deficiencies and absence of vital control registers. Due to non-conducting of internal audit, the department remained unaware of the loopholes and lacunae, some of which have been pointed out in this review.

2.2.31 Summary of recommendations

The Government may consider implementing the recommendations noted under the respective paragraphs with special attention to the following to rectify the system and compliance issues.

- withdraw the amendment regarding levy of tax on MRP or immediately notify the goods on which tax on MRP will be levied;
- revise the format of the returns and TAR and provide for submission of all the relevant declaration/supporting evidence alongwith the return to substantiate the claims and making the returns self sufficient;
- evolve a mechanism to ensure timely scrutiny of the returns by fixing specific targets for the respective assessing authorities;
- make provision for submission of tax invoice number and date with the name of selling and purchasing dealers and TIN alongwith the return;
- evolve other criteria based on comprehensive risk analysis and keeping in view the geographical dispersion for selection of dealers for tax audit;
- make adequate arrangement for conducting tax audit of the number of dealers as prescribed;
- reinstate the system of cross verification of the transactions before allowing the input tax credits; and
- strengthen the internal control mechanism, install the remaining check posts as well as a system for ensuring effective internal audit of the offices of the Taxation Department and its headquarters.

2.3 Other audit observations

Scrutiny of the records of the sales tax/VAT in the commercial tax department revealed several cases of non-observance of the provisions of the Act/Rules and departmental instructions as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on a test check carried out in audit. Such omissions on the part of the assessing authorities are pointed out in audit each year, but not only the irregularities persist; these remain undetected till an audit is conducted in the subsequent year. There is need for the Government to improve the internal controls including strengthening of the internal audit to ensure that such omissions are detected and rectified.

2.4 Exemption/deduction from levy of tax

The BVAT Act read with the CST Act provides that no tax shall be payable on the sale or purchase of the goods in the course of import of goods into or export of the goods outside the territory of India. As per the circular issued by the CCT, Bihar in 1986 and reiterated in 1991, the claim for exemption is required to be supported by proper documentary evidence.

In three circles, it was noticed that three dealers were allowed exemption from levy of tax on the sale of goods valued at Rs. 1,525.87 crore in the course of export out of the territory of India without documentary evidence. This resulted in non-levy of tax of Rs. 288.54 crore as given below:

(Rupees in lakh)

Sl. no.	Name of circle/ No. of dealers	Period	Rate of tax applicable (per cent)	Value of export	Tax leviable	Tax levied	Non-levy of tax
1.	Patna Special/01	2005-06	12.5 to 29 ⁵²	1,52,267.08	28,814.09	Nil	28,814.09
2.	Munger/01	2006-07	12.5 ⁵³	160.66	20.08	Nil	20.08
3.	Muzaffarpur West/01	2005-06 to 2007-08		158.83	19.85	Nil	19.85
Total				1,52,586.57	28,854.02	Nil	28,854.02

After this was pointed out, the Government accepted (November 2009) the audit observation. Further development has not been intimated (January 2010).

2.5 Non-inclusion of excise duty component in sales turnover

Under the Bihar Excise Act, 1915, no intoxicants shall be transported unless the excise duty has been paid. Accordingly, the manufacturer/warehouse owners were required to pay the excise duty on intoxicants before transporting these to the wholesalers/retailers. As per a notification (May 2004) of the State

⁵² The rate of tax on Aviation Turbine fuel: 29 per cent, Motor Spirit: 27 per cent, High Speed Diesel: 22 per cent, Liquefied Petroleum Gas: 12.5 per cent and Superior Kerosene Oil: 12.5 per cent.

⁵³ The rate of tax applied treating the commodity as unspecified.

Excise Department, the warehouse owners (manufacturers) of country/spiced country liquor were exempted from the payment of State excise duty from 2005-06 and the excise duty was shifted to the retail licensees in the shape of licence fee. As per the conditions of sale notifications of country spirit/spiced country spirit shops issued in June 2004, the successful bidders were required to deposit six month's licence fee immediately after the bid and the balance amount was to be deposited in advance in equal monthly instalments between July and December. As per the new Excise Policy, 2007, the licence fee of each shop was to be deposited in twelve equal instalments.

Thus, excise duty is leviable in advance before the intoxicants are transported from the manufacturers and hence intoxicants transported from the manufacturers is inclusive of excise duty.

Under the BVAT Act, the sale price is inclusive of taxes or duties levied under any law for the time being in force, by whatever name called.

Country/spiced country liquor being Schedule IV (non-VATable) goods are taxable only at the first point of sale in the State (except for a period between 1 October 2006 and 10 November 2006). Thus, though the excise duty component was includible in the turnover of the manufacturers/wholesalers, the department was realising tax without considering the excise duty as part of the turnover of the manufacturers. This resulted in non-levy of tax of Rs. 83.69 crore during October 2006 to March 2008 calculated on the basis of the quantity of potable liquor sold by the warehouse owners as given below. This also led to undue financial benefit to the manufacturers to that extent.

(Rupees in lakh)

Sl. no.	Commodity	2006-07 ⁵⁴	2007-08	Total quantity in LPL ⁵⁵	Rate of excise duty per LPL	Value of excise duty	VAT leviable
1	Country liquor	128.95	334.41	463.35	Rs. 35	16,217.32	7,975.97
2	Spiced Country liquor	6.60	13.45	20.05	Rs. 40	802.04	392.55
Total		135.55	347.86	483.40		17,019.36	8,368.52

After this was pointed out, the Government stated (November 2009) that the matter would be looked into and suitable amendment as required would be made while keeping in view the various aspects of liquor trade. The reply is not tenable as tax was leviable under the existing provisions as mentioned above and no further amendment was required. A report on recovery has not been received (January 2010).

2.6 Non-levy of purchase tax

Under the provisions of the Bihar Finance (BF) Act, 1981 and BVAT Act, every dealer who purchases goods on which no sales tax is payable and consumes such goods in the manufacture of other goods for sale or otherwise or disposes such goods in any manner other than by way of sale in the State or

⁵⁴ From 01 October 2006 to 31 March 2007.

⁵⁵ London Proof Litre.

sale in the course of interstate trade, shall be liable to pay tax on the purchase price of such goods at the rate at which it would have been leviable on the sale price of such goods.

2.6.1 In Muzaffarpur West and Patliputra commercial taxes circles, it was noticed that two manufacturers of cattle feed had made within State purchase of taxable goods⁵⁶ of Rs. 24.98 crore from unregistered dealers and consumed them in the manufacture of cattle feed (a tax-free commodity from July 2005) during 2005-08. This attracted purchase tax of Rs. 2.81 crore which was not levied by the assessing authorities.

2.6.2 In Patna City East and Saran (Chapra) commercial taxes circles, it was noticed between November 2007 and June 2008 that three dealers purchased goods⁵⁷ valued at Rs. 3.37 crore during the assessment years 2003-04 and 2004-05 from the places within the State. These goods were purchased without the payment of sales tax and consumed in the manufacture of other goods⁵⁸ and thus were liable to levy of purchase tax of Rs. 23.75 lakh. The assessing authorities while finalising the assessments between November and December 2006 failed to levy purchase tax.

After the cases were pointed out, the Government/department accepted (October 2009) the audit observation in case of two dealers of Saran (Chapra) circle and issued demand notices. The report on recovery in the case of Saran (Chapra) circle and replies in respect of the other cases have not been received (January 2010).

2.7 Determination of turnover

Under the provisions of the BVAT Act, gross turnover is aggregate of the sale prices received or receivable by a dealer on the sales and includes sale of the goods made outside the State or in the course of interstate trade or export. However, the taxable turnover is to be determined after deducting the value of interstate sale, sales of goods specified in Schedule-I and value of goods sold but returned from the gross turnover (GTO).

2.7.1 In five circles⁵⁹, the GTO of five dealers during 2005-08 was determined at Rs. 68.46 crore instead of Rs. 72.91 crore. These dealers have either shown the GTO less than the payment received by them or did not include all the sales. The incorrect determination of GTO by these dealers resulted in short levy of tax of Rs. 55.67 lakh including penalty.

2.7.2 In four circles⁶⁰, it was noticed that the taxable turnover (TTO) of seven dealers during 2005-08 was determined at Rs. 53.35 crore instead of Rs. 61.19 crore. Out of these, four dealers did not include the profit element in his TTO, two dealers claimed excess/incorrect deduction and one dealer did not include the turnover of sand and stone chips. The incorrect/short determination of the TTO by Rs. 7.84 crore resulted in short levy of tax of Rs. 96.92 lakh.

⁵⁶ Maize, molasses, mustard cake, rice bran, wheat, wheat bran etc.

⁵⁷ Citric acid, condensed milk, *maida*, packing materials, sand and stone chips.

⁵⁸ Biscuits and PSP poles (Electric pole).

⁵⁹ Biharsharif, Katihar, Muzaffarpur West, Patliputra and Samastipur.

⁶⁰ Katihar, Muzaffarpur West, Patliputra and Patna Central.

After this was pointed out, the Government accepted (November 2009) the audit observation. Further development has not been intimated (January 2010).

2.8 Evasion of tax

Under the provisions of the BVAT Act, if the prescribed authority is satisfied that any registered dealer has concealed any sales or purchases or any particulars thereof with a view to reduce the amount of the tax payable or furnished incorrect statement of his turnover or incorrect particulars of his sales or purchases in the return, the prescribed authority shall, after giving such a dealer an opportunity of being heard in the prescribed manner, direct that he shall pay, in addition to any tax which may be determined to be payable by him under the Act, by way of penalty, a sum equal to three times the amount of tax.

In Gaya commercial taxes circle, it was noticed in September 2008 that a dealer had claimed exemption on account of the interstate stock transfer of goods of Rs. 6.48 crore during the year 2005-06 and 2006-07 to a dealer of Arunachal Pradesh and submitted eight declarations in form 'F' in support of the claim for exemption. Cross verification of these declarations 'F' with the utilisation statement submitted by the dealer of Arunachal Pradesh to the assessing authority of that State, however, revealed that the dealer of Arunachal Pradesh had actually issued four out of the said eight forms to a dealer of Uttar Pradesh and the remaining four forms were issued for Rs. 2.79 lakh only. Thus, the dealer of Bihar had suppressed the turnover of Rs. 6.45 crore and used the forms obtained from Arunachal Pradesh fraudulently, which resulted in evasion of tax of Rs. 1.03 crore including leviable penalty.

The case was reported to the department and the Government in August 2009; their reply has not been received (January 2010).

2.9 Short levy of tax

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

In four commercial taxes circles, it was noticed between December 2006 and February 2008 that six dealers sold various commodities valued at Rs. 43.58 crore on which tax was leviable at all the points of sale during the years 2001-02 to 2004-05. The assessing authorities while finalising the assessments between April 2005 and July 2007, incorrectly levied tax of Rs. 56.75 lakh instead of Rs. 1.06 crore, resulting in short levy of tax of Rs. 49.43 lakh as mentioned below:

(Rupees in lakh)

Sl. No.	Name of the circle No. of dealers	Commodity turnover	Tax leviable	Tax levied	Short levy of tax	Remarks
1.	<u>Patliputra</u> 1	Chassis of heavy vehicles 2,552.40	43.75	9.85	33.90	The amount of tax paid at the preceding stage was incorrectly calculated.
2.	<u>Saran (Chapra)</u> 1	<u>IMFL</u> 538.94	24.24	15.32	8.92	- do -
3.	<u>Purnea</u> 2	<u>IMFL</u> 929.90	32.69	27.87	4.82	- do -
4.	<u>Samastipur</u> 2	Soap and detergent 337.09	5.50	3.71	1.79	The AA levied additional tax and surcharge instead of multipoint tax.
Total		4,358.33	106.18	56.75	49.43	

After these cases were pointed out, the Government/department while accepting (between June 2008 and June 2009) the audit observations in the cases of Saran (Chapra), Patliputra and Samastipur circles, revised the assessments and issued demand notices accordingly. Of this, Rs. 1.71 lakh had been recovered from two dealers of Samastipur circle (between June and July 2009). Report on recovery of the balance amount and reply in other cases have not been received (January 2010).

2.10 Underassessment of the central sales tax

Under section 8(5) of the Central Sales Tax (CST) Act, 1956, the Government of Bihar issued a notification in June 1986 reducing the rate of sales tax on interstate sale of jute from four to three *per cent*. Further, under the CST Act as amended in May 2002, production of form 'C' is mandatory while granting exemption/allowing tax at reduced rates on the interstate sales. In case of failure to produce the declarations in form 'C', tax is leviable at twice the rate applicable in the State in case of declared goods⁶¹ and in case of the goods other than the declared goods at the rate of 10 *per cent* or at the rate applicable in the State, whichever is higher.

In three commercial taxes circles⁶², it was noticed between November 2006 and August 2008 that 13 dealers claimed payment of tax at reduced rate (three *per cent*) on the interstate sales of jute valued at Rs. 12.67 crore during the assessment years 2002-03 to 2004-05. The AAs while finalising the assessments between October 2004 and January 2007 irregularly allowed the payment of tax at the reduced rate, though the sales were not supported by declarations in form 'C'. This resulted in underassessment of tax of Rs. 41.19 lakh.

⁶¹ Goods of special importance in interstate trade and commerce as described in section 14 of the CST Act.

⁶² Forbesganj, Purnea and Saharsa.

After these were pointed out, the AAs concerned stated between December 2006 and August 2008 that the matter would be examined/reviewed. Further replies have not been received (January 2010).

The cases were reported to the Government between April 2008 and April 2009; their reply has not been received (January 2010).

2.11 Application of incorrect rate of tax

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

In three commercial taxes circles, it was noticed between January 2008 and February 2009 that five dealers sold goods valued at Rs. 5.24 crore during the assessment years 2003-04 to 2004-05. The AAs while finalising the assessments between April 2007 and April 2008 levied tax at incorrect rates resulting in short levy of tax of Rs. 32.23 lakh including additional tax and surcharge as mentioned below:

(Rupees in lakh)

Sl. no.	Name of circle No. of dealer	Name of commodity	Assessment year Month/Year of assessment	Value of goods	Rate of tax (in per cent)		Short levy of tax (including Additional Tax and Surcharge)
					Leviable	Levied	
1.	Patliputra 1	Air Conditioning System	2004-05 April/2007	206.04	16	8	18.31
2.	Biharsharif 2	Electrical goods	2003-04 and 2004-05 February/2008	182.55	12	8	9.54
		Bitumen	2004-05 April/2008	36.65	12.5	9	
3.	Patna South 2	Oxygen gas	2004-05 April/2007	11.52	12	8	4.38
		Electrical goods	2003-04 March/2008	87.06	12	8	
Total				523.82			32.23

After these were pointed out, the Government/department accepted all the cases between September 2008 and November 2009 and issued the demand notices. Report on recoveries has not been received (January 2010).

2.12 Suppression of turnover

Under the provisions of the Bihar Finance Act read with the CST Act, if the prescribed authority has reasons to believe that a dealer has concealed, omitted or willfully failed to disclose the particulars of the turnover or has furnished incorrect particulars of such turnover, the said authority shall assess or reassess the amount of tax due from the dealer in respect of such turnover and shall direct the dealer to pay, besides the tax assessed on the escaped turnover,

penalty not exceeding three times but not less than an amount equivalent to the amount of tax on the turnover escaping tax.

In three commercial taxes circles⁶³, it was noticed between December 2006 and February 2009 that three dealers had purchased/sold goods of Rs. 3.86 crore during the assessment years 2002-03 and 2004-05 as shown in their purchase/sale statements, utilisation statements of the road permits, declaration forms 'C' and 'F' and annual accounts, but had accounted for Rs. 3.01 crore only in their trading account and returns. The dealers, thus, suppressed purchase/sales of goods by Rs. 85.03 lakh. The AAs while finalising the assessments between April 2004 and August 2008, however, failed to detect the suppression of purchase/sales which resulted in short levy of tax of Rs. 15.39 lakh including additional tax, surcharge and minimum leviable penalty.

After these cases were pointed out, the Government/department accepted (July 2009) the audit observations pertaining to Hajipur and Patna South circles and issued demand notices accordingly. A report on recovery has not been received (January 2010). The reply in respect of Begusarai circle has not been received (January 2010).

2.13 Incorrect allowance of concessional rate of tax

Under the provisions of the Bihar Finance Act, the tax on the sale of goods shall be levied only at that point or points in the series of the sales as may be specified by the State Government by a notification. As per the notification issued by the Government in 1977, all machineries and machines are liable to tax at the first point of sale. Further, in case the rate of tax is not specified in case of any goods, tax is leviable at the rate of eight *per cent*.

In Patliputra commercial taxes circle, Patna, it was noticed in February 2008 that a dealer dealing in machineries and machines, sold goods valued at Rs. 1.76 crore to another registered dealer. The AA while finalising the assessment in October 2007 levied concessional rate of tax (one *per cent*) on the sale of such goods instead of at the rate of eight *per cent*. This resulted in short levy of tax of Rs. 15.64 lakh including additional tax and surcharge.

After this was pointed out, the Government/department while accepting (June 2009) the case, raised demand for Rs. 15.82 lakh. Report on recovery has not been received (January 2010).

2.14 Short levy of additional tax

Under the provisions of the Bihar Finance Act and notification issued thereunder, every dealer is required to pay an additional tax at the rate of one *per cent* (except liquor on which additional tax of two *per cent* is leviable) on the gross turnover and surcharge thereon unless specifically exempted from the levy of additional tax.

In Begusarai and Saharsa commercial taxes circles, it was noticed between November 2006 and July 2007 that in case of three dealers dealing in

⁶³ Begusarai, Hajipur and Patna South.

fertilizer, pesticides and seeds who were assessed to tax between December 2004 and February 2006 for the assessment years 2001-02 to 2004-05, additional tax was levied on the turnover of Rs. 7.07 crore instead of the correct amount of Rs. 13.23 crore. This resulted in short levy of additional tax of Rs. 6.78 lakh including surcharge.

After these were pointed out, the Government/department accepted (September 2009) the case relating to Begusarai circle and issued a demand notice. A report on recovery in this case and the reply in respect of the Saharsa circle have not been received (January 2010).

2.15 Levy of tax on closing stock

2.15.1 Levy of tax on closing stock after closure/discontinuance of business

Under the provision of BVAT Act, a registered dealer shall, within a period of twelve consecutive months, pay tax on the stock of the goods remaining with him on the date with effect from which he closes or discontinues his business, provided that the Commissioner may extend the period.

In Patna Central circle, it was noticed that a dealer had discontinued his business after 2005-06 as nil/no return was being filed by the dealer during 2006-07 onwards. The dealer had a closing stock of goods of Rs. 5.32 crore as on 31 March 2006. But no tax was admitted and paid by the dealer on the aforesaid stock. No time extension was found to have been granted by the CCT. Thus, failure of the assessing authority to levy tax resulted in non-levy of tax of Rs. 66.50 lakh.

2.15.2 Levy of tax on stock while transferring business

Under the provision of the BVAT Act, where a dealer liable to pay tax under this Act transfers the ownership or a part of his business, the transferor shall be liable to pay the tax in respect of the stock of the goods transferred with that part of the business.

In Patliputra circle, it was noticed that no tax was levied by the assessing authority in respect of stock transfer of goods of Rs. 1.11 crore while making the transfer of business by two dealers during 2005-06. This resulted in non-levy of tax of Rs. 13.85 lakh.

After the cases were pointed out, the Government accepted (November 2009) the audit observations. A report on recovery has not been received (January 2010).

2.16 Non levy of interest

Under the provisions of the BVAT Act, if the prescribed authority finds that any dealer has been underassessed or given excess credit than his entitlement, the dealer shall pay, in addition to the amount of tax assessed, simple interest at the rate of one and half *per cent* for each calendar month or part thereof on the difference of the tax from the date the tax would have been payable.

In three circles⁶⁴, it was noticed in case of eight dealers that the assessing authorities had levied an assessed tax of Rs. 5.87 crore during 2005-08 in addition to the tax admitted by these dealers in their returns but did not levy any interest on the amount of assessed tax payable. This resulted in non-levy of interest of Rs. 74.20 lakh.

After this was pointed out, the Government accepted (November 2009) the audit observation. A report on recovery has not been received (January 2010).

2.17 Excess collection of tax

Under the provisions of the BVAT Act, no registered dealer shall collect from any person any amount exceeding the amount of tax payable under the Act. In case of violation, a sum equal to twice the amount collected in contravention of the provisions, in addition to the forfeiture of such excess collected tax, is leviable as penalty.

In Patliputra and Patna West circles, it was noticed that though two dealers collected excess amount of tax of Rs. 6.19 lakh than their tax liability during 2005-06 and 2006-07, no order for levy of penalty was passed by the assessing authority. This resulted in non-levy of penalty of Rs. 12.38 lakh.

After this was pointed out, the Government accepted (November 2009) the audit observation. A report on recovery has not been received (January 2010).

⁶⁴ Bhagalpur, Patliputra and Patna City West.