

CHAPTER II - Taxes on Sales, Trade etc.

2.1 Results of audit

Test check of the records of the Commercial Taxes department during 2008-09 revealed non/short levy of tax and penalty, irregular allowance of exemption/concession/application of incorrect rate of tax etc. amounting to Rs. 298.33 crore in 228 cases, which could be classified under the following categories:

(Rupees in crore)

Sl. no.	Category	No. of cases	Amount
1.	Transition from sales tax to VAT and application of IT system (A review)	1	32.75
2.	Non /short levy of tax	76	48.92
3.	Irregular allowance of exemption from tax	54	59.99
4.	Non-levy of penalty	7	11.09
5.	Irregular allowance of concessional rate of tax	15	0.50
6.	Non/short levy of additional tax/ surcharge	15	0.60
7.	Short levy of tax due to incorrect determination of turnover	16	11.96
8.	Non-levy of penalty for excess collection of tax/ mistake in computation of tax	6	6.87
9.	Failure to conduct inter-departmental cross verification	1	70.39
10.	Other cases	37	55.26
Total		228	298.33

During 2008-09, the department accepted non/short levy of tax and penalty, irregular allowance of exemption/concession/application of incorrect rate of tax etc. of Rs. 131.97 crore in 67 cases of which 52 cases involving Rs. 131.51 crore were pointed out in audit during 2008-09 and rest in earlier years. A recovery of Rs. 27 lakh was made at the instance of audit.

A few illustrative audit observations involving Rs. 199.13 crore including a review on “**Transition from sales tax to VAT and application of IT system**” of Commercial Taxes Department are mentioned in the succeeding paragraphs:

2.2 Transition from Sales Tax to Value Added Tax and application of IT system

Highlights

- The growth rate of revenue collection during post VAT period had declined as compared to pre-VAT period.

(Paragraph 2.2.7)

- The scheme implemented for computerisation of commercial tax activities during 2004-06 failed to give desired results as it was not for VAT module. This resulted in unfruitful expenditure of Rs. 6.10 crore. Non-mapping of essential rules in the application resulted in continuation of manual operation of business processes.

(Paragraph 2.2.8.5)

- Taxpayer's Identification Number (TIN) was granted to all the 42,964 dealers registered under the repealed Act where as only 17,458 dealers applied for registration under the JVAT Act, 2005.

(Paragraph 2.2.9.2)

- Non-registration of 418 dealers with tax effect of Rs. 48.53 crore was detected by audit through cross verification of data relating to mining offices with eight commercial taxes circles.

(Paragraph 2.2.9.4)

- Payment of tax made with delays ranging from 1 to 1,041 days from 2006-07 to 2008-09 in 6,039 cases could not be monitored by the department as the application did not have provision for detection of delay and calculation of interest and penalty.

(Paragraph 2.2.10.5)

- Non-provision for cross verification with records of other departments of State/Central Government resulted in suppression of taxable turnover of Rs. 43.32 crore and consequent short levy of VAT and penalty of Rs. 15.20 crore.

(Paragraph 2.2.13)

- No uploading of data was made in Tax Information Exchange System (TINXSYS) despite payment of Jharkhand Government share of Rs. 32 lakh.

(Paragraph 2.2.14)

- Payment by Military Engineering Service (MES) of Rs. 64.30 crore to 64 unregistered contractors without deduction of tax on works contract resulted in non-levy of VAT amounting to Rs. 16.15 crore.

(Paragraph 2.2.15.1)

2.2.1 Introduction

The State of Jharkhand, after its creation in November 2000, implemented Jharkhand Finance (JF) Act, 2001. After the unanimous decision of the Government of India in January 2002 to implement VAT, the Government of Jharkhand repealed the JF Act and enacted the Jharkhand Value Added Tax (JVAT) Act, 2005 and JVAT Rules, 2006 from 1 April 2006.

The main objectives/aims contained in the white paper published on VAT included:

- i) it will eliminate cascading effect due to credit of tax paid on purchase for resale or for use in production;
- ii) other taxes will be abolished and overall tax burden will be rationalised;
- iii) overall tax would increase and there will be higher revenue growth; and
- iv) there would be self assessment by dealers and set off will be given for input and tax paid on previous purchases.

Differences between Sales Tax Act and JVAT Act

Some of the differences between the existing VAT Act and Sales Tax Act are as under;

- VAT is multipoint tax system while sales tax was single/double point tax system;
- VAT system relies more on the dealers to pay the tax wilfully and submit their returns and deemed self assessment; whereas supporting documents are required along with returns in the Repealed Act;
- a fixed percentage of cases is provided for detailed check in JVAT Act; while 100 *per cent* cases were to be assessed in the Repealed Act; and
- reduced controls of the executive on the dealers in VAT while many other kinds of taxes such as additional tax, turnover tax etc. were there in the repealed Act.

Salient features of JVAT Act

Different rates of tax and number of schedules in JVAT Act are as under:

Schedule I	Exempted goods
Schedule II	Part A - 1 <i>per cent</i>
	Part B - 4 <i>per cent</i>
	Part C - 4 <i>per cent</i> (industrial inputs & packing materials)
	Part D - 12.5 <i>per cent</i>
	Part E – not exceeding 50 <i>per cent</i> (special rate of tax)
Schedule III	4 <i>per cent</i> (Entry tax)

- The registered dealers under JVAT Act are granted a unique eleven digit registration number known as “Taxpayer’s Identification number” or TIN. The first two digits represent state code (state code for Jharkhand is 20)

and next two are 'check digits'. Of the rest, first two digits are circle codes (varying from 01 to 28 since there are 28 circles in Jharkhand) and last five digits are registration numbers of dealer as per JVAT Act and Central Sales Tax (CST) Act.

- The JVAT Act and notification issued thereunder provides a scheme for payment of composite tax by registered dealers who are engaged in the business of restaurant and eateries, bakeries, brick kilns, stone crushers, works contracts and sale and purchase of second hand motor vehicles with annual gross turnover not exceeding Rs. 50 lakhs. The rate of composite tax varies between half to four *per cent*.

2.2.2 Organisational Set up

The Secretary-cum-Commissioner of Commercial Taxes is responsible for overall collection of VAT in the State. The Secretary-cum-Commissioner of Commercial Taxes is assisted by Additional Commissioner and Joint Commissioners of Commercial Taxes, Joint Commissioners of Commercial Taxes of Bureau of Investigation (IB), Vigilance and Monitoring, along with other Deputy/Assistant Commissioners of Commercial Taxes at the headquarter's level. The Deputy Commissioner of Commercial Taxes (Headquarter) is also the coordinator for the computerisation of the Commercial Taxes Department.

The State is divided into five commercial taxes divisions¹ each under the charge of a Joint Commissioner (Administration) and 28 circles², each headed by Deputy/Assistant Commissioners of Commercial Taxes, respectively. The in-charge of the circle, besides other responsibilities, is also responsible for survey through the Commercial Taxes Officers. A Joint Commissioner of Commercial Taxes (Appeal) is also posted in each division who is assisted by Deputy Commissioners of Commercial Taxes for disposal of appeal cases.

A Deputy Commissioner of Bureau of Investigation is posted in each division to assist Joint Commissioners of Commercial Taxes (Administration). A Deputy Commissioner of Commercial Taxes, Vigilance and Monitoring is posted under the direct charge of Secretary-cum-Commissioner of Commercial Taxes at head office. The in-charge of the circle as well as divisional IB is responsible for survey.

2.2.3 Audit Objectives

The review was conducted to ascertain whether the

- planning for implementation and the transition from the JF Act and Rules made thereunder to JVAT Act and Rules made thereunder was effected timely and efficiently;
- organisational structure was adequate and effective;

¹ Dhanbad, Jamshedpur, Hazaribag, Ranchi and Santhal Pargana.

² Adityapur, Bokaro, Chaibasa, Chirkunda, Deoghar, Dhanbad, Dhanbad Urban, Dumka, Giridih, Godda, Gumla, Hazaribag, Jamshedpur, Jamshedpur Urban, Jharia, Katras, Koderma, Lohardaga, Pakur, Palamu, Ramgarh, Ranchi East, Ranchi South, Ranchi Special, Ranchi West, Tenughat, Sahebganj and Singhbhum.

- provisions of the JVAT Act and Rules made thereunder were adequate and enforced properly to safeguard the revenue of the State;
- internal control mechanism existed in the department and was adequate and effective to prevent leakage of revenue;
- checking the status of system after being in place for three years; and
- whether the application of VICTORY-VAT software met the requirement of JVAT Act with adequate security measures, IT control and data captured was sufficient, reliable, accurate and complete.

2.2.4 Scope and methodology of audit

A review on transition from sales tax to VAT was conducted for the period 2006-07 to 2008-09 in 13³ out of 28 circles, of five divisions and office of Secretary-cum-Commissioner of Commercial Taxes, during the period from June 2009 to August 2009, with special emphasis on creation of database for implementation of VAT, analysis of man power requirement, computerisation, registration, filing and scrutiny of returns, input tax credit, self assessment/assessment, working of IB and Vigilance and Monitoring wings of Commercial Taxes Department. Information collected from the Central/State Government departments and public/private undertakings were also cross verified with the sales tax/ VAT records. Computerised data for the period from April 2006 to April 2009 of four circles⁴ was also analysed using Interactive Data Extraction and Analysis (IDEA), a Computer Assisted Audit Tool (CAAT).

2.2.5 Acknowledgement

Indian Audit and Accounts Department acknowledges the co-operation of the Commercial Taxes Department in providing necessary information and records for audit. Entry conference was held in April and June 2009 with the Secretary-cum-Commissioner, Commercial Taxes Department, Jharkhand in which the scope, audit objective and methodology to be adopted during the conduct of the review was explained in detail. The draft review report was forwarded to the Government and department in August 2009. Audit findings and recommendations were discussed in the exit conference with the Principal Secretary, Finance Department on 24 September 2009. They agreed with all points raised in the review and assured to take corrective/remedial measures in respect of the deficiencies pointed out in the review.

Audit findings

System deficiencies

2.2.6 Internal audit

Internal audit is defined as the control of all controls as it is a means to ensure that the prescribed systems were functioning reasonably well. The Finance (Audit) department works as internal auditor of the Commercial Taxes

³ Adityapur, Bokaro, Chaibasa, Hazaribag, Jamshedpur, Jamshedpur Urban, Pakur, Ramgarh, Ranchi East, Ranchi South, Ranchi Special, Ranchi West and Singhbhum.

⁴ Bokaro, Jamshedpur, Ranchi Special and Ranchi West.

department. By an order of May 1960, the internal audit parties are required to conduct 100 *per cent* audit of all assessments finalised, examining *inter-alia* assessment orders, issue of demand notices, amount of tax collected and verification of deposit of amount in treasury. However, it was indicated that no internal audit had been conducted in the office of the Secretary-cum-Commissioner, Commercial Taxes department and in circles for the last five years.

In the office of the Secretary-cum-Commissioner, Commercial Taxes department Jharkhand there is a 'Vigilance and Monitoring Wing'. The guidelines issued in February 1986 and March 1997 required checking of 20 assessment records every month. Selection of records was to be made on the basis of the gross turnover. Besides, the Deputy Commissioner of Commercial Taxes (Vigilance and Monitoring) was required to check inspection registers, cheque registers, returns, issue of demand notices etc. and send a report regarding registration, levy of penalty for belated payment of output tax/assessed tax and realisation of assessed tax. It was seen that, the post of Joint Commissioner of Commercial Taxes at head quarter and five out of six posts of divisional level of the Deputy Commissioner of Commercial Taxes of Vigilance and Monitoring wing have not been filled up after the implementation of VAT. Accordingly, the work assigned to vigilance officers as mentioned above were not carried out during the period under review.

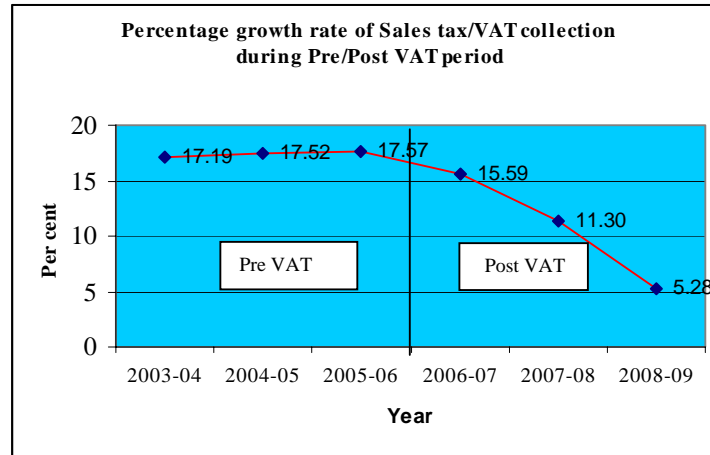
2.2.7 Pre-VAT and post-VAT tax collection

The comparative position of pre-VAT (2003-04 to 2005-06) and post-VAT (2006-07 to 2008-09) tax collection including VAT and the growth rate in each of the year is furnished in the following table:

(Rupees in crore)

Pre VAT			Post VAT		
Year	Actual Collection	Percentage of growth	Year	Actual Collection	Percentage of growth
2003-04	1,601.02	17.19	2006-07	2,556.90	15.59
2004-05	1,881.53	17.52	2007-08	2,845.88	11.30
2005-06	2,212.03	17.57	2008-09	2,996.20	5.28

The average growth rate of tax collection during 2003-04 to 2005-06 and 2006-07 to 2008-09 of pre-VAT and post-VAT respectively has been depicted in the graph below:



During the current year (2008-09), the growth rate was only 5.28 per cent. The department did not furnish any reason for decline in growth rate despite being requested (August 2009). Audit, however, noticed a number of deficiencies like non-formulation of policies for creation of additional tax base; absence of proper survey and monitoring at the apex level; absence of a system of cross verification of intra and inter-state sales and purchases made by registered dealers; non-establishment of check posts and inadequate internal control system in the department, which may be the reasons for decline in growth rate. Some of the important issues are discussed in the succeeding paragraphs:

2.2.8 Preparedness and transitional process

2.2.8.1 Planning for implementation of VAT

The Empowered Committee (EC) of the State Finance ministers decided in 2002 to implement VAT in all the states in India with effect from 1 April 2003. Accordingly, proposed JVAT Act Bill was prepared as per the model Act circulated by the EC and approved by the State Cabinet in February 2003. However, VAT could not be implemented from the target date *viz.* 1 April 2003. Following prolonged deliberation on the subject all over the country, the EC decided to implement VAT in all the states with effect from 1 April 2005. In view of the state assembly election, followed by political stalemate in forming a stable Government, VAT could not be implemented from the said date in Jharkhand. Finally, JVAT Act was approved by the State Legislature in February 2006 and the VAT was implemented from 1 April 2006.

2.2.8.2 Preparation of VAT Act/Rules, vetting of Act/Rules by the Government of India and approval of the legislature

The proposed Act Bill 2003 was sent to the Ministry of Home Affairs, Government of India for vetting in February 2003. All the modifications suggested by the Government of India were incorporated in the Jharkhand Value Added Tax Act Bill, which was enacted by the Assembly in February 2006 as Act of 2005.

2.2.8.3 Creation of awareness amongst stake holders

In course of audit scrutiny of records of Secretary-cum-Commissioner of Commercial Taxes, Jharkhand, **audit observed that no steps were taken by the Commercial Taxes Department to create awareness amongst stake holders or public in general through seminars, media (print or electronic or both) etc.** The year wise utilisation of funds received by the department for campaigning for implementation of VAT in Jharkhand was as per the following table:

(Rupees in lakh)

Period	Allotment received	Expenditure incurred	Balance surrendered
2003-04	5.01	Nil	5.01
2004-05	Nil	Nil	Nil
2005-06	20.20	4.00	16.20
2006-07	17.00	1.43	15.57
2007-08	47.00	47.00	Nil
2008-09	35.00	Nil	35.00
Total	124.21	52.43	71.78

Thus it could be seen that only 42 *per cent* of the fund received for the purpose was utilised during 2003-09 by the department. Further, expenditure during 2007-08 included Rs. 32 lakh paid to Government of India for TINXSYS (Tax Information Exchange System) and Rs. 15 lakh spent on tour of the Secretary and Additional Commissioner of Commercial Taxes Department to London and Brazil to gather information on VAT. Thus, only negligible expenditure was incurred for the purpose and rest was surrendered/utilised for other purposes.

2.2.8.4 Analysis of staff requirement and reorganisation of taxation department

For introduction of VAT system, there was a need for reorganisation of department and for analysing the staff requirement. However, **audit noticed that no steps were taken to analyse the requirement of staff and reorganisation of the department before implementation of VAT.** Requirement of officers at headquarters level, divisions and circles was assessed and identified only in May 2009 i.e. three years after the implementation of VAT though for subordinate staff it was still not done (August 2009). It was stated that the sanctioned strength was based on the requirement of each office. However, audit noticed that the man in position in seven circles⁵ and IBs under Ranchi, Jamshedpur and Dhanbad divisions were more than the sanctioned strength whereas in 16 circles⁶ it was significantly lower than the sanctioned strength. Besides, no officer was posted to the

⁵ Dhanbad Urban, Jamshedpur, Jamshedpur Urban, Ranchi East, Ranchi Special, Ranchi West and Singhum.

⁶ Chaibasa, Chirkunda, Deoghar, Dumka, Giridih, Godda, Gumla, Hazaribag, Jharia, Katras, Koderma, Lohardaga, Pakur, Palamu, Sahebganj and Tenughat.

Bureau of Investigation Central IB at headquarters level, Dumka and Hazaribag divisions.

2.2.8.5 Computerisation of the taxation department and the check gates and their interlinking

- **Unfruitful expenditure of Rs. 6.10 crore on computerisation**

The State Government had initially prepared budget estimate of Rs. 4.25 crore for computerisation in September 2004 which was revised to Rs. 6.54 crore in 2005-06 for hardware and networking equipments, application software, site preparation, data entry, etc. **Audit observed that the scheme implemented for computerisation of commercial tax activities during 2004-06 failed to give desired results as it was not for the VAT module. This resulted in unfruitful expenditure of Rs. 6.10 crore. Non-mapping of essential rules in the application resulted in continuation of manual operation of business processes.**

Year wise allotment and expenditure for computerisation during 2003-04 to 2008-09 was as indicated in the following table:

(Rupees in lakh)			
Period	Allotment received	Expenditure incurred	Balance surrendered
2003-04	100.00	Nil	100.00
2004-05	425.49	407.78	17.71
2005-06	150.00	108.38	41.62
2006-07	135.00	64.77	70.23
2007-08	72.00	29.36	42.64
2008-09	Nil	Nil	NIL
Total	882.49	610.29	272.20

It was noticed that the allotment of Rs. one crore made during 2003-04 was not operated at all and the entire amount was surrendered. For the period from 2004-05 to 2007-08, Rs. 7.82 crore were allocated for different purposes of computerisation. However, against this Rs. 6.10 crore were utilised and the balance of Rs. 1.72 crore was surrendered.

Test check of records indicated that the department had entered into a consultancy agreement in April 2004 with a Central Public Sector Undertaking at a fee of Rs. 77 lakh to develop an 'Application Software' with a centralised processing and database unit (web enabled) to facilitate access to both the user of the system and the dealers for on-line e-filing of returns. The Application Software comprised nine modules to be commissioned within one year. Though, decision to implement VAT was taken in 2003, i.e., much earlier to entering into agreement in April 2004, there was no mention of the fact that the software was to be developed for the purpose of VAT, which indicates defective planning. Further, though the consultant was required to develop all the modules within a period of one year, it developed only three modules till March 2006. The department had at no time reviewed the progress made in the development of the system. Instead it paid Rs. 43 lakh as fee, Rs. 55 lakh for purchase of software from a Delhi based company and Rs. 3.11 crore for purchase of hardware and networking equipments in 2004-06. In March 2006, the department became aware of the fact that the system was non VAT and

cancelled the contract. These facts indicated that the planning for implementing the VAT system was faulty.

Thus, there was a wasteful expenditure of Rs. 4.09 crore besides unfruitful expenditure of Rs. 2.01 crore on site preparation.

- **Setting up of VICTORY**

National Informatics Centre (NIC) at the request of the department in February 2006 developed a web based VAT application software namely VICTORY (VAT Information Computerisation to Optimize Revenue Yields) for the Commercial Taxes Department which was commissioned on 1 April 2006. The application software (VICTORY) comprises the following five modules:

1. Dealer information system and issuance of TIN;
2. Dealer Return processing system;
3. Payment Management system;
4. Monthly Progress Report; and
5. Form Control system.

A review of the system indicated the following deficiencies:

- The documentation of critical process of User Requirement Specification, System Requirement Survey and System Design Document was not carried out.
- The Form control system was yet to be made operational. The uses of 'Return processing system' and 'Monthly Progress Report' were limited to the entry of returns and generation of monthly progress report of collection of revenue respectively. The monthly progress report which is a part of management information system was being prepared using data entered by the circles compiled from manual records. Data entered through Registration, Payment and Return modules in database was not being utilized for generating such management information system reports.
- Areas like realisation of late fee; suspension of Registration Certificate; monitoring of submission of returns to impose penalty on delayed submission of returns, monitoring of payment of tax to impose interest and penalty on delayed payment of admitted tax; grant of instalments; self assessment, excess collection of tax; refund and provisional refund etc. were not found developed/mapped in the modules.
- Modules like Industrial Exemption System, Dealer Assessment System, and Personal Information System relating to administrative work of the department and systems for other taxes like Luxury tax, Entertainment Tax etc. were not considered for development.
- There was no documented user and password policy. It was noticed that the normal password control practices like restriction on unsuccessful login attempts, automatic lapse of password after a pre-defined period and application enforced periodical change of password were non-existent. Further, number and type of characters specified for the password were also

not defined in the application and the application accepted any single character (alphabet, special or numeric) as password. The Department in its reply stated (July 2009) that the matter has been referred to National Informatics Centre.

- There was no audit trail built in the application to capture activities of the users as log of programmes and transactions executed did not exist in the application. It was also observed that 6,550 monthly returns⁷ were entered in the database without capturing user IDs, clearly establishing the lack of even minimum audit trail in the application.
- The department did not furnish any documented plan to phase out the manual system and change over to the computerised system. The system developed is running in parallel with the manual system since its inception. Therefore the objective of discontinuance of manual registers and improving the efficiency of the working system of the department were not achieved.

- **Setting and functioning of Check Posts**

Section 72 of JVAT Act provides for establishment of check posts with a view to prevent or check avoidance or evasion of tax at such places as may be specified in a notification. An allotment of Rs. 15 crore was provided in 2001-02 for establishment of check posts which was diverted to Department of Transport, Jharkhand for establishing check posts. However, no check posts were established and no officers from the commercial taxes department were deployed for the purpose. Computerised check posts linked with the commercial taxes department headquarter is an essential tool to ensure correct assessment of tax of the dealers involved in inter-state trade. Absence of the above is also a reason of decrease in growth rate of revenue collection over the years, after the implementation of VAT in the State.

2.2.8.6 Creation of operation manual and training of staff

In the course of scrutiny of JVAT Act and Rules made thereunder, it was noticed that no provision has been kept for creation of operation manual for officers and other sub-ordinate staff working in the department. **No operation manual has been prepared by the commercial taxes department for effective implementation of VAT.**

Information collected from the Secretary-cum-Commissioner, Commercial Taxes Department, Jharkhand, indicated that originally 249 officers and 358 staff were earmarked for training in the 2003-04. However, 65 officers and 83 staff of the department are yet to be trained till the date of audit even three years after implementation of VAT.

2.2.8.7 Completion of Sales Tax/Central Sales Tax assessments under the repealed Act

The position of assessment finalised under the repealed Act during 2006-07 to 2008-09 was as under:

⁷ Form JVAT 213

Year	Assessment under repealed Act	Assessment under CST Act	Assessment under Entry tax	Total assessment finalised	Total assessment due to be finalised
2006-07	24,104	17,701	766	42,571	NA ⁸
2007-08	19,195	12,949	680	32,824	6,256
2008-09	16,732	10,895	1,344	28,971	2,484
Total	60,031	41,545	2,790	1,04,366	8,740

It would be seen from above that there is still a large number of cases pending for assessment under the repealed Act. The pendency is likely to affect adversely the finalising of cases under JVAT Act. These also affected the smooth transition from JF Act to JVAT Act.

To overcome the deficiencies mentioned in the foregoing paragraphs, the Government may consider:

- **reorganisation of the department based on proper manpower planning and adequate training;**
- **strengthening the functions of IB and Vigilance and Monitoring wing for regular survey, collection of data/information regarding purchase/sale and creation of database from departments of State/Central Government/PSUs etc. for cross verification of the transactions; and**
- **full utilisation of computer application software already installed and widening its scope from time to time, as per requirement.**

2.2.9 Registration and database of dealers

2.2.9.1 Creation of database

The application software VICTORY developed for the commercial taxes department created a database of dealers which included TIN, date of returns furnished by them and tax paid by them. **Audit observed that no periodic analysis of the database was done by the commercial taxes department.** Some of the related discrepancies noticed in audit are mentioned in the following paragraphs:

2.2.9.2 Registration of dealers

As per the JVAT Act and Rules made thereunder, every dealer who held a valid certificate of registration under the repealed Act, shall apply for registration in Form JVAT 100 and shall also submit information in the prescribed format regarding details of business along with two copies of recent passport size photograph, to the Registering Authority, within two month of coming into force of these rules. No fee shall be charged if application is made within the prescribed time period of thirty days. In case of late submission of application up to thirty days late fine of Rs. 100 was chargeable. Further, in case of non

⁸ Information not furnished by the department.

submission of application beyond thirty days the dealer would cease to be a registered dealer under the Act from the next day. The Act further stipulates that the Joint Commissioner of Commercial Taxes (Administration), may condone further delay of 180 days with late fee of Rs. 200. New dealers seeking registration are to apply in form JVAT 101. The Registering Authority if satisfied, shall issue to the dealer a Registration Certificate (RC) under the Act in Form JVAT 106 within fifteen days and grant him a Taxpayer's Identification Number (TIN) which shall be valid from the appointed day, i.e., 1 April 2006. Audit scrutiny of VICTORY indicated the following:

- TIN was granted in advance to all the 42,964 dealers registered under the Repealed Act before the appointed day though subsequently only 17,458 dealers applied in Form JVAT 100 for registration. Thus, allotment of TIN to 25,506 dealers without obtaining the requisite information/documents was against the provisions of the Act. This also deprived the Government of the fee/fine required to be deposited for late submission of the application.

After this was pointed out, the department stated (July 2009) that in the pre-VAT period it was decided to grant TIN to all registered dealers and that in Jharkhand Value Added Tax Act and related Rules, the provision of deemed registration was provided. It was also stated that the existing dealers can apply in form "JVAT100" and their registration number/TIN can be regularised in the VAT period. The reply is, however, not in consonance with Rule 3(ii) of JVAT Rules which provides that dealers who had not applied in the prescribed form within the period specified in Rule 3(i), were deemed to have failed to apply for registration under JVAT Act.

- Test check of data relating to two circles⁹ indicated that 77 dealers had applied for registration after more than two to three months. Also the dealers did not submit the information in the prescribed format. The dealers were liable to pay fine at the prescribed rate. This was not done, instead the dealers were registered and RC was issued in violation of the Act. Registration of dealers without obtaining the information in the prescribed forms and documents which is fraught with the risk of evasion of VAT.
- Under Jharkhand Value Added Tax Act and Rules made thereunder any dealer, whose gross turnover of sales during a financial year exceeds Rs 25,000, may apply in the prescribed manner to the prescribed authority for voluntary registration under this Act.

Analysis of database of test checked circles indicated that the field relating to gross turnover was found zero in respect of 235 dealers who had applied for voluntary registration. TINs were, however allotted to these dealers in violation of the provisions of the Act.

After this was pointed out, the department stated (June -July 2009) that gross turnover was mentioned in the application for registration, but due to clerical mistake the same was not entered in the database. The reply is not correct as test check of records maintained manually of 40 such dealers indicated that 13

⁹ Ranchi South and Ranchi East

dealers had not furnished gross turnover and two dealers had furnished gross turnover below the threshold limit¹⁰ in the prescribed column of the application form. Also, the application should have been designed with validation checks for allotment of TIN/issue of registration certificates to ineligible dealers.

- Under Jharkhand Value Added Tax Act and Rules made thereunder, a dealer who is liable to pay tax should furnish security for the proper payment of tax payable by him, by furnishing to the Registering Authority a guarantee from a Nationalised bank approved in this behalf by the said authority, agreeing to pay the State Government, on demand, the amount of security fixed by the said authority. Analysis of the database of test checked circles indicated that bank guarantees amounting to Rs. 1.80 crore had expired on April 2009. Further, test check of records maintained manually of 20 such bank guarantees indicated that six bank guarantees amounting to Rs. 16.50 lakh had expired between May 2007 and May 2009. There was no provision in the application to monitor the expiry of bank guarantees.

After this was pointed out, the department stated (July 2009) that the related provision to monitor the expiry of bank guarantees and generation of report of Bank Guarantees will be provided in the application.

- Under Jharkhand Value Added Taxes Act and Rules made thereunder the dealer shall furnish particulars of the business in the application form¹¹ including information as contained in annexure enclosed therewith. Analysis of database of test checked circles indicated following incomplete capturing of data:
 - Nature of Business in respect of 6,223 dealers was found unchecked against the specified types. Test check of records maintained manually of 40 such dealers indicated that 24 dealers had furnished nature of business, the same was, however, not captured in the database.
 - Principal Commodity was found blank in respect of 8,294 dealers. Test check of records maintained manually of 40 such dealers indicated that 39 dealers had furnished name of principal commodity, the same was, however, not captured in the database.
 - Details of Annexure–I in respect of 6,202 dealers were not found. Test check of records maintained manually of 40 such dealers indicated that 21 dealers had furnished details in Annexure–I, the same was, however, not captured in the database.
 - Details of Annexure–III in respect of 7,272 dealers were not found. Test check of records maintained manually of 40 such dealers indicated that 34 dealers had furnished details in Annexure–III, the same was, however, not captured in the database.

¹⁰ It is the limit of gross turnover of a dealer in a year beyond which he is eligible for registration under JVAT Act. This is Rs. 25,000 for works contractors', Rs. 2 lakh for restaurants and Rs. 5 lakh for other dealers.

¹¹ Form JVAT 100/JVAT 101.

After this was pointed out, the department stated (between June and July 2009) that most of the registered dealers under repealed Act had not filed the prescribed form “JVAT100”, but TINs were allotted to them and that in case of dealers, who had submitted the form “JVAT100”, necessary corrections would be made after verification.

- Analysis of the database of test checked circles indicated that in 2,740 cases, the entries made in the field relating to the date of verification of application for registration were prior to the entries of date of acknowledgement of application and in 14 cases the entries made in the field relating to the date of acknowledgement of application for registration were prior to the implementation date of Jharkhand Value Added Tax Act. Due to inadequate validation check on the date fields, the application accepted any past or future date, however irrelevant, as is evident from the following table¹² based on the database.

Field Name	Purpose of the field	Range of dates entered	
App_verify_dt	Stores the date of verification of application for registration.	16/12/2000	11/11/2026
Ack_dt	Stores the date of acknowledgement of application for registration.	06/12/1974	05/08/5006
liability_dt	Stores the date on which liability for payment of tax arises.	07/12/0200	14/01/9996
Rc_issue_dt	Stores the date on which the registration certificate has been generated.	01/04/2006	22/06/2206

After this was pointed out, the department stated (July 2009) that the matter has been referred to the National Informatics Centre for rectification.

- Under the provision of Jharkhand Value Added Tax Act and Rules made thereunder, the dealer was to mention the PAN in the application for registration under the Act. By a notification issued by the Government of India in December 2001, possessing of PAN under the Income Tax Act, 1961 by the registered dealers under the General Sales Tax Law of the appropriate states was made mandatory.

Analysis of database of test checked circles indicated that the field relating to PAN of the dealers was found incomplete/irregular against the prescribed format in case of 202 dealers. Further, test check of records maintained manually of 40 such dealers indicated that four dealers had not furnished PAN, nine dealers had applied for allotment of PAN during May and November 2006 but the same was not furnished (July 2009) while one dealer had furnished incorrect PAN at the time of registration.

¹² T_Dealer_Main.

After this was pointed out, the department stated (between June and July 2009) that necessary corrections would be made after verification, and notices will be issued to the dealers who had not submitted the PAN.

2.2.9.3 Periodic analysis of dealers below threshold limit

In the course of scrutiny of JVAT Act and Rules made thereunder, it was noticed that no provision existed for periodic analysis of dealers below threshold limit to prevent the unregistered dealers avoiding registration. No instruction was issued by the department in this regard. Absence of a mechanism for periodical review of dealers below threshold limit keeps the option open for the unregistered dealers to evade payment of tax even after crossing the threshold limit.

2.2.9.4 Detection of unregistered dealers

As per the provisions of the JVAT Act and Rules made thereunder, the circle in-charge and IB shall, with a view to identify dealers who are liable to pay tax under the Act, but have remained unregistered, cause survey of unregistered dealers from time to time, to widen the tax base.

In course of audit, it was noticed that IB remained non-functional during the period of review. However, 2,693 surveys were conducted by 27 circles incharge¹³ of all the five divisions as detailed in the following table:

Year	No. of surveys conducted during the year	No. of dealers found due for registration	No. of dealers recommended for registration	No. of dealers actually got registered	Percentage of column 5 to 2
1	2	3	4	5	6
2006-07	400	332	278	221	55
2007-08	841	599	567	406	48
2008-09	1,452	976	580	479	33
Total	2,693	1,907	1,425	1,106	41

It was observed that 1,106 dealers were registered out of 1,425 dealers recommended for registration in the 2,693 surveys conducted during the last three years. Reasons for non-registration of the remaining 319 dealers recommended for registration, on the basis of survey, were not furnished by the department. The percentage of dealers registered against the market survey varied between 33 and 55 *per cent* with an average of 41 *per cent*.

No surveys were conducted during 2006-07, 2007-08 and 2008-09 in nine¹⁴, three¹⁵ and one¹⁶ circles respectively. Besides, no return was prescribed by the Secretary-cum-Commissioner, Commercial Taxes Department to monitor the progress of registration of dealers through surveys.

¹³ Adityapur, Bokaro, Chaibasa, Chirkunda, Deoghar, Dhanbad, Dhanbad Urban, Dumka, Giridih, Gumla, Hazaribag, Jamshedpur, Jamshedpur Urban, Jharia, Katras, Koderma, Pakur, Palamu, Ramgarh, Ranchi East, Ranchi South, Ranchi Special, Ranchi West, Sahebganj, Singhbhum, Lohardaga and Tenughat.

¹⁴ Adityapur, Deoghar, Dumka, Godda, Jamshedpur, Jamshedpur Urban, Palamu, Sahebganj and Singhbhum.

¹⁵ Dumka, Godda and Jamshedpur.

¹⁶ Godda.

It was further noticed that no surveys were conducted by verification of documents in Government, Public Utilities¹⁷ and Financial Institutions including banking companies to prevent evasion of tax by unregistered dealers.

Cross verification of data collected by audit through five district mining offices¹⁸ with records of eight commercial taxes circles¹⁹ revealed that 418 lessees of mining department dispatched/sold stone ballast valued at Rs.194.12 crore during 2006-08, though they were not registered with the Commercial Taxes Department. Thus, non-conducting of survey resulted in non-registration and non-levy of tax amounting to Rs. 48.53 crore including penalty of Rs. 24.26 crore.

After the cases were pointed out, the department raised demand of Rs. 1.36 crore in September 2009 against 54 cases.

2.2.9.5 Database of dubious/risky dealers

It was noticed that a data base of dubious/risky dealers was not prepared by the department and made online in application software VICTORY for information of all concerned officials to check cases of fraud, concealment and usage of fake forms.

2.2.9.6 Periodic analysis of registration certificate to detect dormant registration

Neither was periodical analysis of registration certificate to detect dormant registration and TIN conducted by the circles for taking cancellation nor had the Secretary-cum-Commissioner, Commercial Taxes Department office issued any executive instruction/guidance for detection of dealers with dormant registration so far (August 2009). TIN remaining dormant for a considerable time are prone to evasion of tax.

The Government may consider conducting periodical analysis of the data to ensure prompt registration of dealers, detection of dubious/risky and dormant dealers.

2.2.10 Returns

2.2.10.1 Deficiencies in forms for submitting returns

The deficiencies noticed in forms prescribed for monthly, quarterly and annual returns required to be submitted by dealers to the assessing authority are as follows:

Monthly/quarterly and annual returns in the Form JVAT 200 and JVAT 204 respectively are required to be submitted by the dealers under Rule 14 of the JVAT Rules. **Audit noticed that the forms do not provide any column indicating description and quantity of goods sold/purchased.** As a result, application of correct rates of tax and value is not verifiable.

¹⁷ Municipal Body, Gram Panchayat, District Board, Electricity Board, State Transport Corporation etc.

¹⁸ Chaibasa, Hazaribag, Jamshedpur, Pakur, and Saraikella Kharsawan.

¹⁹ Adityapur, Chaibasa, Hazaribag, Jamshedpur, Jamshedpur Urban, Pakur, Ramgarh and Singhbhum.

2.2.10.2 Monitoring of filing of returns

A registered dealer under the Act is required to file a true and complete return in Form JVAT 200 with the concerned circle within 25 days after the end of the tax period. Monthly/Quarterly and Annual return in Form JVAT 200 and 204 respectively are also to be filed by the registered dealer within 25 days and by 31 July after the end of the tax period respectively. A penalty not exceeding rupees twenty for every day of default or maximum of rupees five thousand in a year is leviable under the Act. Audit noticed that there was no system to monitor submission of returns. The module 'Return processing system' in the application software 'VICTORY' did not contain any monitoring system to watch timely submission of returns by the dealers. Though a provision for levy of penalty of late submission of return has been prescribed in the Act, due to the absence of provision in the system, levy of penalty could not be ascertained in audit.

- Section 35 (6) of JVAT Act, 2005 provides that if a dealer(s) fails to furnish returns within the prescribed date, the assessing authorities shall proceed to assesses the dealers on the basis of the information available in the returns. No assessment in respect of these cases shall be made after the expiry of two years from the end of tax period.

It was observed that 25,586 TIN dealers had not filed returns during 2006-07 to 2008-09 till the date of audit as shown in the following table:

Divisions	No. of TIN dealers not filing returns		
	2006-07	2007-08	2008-09
Dhanbad	289	253	210
Hazaribag	2,641	3,107	3,336
Santhal Pargana	352	331	277
Jamshedpur	3,972	4,353	4,691
Ranchi	522	658	594
Total	7,776	8,702	9,108

The assessment of 7,776 dealers who did not file returns during 2006-07 has become time barred under the provisions of the Act. The department did not take timely action to complete assessments to safeguard the Government revenue.

- It was also noticed that the application had provision to generate list of dealers who had not submitted returns. Analysis of database of test checked circles indicated that entries relating to submission of returns were absent in respect of 6,025 out of 15,375 dealers for the period from 2006-07 and 2008-09. Further, 4,494 out of 14,051 dealers had not submitted Annual Return²⁰, although they were submitting either Monthly Return²¹ or Quarterly Return²² or both during 2007-08. Test check of records maintained manually of 40 such dealers indicated

²⁰ Form JVAT 204.

²¹ Form JVAT 213.

²² Form JVAT 200.

that 16 dealers had not submitted Annual Return for the year 2007-08. Thus, monitoring of non-submission of returns by the dealers by the department was weak.

The department stated (July 2009) that only 40 *per cent* of total returns/payment received in the circles was entered into return/payment modules and that when data entry is completed, management information system will be generated through the system.

2.2.10.3 Scrutiny of returns (Form 200) filed by the VAT dealers

Under Jharkhand Value Added Tax Act and Rules made thereunder, the Prescribed Authority of the record, shall, within 15 days of the returns being placed on the record of the dealer, scrutinize them in accordance with the provisions of the Act. If any mistake is detected as a result of scrutiny, the assessing authority shall serve a notice on the dealer to make payment of extra amount of tax, along with interest.

Further, provisions for submission of relevant documents along with self assessment in JVAT 124 by 31st December following the end of the tax period render the scrutiny impractical.

Audit scrutiny indicated that though the provision for scrutiny of the returns was available in the application, neither the details of scrutiny of returns nor provision for issue of notices was found in the application.

After this was pointed out the department stated (July 2009) that the software related to scrutiny of returns was being developed.

2.2.10.4 Erroneous calculation of tax

Audit scrutiny indicated that the application had provision to calculate the value of the fields of Total Amount of Input Tax, Total Amount of Output Tax and Balance Payable in the form for Quarterly Return based on values entered in different fields. The facility of editing the calculated fields was also provided in the application which resulted in a mismatch between the calculated values and values entered in these fields. The value of the field of the balance payable in the form of Quarterly Return was entered in database as 6,56,56,526.08 in place of 32,51,22,135.65 which would be arrived on normal calculation. Similarly, the value of field of Total Tax in the form of Monthly Return as entered in database was 74,38,65,566.57 and the value as derived from normal calculation would be 1,93,19,50,973.23.

After this was pointed out, the department stated (July 2009) that the erroneous calculation of tax as shown in database was due to data entry as per details furnished by the dealers and that the actual calculations derived can be seen by the concerned authorities and notices can be issued to the dealers accordingly. It was also stated that in due course when the data entry of return becomes stable the facility of issue of notices would be provided in the application.

The above indicates that the application has not been designed with checks to detect an incorrect return and for issue of notices.

2.2.10.5 Delay in payment of tax by the registered VAT dealers

Under Jharkhand Value Added Tax Act, if a dealer fails to make payment of the tax due by the due date, the dealer shall be liable to pay interest at the rate of one *per cent* per month from the due date of payment of tax to the date of its payment or to the date of order of assessment, whichever is earlier. Further, penalty is also leviable.

Analysis of database of test checked circles indicated that in 6,039 cases, payment of tax was made with delays ranging from 1 to 1,041 days during the period from 2006-07 to 2008-09. In the application, however, **there was no provision for detection of delay and calculation of applicable interest and penalty.**

After this lacunae was pointed out, the department stated (July 2009) that only 40 *per cent* of the payments were being entered in the application, as computerisation was not complete and that when 100 *per cent* of payment details were captured, the generation of defaulters list would serve the purpose of monitoring.

2.2.10.6 Non-Monitoring of clearance of cheques

The application captures the details of cheques received from the dealers as payment of tax viz. cheque number, name of bank, cheque amount & cheque date and also the details regarding clearance of cheque i.e. date of clearance of cheque, challan number etc. After entering the date of clearance of cheque, the payment appears in Payment Report (Register VIII).

Analysis of database of test checked circles indicated that the field relating to date of clearance of cheques for the tax paid by the dealers through 5,200 cheques of different bank branches was found blank and the cheques appeared to be time barred, from the date of cheque (up to December 2008). **The application had no provision to monitor the time barred/bounced cheques.** This resulted in a discrepancy between the Payment Report (Register VIII) and manual Register VIII maintained in the circles clearly showing that the computerisation in the department had failed to replace manual maintenance of records and had instead resulted in duplicity of efforts.

After this was pointed out, the department stated (July 2009) that the matter has been referred to National Informatics Centre for rectification.

The Government may consider designing the application with the checks/controls to detect incorrect returns, delays in payment of tax, interest payable and for monitoring the time barred/bounced cheques.

2.2.10.7 Provision for compliance with audit observations

In course of scrutiny of JVAT Act and Rules made thereunder, it was noticed that **no provision has been kept for production of records requisitioned and compliance of audit observations by the Accountant General conforming to the requirements of audit in terms of the Duties, Power and Condition of Services of Comptroller and Auditor General of India Act, 1971. Provision for the same is prominent in similar Acts of other States (e.g. Bihar).**

2.2.11 Tax audit

According to section 34 of JVAT Act, the circle in-charge shall undertake tax audit of the records; stock in trade and the related documents of the dealer, who are selected by the Commissioner in the manner as may be notified for the purpose. The tax audit shall be generally taken up in the office, business premises or warehouses of the dealer. During tax audit, the circle in-charge shall examine the correctness of return or returns filed and admissibility of various claims including ITC. In the course of audit, it was seen that no such notification was issued by the Secretary-cum-Commissioner, Commercial Taxes Department since implementation of JVAT Act till date.

2.2.12 Absence of necessary details in declaration forms

According to JVAT Act and Rules made thereunder, ITC claims are allowed on submission of declaration in Form JVAT 404 by the selling dealer alongwith certificate of deposit of tax into the treasury. **Audit observed that Form JVAT 404 did not contain information regarding challan number, date and name of treasury essential for further cross verification of tax deposit.**

2.2.13 Provisions for cross verification

The Act does not provide for cross verification of declaration in form JVAT 404 furnished by the selling dealers to prevent evasion of tax by the dealer/works contractor. However, Section 37(6) of the Act provides that if the prescribed authority has reason to believe that the dealer in order to evade or avoid payment of tax, has failed to furnish return in respect of any period or has furnished incomplete and incorrect returns for any period, the said authority shall assess or reassess the amount of tax due from him in respect of such turnover and shall direct the dealer to pay besides the tax assessed on escaped turnover, by way of penalty, a sum equal to twice the amount of additional tax assessed on account of said reasons.

Instances of loss of revenue due to the absence of provision for cross-verification are discussed below:

- Cross verification of data collected from five district mining offices²³ with six commercial taxes circles²⁴ indicated that 45 registered dealers have dispatched stone valued at Rs. 44.40 crore during 2006-08. Out of these, 11 lessees had indicated the amount as nil and remaining lessees reflected the amount of dispatch as Rs. 10.72 crore only in their return. This resulted in suppression of taxable turnover of Rs. 33.68 crore and consequent short levy of tax of Rs. 12.63 crore including penalty of Rs. 8.42 crore.

After the cases were pointed out, the department raised demand of Rs.11.26 lakh in September 2009 against six cases.

²³ Chaibasa, Hazaribag, Jamshedpur, Pakur and Saraikela Kharsawan.

²⁴ Adityapur, Chaibasa, Hazaribag, Jamshedpur, Pakur and Singhbhum.

- Cross verification of the data collected from Military Engineering Services (MES)²⁵ department, five²⁶ working divisions with the records of Ramgarh and Ranchi South commercial taxes circles indicated that four works contractors had received payment of Rs. 9.68 crore on account of works executed during 2006-08. Of these, three contractors had indicated the amount of payment received as 'nil' in their returns while remaining contractor indicated Rs. 3.89 lakh only in his return. This resulted in suppression of taxable turnover of Rs. 9.64 crore and consequent short levy of tax of Rs. 2.57 crore including penalty of Rs. 1.72 crore.

The Government may consider incorporating necessary details in form JVAT 404 and make a provision in the Act for cross verification of the transaction.

2.2.14 Deficiencies in uploading data in TINXSYS

Tax Information Exchange System (TINXSYS) is a centralized exchange of all inter-state dealers spread across the various States and Union territories of India. TINXSYS will help the Commercial Tax Departments of various States and Union Territories to effectively monitor the interstate trade and for verification of statutory forms issued under CST Act by other State Commercial Tax Departments and submitted to them by the dealers in support of claim for concessions under the CST Act.

During the course of audit, it was noticed that no utilisation of 'forms' was uploaded till date of audit and hence the shared facility could not be utilised so far (August 2009). Scrutiny of the records in the office of the Secretary-cum-Commissioner, Commercial Taxes Department, Jharkhand further indicated that Rs. 32 lakh was paid to the Government of India for TINXSYS as share of Jharkhand Government for uploading CST declaration forms.

2.2.15 Tax deduction at source

2.2.15.1 Bar on purchase/engagement from/with unregistered dealers by the works/buying Departments

In course of scrutiny of the JVAT Act and Rules made thereunder, it was noticed that no provision exists to bar purchase/engagement from/with unregistered dealers by the works/buying departments. Absence of such provision may lead to evasion of tax by unregistered works contractors.

The JVAT Act provides that if the prescribed authority is satisfied that any dealer liable to pay tax under this Act has failed to get itself registered, he may after giving the dealer a reasonable opportunity of being heard, assess the amount of tax due from the dealer in respect of a particular period. The prescribed authority shall direct the dealer to pay in addition to the tax assessed, penalty equivalent to the amount of tax or Rs. 10,000 whichever is greater.

²⁵ Garrison engineer Dipatoli, Ramgarh and Ranchi.

²⁶ Drinking Water & Sanitation Division Ranchi west, Hatia, Dhanbad No.1, Chas and Rural Engineering Organisation(REO) Works Division Simdega.

Cross verification of data collected by audit from MES with the list of TIN dealers in the application software VICTORY of the commercial taxes department indicated that 64 unregistered contractors received Rs. 64.30 crore on account of works executed by them during 2006-08 on which VAT was not paid. This resulted in non-levy of VAT amounting to Rs. 16.15 crore, including penalty of Rs. 8.08 crore.

2.2.15.2 Absence of system of sending the details of works contract purchases by the works/buying departments to the taxation department

JVAT Act provided that, every person required to deduct tax in advance shall furnish such returns at such intervals by such dates in such manner to such authority as may be prescribed and shall pay the tax deducted according to such returns. However, scrutiny indicated that no such returns have been prescribed in JVAT Rules or in any other notification issued by the Commercial Taxes Department till the date of audit. Due to absence of the return in the Rules etc. the department is unable to gather important information from an important source, necessary for levy of tax.

2.2.16 Acceptance and disposal of appeal cases

The number of total cases pending at the appellate courts, tribunal and high courts though called for was not provided to audit. However, scrutiny of information received from four divisions²⁷ indicated that 448 cases were pending at the appellate courts, tribunal and high courts involving recovery of Rs. 1,389.76 crore.

Divisions	Appellate court		Tribunal		High court	
	No. of cases	Amount involved	No. of cases	Amount involved	No. of cases	Amount involved
(Rupees in crore)						
Jamshedpur	201	1,329.73	-	-	-	-
Santhal Paragana	27	.89	-	-	-	-
Hazaribag	88	15.62	-	-	-	-
Ranchi	80	21.92	49	19.21	03	2.39
Total	396	1,368.16	49	19.21	03	2.39

2.2.17 Deficiencies in deterrent measures

Though penal measures have been provided in JVAT Act and Rules made thereunder for offences like delayed payment of admitted tax, non payment of tax on excess turnover in revised returns, excess collection of tax, non submission of audited accounts in case of dealers with gross turnover of Rs. 40 lakh and above and turnover escaping assessment etc., but no provisions for levy of additional penalties have been provided for subsequent/willful default after the first offence to mitigate the risk of the dealers repeating these offences.

²⁷ Hazaribag, Jamshedpur, Ranchi and Santhal Pargana.

Review of JVAT Act and rules made thereunder indicated that neither does any provision exist for creation of VAT fraud task force nor have the IB, Vigilance and Monitoring Wing been designated to act as intelligence-cum-investigation unit to detect and deal with fraud cases, analyse anti-fraud policies and offer views and suggestions for improving compliance.

The Government may consider framing provisions for levying penalty for the first offence and additional penalties for subsequent offence and willful default after the first offence and putting in place a mechanism for settlement of appeal and disputed cases in a time bound manner.

2.2.18 Provisions for compilation of report/returns received from unit offices and submission to the Commissioner for monitoring

Under the provision of JVAT Rules, the Commissioner is authorised to prescribe registers, returns/records to be used by the unit offices and submit to the headquarter for matters connected with the administration of the Act and Rules. However, apart from calling for occasional reports/returns from the unit offices, no specific register or regular report/return has been prescribed for the purpose of effective administration of VAT.

Compliance deficiencies

2.2.19 Determination of opening stock under the VAT Act

According to the provision of JVAT Act and Rules made thereunder, every dealer holding stock of any goods as on the commencement of the Act shall furnish the details of such stock in form JVAT 114. Thereafter, the dealer shall make an inventory of such goods and claim Input Tax Credit (ITC) in Form JVAT 401 along with the evidences within thirty days from the commencement of the Act. The claim will be verified and allowed in Form JVAT 402 within thirty days from receipt of claim.

Audit observed that 17,458 dealers had applied for registration under the Act in form JVAT 100. Out of these, 957 dealers with their opening stock of Rs. 438.04 crore claimed ITC of Rs. 27.53 crore, of these, the details of ITC credit of Rs.4.74 crore relating to 475 dealers, was entered in the VICTORY. However, date of application in JVAT 401 and date on which ITC claim was allowed in JVAT 402, were not entered in the system. Analysis of the data further indicated that:

- Out of 548 dealers registered under the repealed Act in Ranchi South circle, 545 dealers applied for registration after lapse of thirty days which implies that ITC claims in JVAT 401 were made after that. Out of these 34 dealers claimed and were allowed ITC of Rs. 1.73 crore. Further, it was noticed that in Ranchi West circle, ITC claim of Rs. four lakh of seven dealers were allowed with delays ranging between 150 and 240 days. Thus, allowance of ITC on opening stock in the above cases was in contravention of the provisions of JVAT Act.
- The check field relating to details of Purchase invoices/Form IX-C/Form IX was found unchecked in the case of 85 dealers in Ranchi

Special and Ranchi West circles. The dealers were, however, authorised to claim ITC amounting to Rs. 62.37 lakh. Further, test check of records maintained manually of 10 such dealers indicated that eight dealers had submitted the details of purchases along with form “JVAT 401”, the same was, however, not captured in the database.

- The check field relating to details of seller’s name and registration number under repealed Act was found unchecked in the case of 143 dealers in Ranchi Special and Ranchi West circles. The dealers were, however, authorised to claim ITC amounting to Rs 1.33 crore. Further, test check of records maintained manually of 10 such dealers indicated that in six cases dealers had furnished seller’s name and registration number along with form “JVAT 401”, the same was, however, not captured in the database.

After this was pointed out, the department stated (between June and July 2009) that the details were available in records maintained manually but these had not been entered in the database.

2.2.20 Non-generation of registration certificates

Audit noticed that 34,529 applicants dealers applied for registration under VAT Act against which 26,512 RCs were only generated which included 16,011 dealers that had applied in Form JVAT 100. The reason for non-generation of 8,017 RCs was not ascertained by the department.

After this was pointed out, the department stated (July 2009) that the related issue will be taken up with the concerned circles and that the registration certificates would be issued as soon as possible.

According to Rule 42(2) of JVAT Rule, a VAT dealer, who transports any consignment by using authenticated form “JVAT 504” series shall be in possession of a valid registration certificate. Analysis of VICTORY database of test checked circles indicated that Forms 504 series were authenticated by the prescribed authority to 110 dealers, who were not in possession of a valid registration certificate.

Test check of records maintained manually of 17 such dealers indicated that registration certificates were not issued to 13 dealers and registration certificates were issued to four dealers subsequent to the date on which database was made available to audit.

After this was pointed out, the department stated that Form 504 was issued to the dealers having valid TIN to facilitate the movement of goods and that the registration certificates would be issued after verification of the documents of such dealers. However, issue of form JVAT 504 to dealers not registered under the Act, is not in consonance with the rule 42(2) of JVAT Rules.

2.2.21 Delayed submission of returns by the dealers

Under the Jharkhand Value Added Tax Act and Rules made thereunder a registered VAT dealer shall file quarterly/monthly returns within 25 days after

the end of the tax period and Annual return by 31 July of the following year. Further, penalty is also leviable.

Analysis of database of test checked circles indicated that 10,873 quarterly returns were filed by the dealers with delays ranging from 1 to 976 days. Test check of records maintained manually of 20 such returns indicated that returns were filed by the dealers after the stipulated period. It was noticed that in only one case penalty was levied at the time of assessment.

After this was pointed out, the department stated (July 2009) that only 40 *per cent* of returns were being entered in the application as computerisation was not complete and that when 100 *per cent* of returns had captured, the generation of defaulters list would serve the purpose of monitoring.

2.2.22 Delay in entering of returns (Form 200) filed by the registered VAT dealers

Under Jharkhand Value Added Tax Act and Rules made thereunder, the prescribed authority of the record, within five days of receiving of the returns or statements, shall ensure that the full information as contained in them is entered in the computer/register.

Analysis of database of test checked circles indicated that 10,955 Quarterly Returns were entered in the application with delays ranging from 1 to 599 days. Further, 1,570 Quarterly Returns for the period 2006-07 and 2008-09 filed by the dealers were not entered (April 2009).

After this was pointed out, the department stated (between June and August 2009) that delayed entry of returns into the computer was due to shortage of trained manpower.

2.2.23 Non filing of stipulated documents with the returns

Rule 31 of JVAT Rules required, all supporting documents to be furnished alongwith self assessment in Form- JVAT 124 by 31 December following the end of the tax period.

A test check of records of three²⁸ commercial taxes circles indicated that during 2006-07 four dealers had claimed deduction of Rs. 5.93 crore in shape of sales tax, income tax, royalty, amount transferred to sub contractors, tax deducted at source, job work, sales return and materials consumed etc. without furnishing supporting documents and JVAT 124. As a result the correctness of the exemption from tax of Rs. 82 lakh could not be ascertained in audit. Of these four dealers, two dealers of Ranchi South and Special commercial taxes circles having tax effect of Rs. 45 lakh filed their sales tax returns for the period 2006-07 for Rs. 3.19 crore. These were required to be finalised by 31 March 2009. These cases have now become time barred. Lack of timely action resulted in a loss of revenue of Rs. 45 lakh to the Government.

2.2.24 Non-imposition of penalty on non-deduction of tax at source

According to section 44(6) of JVAT Act and notification issued thereunder, every person responsible for making any payment in respect of transfer of

²⁸ Adityapur, Ranchi South and Ranchi Special.

property in goods, involved in execution of works contract shall deduct an amount at the rate of 2 *per cent* from every bill or invoice raised by the works contractors, failing which the concerned circle in charge may direct him to pay by way of penalty a sum equal to the amount of tax which he failed to deduct.

Cross verification of information collected from MES²⁹ indicated that 69 contractors received Rs. 69.90 crore on account of works executed by them towards contracts between 2006-07 and 2007-08 and no deduction at source of Rs. 1.40 crore was made by the paying authority. However, audit noticed that penalty of Rs. 1.40 crore was not imposed by the concerned circle in-charge.

2.2.25 Conclusion

The transition from the JF Act 2001 to JVAT Act, 2005 had several deficiencies *viz.* slow process of reorganisation of administration, shortage/uneven distribution of manpower, slow process of computerisation and training to the officers and staff, engagement of existing manpower for the finalisation of cases under the repealed Act. VICTORY – VAT Application Software” became operational in the state since implementation of Jharkhand Value Added Tax Act (1 April 2006) with the target date of completion being 31 March 2009. However, the application was developed with system/design deficiencies. There was also lack of proper planning in registration/cancellation of dealers, survey for widening tax base, establishment of check posts, mobile checking of premises of dealers and strengthening of Vigilance and Monitoring wing. Tax audit, a vital part of the tax administration was totally ignored though prescribed in the Act. Several deficiencies in the Act and Rules, Forms and absence of executive instructions for strengthening the provisions of Act and Rules were also noticed. In view of the above the growth rate of revenue collection substantially declined from around 17 *per cent* per annum during pre-VAT period to only 5.28 *per cent* during 2008-09.

2.2.26 Summary of recommendations

Government may consider:

- reorganisation of department based on proper manpower planning and adequate training;
- strengthening functions of IB and Vigilance and Monitoring wing for regular survey, collection of data/information regarding purchase/ sale and creation of database from departments of State/Central Government/PSUs etc for cross verification of the transactions;
- full utilisation of computer application software already installed and widening its scope from time to time, as per requirement;
- to conduct a periodical analysis of the data to ensure prompt registration of dealers, detection of dubious/risky and dormant dealers;

²⁹ Garrison Engineers Dipatoli, Ramgarh and Ranchi.

- to design the application with the checks/controls to detect incorrect returns, delays in payment of tax, interest payable and for monitoring the time barred/bounced cheques;
- to consider incorporating necessary details in form JVAT 404 and make a provision in the Act for cross verification of the transaction; and
- to consider framing provisions for levying additional penalties for first/subsequent offence and wilful default and putting in place a mechanism for settlement of appeal and disputed cases in a time bound manner.

2.3 Other Audit observations

Scrutiny of assessment records of sales tax and Central sales tax indicated several cases of non-observance of provisions of Acts/Rules and notifications issued therein, suppression of sales/purchase turnover, non/short levy of tax/penalty/surcharge, irregular concession/exemption, incorrect application of rate of tax, misuse of declaration forms etc. 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 assessing authorities are pointed out in audit each year, but not only do the irregularities persist; these remain undetected till an audit is conducted. There is need for the Government to improve the internal control system including strengthening of internal audit.

2.4 Non-observance of provisions of Acts/Rules and non-followup of Government instructions/notifications

The Jharkhand Finance Act, 2001, Central Sales Tax Act, 1956 and instructions/notifications issued thereunder provide for:

- Cross verification of data/information to be obtained from Central and State Government offices/undertaking regarding sales/purchase made by the dealers with the sales tax returns/records available in the sales tax department to check evasion of tax;*
- payment of penalty at the prescribed rate, in addition to tax, in case of failure to apply for registration;*
- payment of penalty, at the prescribed rate, in case of concealed turnover detected before and after finalisation of assessment; and*
- the rate of sales or purchase tax leviable on all transactions of taxable sales or purchases.*

The Commercial Taxes Department did not observe some of the above provisions in cases mentioned in the succeeding paragraphs.

2.4.1 Failure to conduct inter-departmental cross verification

The Commissioner of Commercial Taxes issued instructions in May 1990 to the circle offices to collect data/information regarding sales/purchase made by dealers from the Income Tax Department and other Central/State Government departments for cross verification with their sales tax returns/records to check

evasion of tax. The Investigation Bureau of the department was asked in June 1991 to cross verify the data/records of the department with those of the Income Tax Department and various departments of the Central/State Government/Public Sector Undertakings. By a notification issued in November 1998, the assessing authorities were directed to review the returns and initiate proceedings within three days against the defaulting dealers for delay in submission of returns, belated payment of admitted tax and turnover escaping assessment.

Audit scrutiny, however, indicated that neither was the data/information collected from different departments, nor was any cross verification of transactions shown in the returns conducted either by the circle officers or by the Investigation Bureau. Failure of the department to do so resulted in short realisation of revenue of Rs. 70.39 crore as mentioned in the following paragraphs:

2.4.1.1 Non-registration of contractors

Under the JF Act, every dealer, who is a contractor and whose gross turnover exceeds Rs. 25,000 in a year, is liable to pay tax. Further, no such dealer shall sell or purchase goods, unless he has been granted and is in possession of a valid registration certificate. Failure to apply for registration may render him liable to pay a penalty, in addition to levy of tax, at the rate of Rs. 50 for each day of default or an amount equivalent to the amount of tax assessed, whichever is less.

Further, under the said Act and notification issued thereunder, every person responsible for making any payment of sale price on account of valuable consideration payable in respect of transfer of property in goods, involved in execution of works contract shall deduct an amount at the rate of two *per cent* from every bill or invoice raised by the works contractors.

Cross verification of data of payment received by the contractors collected from Military Engineering Service³⁰, Income Tax Department and Building Construction Division and data of dispatch of stone ballast by lessees collected from five district mining offices³¹, with the records of 13 commercial taxes circles³² indicated that 63 contractors and 437 lessees were liable to pay tax including additional tax and surcharge of Rs. 37.08 crore on receipts of Rs. 60.36 crore and Rs. 303.20 crore respectively towards value of works executed and dispatch/sale of stone ballast during 2001-02 to 2005-06. None of these contractors/lessees were, however, registered with the Commercial Taxes Department and hence these could not be assessed resulting in non-realisation of revenue of Rs. 40.27 crore including penalty of Rs. 3.19 crore.

After this was pointed out, the department stated (October 2009) that demand had been raised for Rs. 1.37 crore against 51 cases in September 2009.

³⁰ Garrison Engineer, Dipatoli, Ramgarh and Ranchi.

³¹ Chaibasa, Hazaribag, Jamshedpur, Pakur and Saraikela Kharsawan.

³² Adityapur, Bokaro, Chaibasa, Hazaribag, Jamshedpur, Jamshedpur Urban, Pakur Ramgarh, Ranchi East, Ranchi South, Ranchi Special, Ranchi West and Singhbhum.

Further, cross verification of data collected from the Military Engineering Service³³ department indicated that 67 contractors received a sum of Rs. 58.88 crore on account of works executed by them between 2001-02 and 2005-06. Tax of Rs. 1.18 crore, though deductible at source, was not deducted by the office of the concerned garrison engineers.

After this was pointed out, the assessing authority stated (October 2009) that demand had been raised for Rs 66.28 lakh in September 2009.

2.4.1.2 Non-levy of penalty before assessment

The JF Act read with the CST Act, provides that if the assessing authorities have reason to believe that a dealer has wilfully concealed any amount of turnover to deprive the Government of the due tax, the dealer shall be liable to pay penalty not exceeding three times but not less than the amount of tax leviable or assessed on the escaped turnover. The departmental instruction of November 1998, provided initiation of penalty proceedings on the concealed turnover before assessment within three days from the date of receipt of the returns.

Cross verification of dispatch of stone ballast by the lessees collected from three district mining offices³⁴, with the records of five commercial taxes circles³⁵ indicated that eight lessees had declared dispatch of stone ballast as 'nil' and two lessees reflected the amount as Rs. 1.30 crore in their returns during 2004-05 and 2005-06. The actual amount of dispatch of stone ballast worked out to Rs. 4.28 crore as per the data collected from the department. However, penalty of Rs. 80.59 lakh, leviable for such concealed sale of Rs. 2.98 crore in the returns, was not levied.

2.4.1.3 Suppression of sales detected through cross verification

Under the JF Act, if the assessing authority has reason to believe that a dealer has concealed, omitted or failed to disclose wilfully the particulars of turnover or has furnished incorrect particulars of such turnover, the said authority shall assess or reassess the amount of tax due in respect of such turnover and shall direct the dealer to pay, beside the tax assessed, penalty not exceeding three times but not less than an amount equivalent to the amount of tax on the escaped turnover.

- Cross verification of the data collected from Military Engineering Service³⁶ and Rural Special Division, Jamshedpur and Dumka, with the assessment records of two dealers of Ramgarh and Ranchi South commercial taxes circles, indicated that the contractors had shown the amount of payment received on account of works executed as 'nil' in their sales tax returns between 2003-04 and 2005-06 assessed between December 2006 and April 2007. The actual payment received by these contractors worked out to Rs. 8.51 crore as per data collected. This resulted in suppression of taxable turnover and consequently short levy of tax of Rs. 2.87 crore including penalty of Rs. 2.10 crore.

³³ Garrison Engineers, Dipatoli, Ramgarh and Ranchi.

³⁴ Chaibasa, Hazaribag and Saraikela Kharsawan.

³⁵ Adityapur, Chaibasa, Hazaribag, Jamshedpur and Ramgarh.

³⁶ Garrison Engineers Dipatoli, Ramgarh and Ranchi.

After this was pointed out, the assessing authority stated (October 2009) that demand had been raised for Rs. 50.99 lakh against one case in September 2009.

Through further cross verification of the data collected from M/s Reliance Industries with the assessment records of a works contractor of Ranchi South commercial taxes circle, it was noticed that the contractor had received payment of Rs. 12.49 lakh on account of works executed by him during 2005-06, which was not shown in the turnover by the contractor. This resulted in under assessment of tax of Rs. 4.10 lakh including penalty of Rs. three lakh.

- Cross verification of the data collected from five district mining offices³⁷ with the records of 64 lessees of six commercial taxes circles³⁸, assessed between July 2003 and November 2008, indicated that these lessees/suppliers had disclosed the despatch of stone ballast valuing Rs. 27.50 crore between 2002-03 and 2005-06 in the sales tax returns. The actual value of despatch worked out to Rs. 85.97 crore, as per data collected. This resulted in suppression of turnover of Rs. 58.47 crore and under assessment of tax of Rs. 23.05 crore including penalty of Rs.16.88 crore.
- Cross verification of the data collected from Income Tax Department with the sales tax returns of 11 contractors/dealers of Bokaro and Ramgarh commercial taxes circles, assessed between March 2005 and November 2008 indicated that four contractors had declared sales turnover as 'nil' during 2000-01 to 2005-06 and remaining contractors had reflected sales turnover as Rs. 3.38 crore only in their sales tax returns. But sales turnover of these dealers/contractors as per data collected from income tax department were Rs. 8.57 crore. The assessing authorities made no effort to verify the correctness of the returns by obtaining information from the Income Tax Department. Thus, concealed sales turnover of Rs. 5.19 crore resulted in non-levy of tax of Rs. 1.57 crore including penalty of Rs. 1.15 crore.
- Cross verification of data collected from Sales Tax Department of West Bengal with the sales tax records of Bokaro commercial taxes circle indicated that two dealers had purchased lubricant and furnace oil of Rs. 4.82 crore against issue of declaration form 'C' during 2002-03 and 2004-05 but actually accounted for purchase turnover of Rs. 4.58 crore only. Thus, concealed purchase turnover of Rs. 24.33 lakh resulted in non-levy of tax of Rs. 12.04 lakh including penalty of Rs. 9.03 lakh.
- Cross verification of the data collected from Birsa Agricultural University, Kanke, Ranchi with the assessment records of three dealers of Ranchi Special commercial taxes circles, indicated that a contractor had shown the amount of works executed as 'nil' in his sales tax returns between 2004-05 and 2005-06 assessed between April and September 2008 instead of actual payment of Rs. 23.97 lakh as per data collected. The remaining contractors had shown the amount of payment as Rs. 8.47 lakh in their sales tax returns between 2002-03 and 2005-06 assessed

³⁷ Chaibasa, Hazaribag, Jamshedpur, Pakur and Saraikela Kharsawan.

³⁸ Adityapur, Chaibasa, Hazaribag, Pakur, Ramgarh and Singhbhum.

between July 2006 and December 2006 instead of actual payment of Rs. 1.25 crore as per data collected. This resulted in suppression of taxable turnover of Rs. 1.40 crore and consequently short levy of tax of Rs. 48.09 lakh including penalty of Rs. 35.19 lakh.

The matter was reported to the department in May 2009 and the Government in June 2009; their replies have not been received (January 2010).

2.5 Irregularities in determination of turnover

Turnover means aggregate of sales prices received or receivable and purchase prices paid or payable during any given period. Correct determination of turnover is essential for a proper assessment and levy of taxes due. The gross turnover of a dealer is taken into account for the purpose of determining its liability for tax, surcharge and additional tax but for the purposes of actual levy of taxes, certain deductions are allowed to arrive at the taxable turnover.

Audit noticed that the assessing authorities while finalising the assessment had not assessed the taxable turnover of dealers correctly as per the provisions of the Act. This resulted in non/short levy of tax & penalty of Rs. 46.18 crore as mentioned in the following paragraphs:

2.5.1 Suppression of sales/purchase turnover

Under the JF Act read with the Central Sales Tax Act, if the dealer has concealed, omitted or failed to disclose wilfully the particulars of turnover or has furnished incorrect particulars of such turnover, the competent authority shall assess or reassess the amount of tax due from the dealer and shall direct the dealers to pay, besides the tax assessed on escaped turnover, penalty not exceeding three times but not less than an amount equivalent to the amount of tax on the escaped turnover.

Test check of the relevant records³⁹ indicated that 36 dealers in 14 commercial taxes circles⁴⁰ filed their returns for a taxable turnover of Rs. 1,902.07 crore during 2001-02 to 2005-06. The assessments were finalised on the basis of returns filed by them between February 2003 and March 2008. However, as per the information available in the assessment records of the same or of different circles, the dealers had actually sold and purchased goods worth Rs. 2,139.45 crore. Thus, the dealers concealed taxable turnover of Rs. 237.38 crore. Though the relevant information was available in the assessment records of the concerned dealers, the assessing authorities did not cross verify the information with these records. This resulted in non/short levy of tax of Rs. 38.82 crore, including penalty. A few specific cases are mentioned in the following paragraphs:

³⁹ Utilisation certificate of declaration forms, audited annual accounts, trading and manufacturing accounts.

⁴⁰ Bokaro, Chaibasa, Chirkunda, Dhanbad, Dhanbad Urban, Giridih, Hazaribag, Jharia, Jamshedpur, Jamshedpur Urban, Lohardaga, Palamu, Ramgarh and Ranchi Special.

(Rupees in crore)

Name of the circle Registration number of the dealer	Period Date of assessment	Nature of observations	Suppressed turnover	Short levy of tax, surcharge, additional tax and minimum penalty
Chaibasa CB-19 (R)	2002-03 and <u>2003-04</u> November 2006 and August 2007	Cross verification of sales turnover with the records of the purchasing dealer indicated that the dealer had sold iron ore valued at Rs. 234.26 crore but had filed returns for only Rs. 170.83 crore and was assessed accordingly.	63.43	14.78
Jamshedpur JR- 2385 (R)	<u>2003-04</u> March 2008	Cross verification of sales turnover with the records of the purchasing dealer indicated that the dealer had sold diesel engine valued at Rs. 1,176.40 crore but had filed returns for only Rs. 1,134.92 crore and was assessed accordingly.	41.48	4.85
Jamshedpur JR- 6 (R)	<u>2002-03 and 2003-04</u> March 2007 and March 2008	As per audited annual accounts, the dealer had sold 49,987 MT of cold rolled products valued at Rs. 81.15 crore but had accounted for only Rs. 27.62 crore in the returns.	53.53	4.28
Dhanbad DH-1680 (R)	<u>2004-05</u> December 2007	As per utilisation statement of Form 'C', the dealer had consumed HSD/ Bitumin/ Cement valued at Rs. 33.13 crore out of total purchase but reflected consumption of goods valued at only Rs. 11.57 crore in the return	21.56	3.71
Jamshedpur JR-2005 (R)	2002-03 and <u>2003-04</u> March 2007 and March 2008	As per audited annual account, the sales turnover of the dealer was Rs. 463 crore including labour and freight charges but accounted for only Rs. 447.53 crore in the return.	15.47	2.95

After the cases were pointed out between June 2008 and February 2009, the assessing authorities of eight commercial taxes circles⁴¹ stated (between September and October 2009) that additional demand of Rs. 28.13 crore in case of 16 dealers had been raised between June and October 2009. The remaining assessing authorities stated that the cases would be reviewed. Further replies have not been received (January 2010).

2.5.2 Incorrect determination of gross turnover

Under the JF Act, gross turnover is the aggregate of all amounts received or receivable as consideration for the sales or in the cases where purchase tax is leviable, the amounts paid or payable for the purchases made by the dealer.

Test check of records of seven commercial taxes circles⁴² indicated that in case of 10 dealers, the gross turnover for 2001-06 was incorrectly determined by the assessing authorities as Rs. 611.48 crore. The gross turnover of the dealers worked out to Rs. 642.10 crore as per the returns/records furnished by the dealers. But the assessing authorities while finalising the assessment between

⁴¹ Bokaro, Chaibasa, Chirkunda, Dhanbad, Jamshedpur, Jamshedpur Urban, Lohardaga and Ranchi Special.

⁴² Dhanbad Urban, Giridih, Hazaribag, Jamshedpur, Jharia, Palamu and Ranchi Special.

August 2004 and March 2008 did not scrutinise the records submitted by the dealers alongwith the returns. This resulted in short determination of the taxable turnover by Rs. 30.62 crore and consequential short levy of tax amounting to Rs. 3.40 crore.

After the cases were pointed out between January 2008 and January 2009, the assessing authority of Hazaribag commercial taxes circle stated (September 2009) that an additional demand of Rs. 6.75 lakh in one case had been raised in September 2009. The remaining assessing authorities stated that the matter would be reviewed. Further replies have not been received (January 2010).

2.5.3 Turnover escaping assessment

Under the provision of JF Act, tax is payable on transfer of property in goods (whether as goods or in some other form) involved in the execution of works contract.

Test check of records of an assessee engaged in manufacturing and selling of cement and execution of works contract in Ranchi Special Commercial Taxes Circle indicated that the assessee had supplied cement, bricks, stone, steel etc. valued at Rs. 1.92 crore during 2003-04 and 2004-05 in course of execution of works contract. However, the assessing authority, while finalising assessment in November 2007 did not levy tax on the goods supplied in course of execution of works contract. This resulted in turnover of Rs. 1.92 crore escaping assessment and consequently in short levy of tax of Rs. 20.06 lakh.

2.5.4 Under-assessment due to incorrect deduction

Under provisions of the JF Act, certain deductions are allowed from gross turnover to works/supplies contractors for computing their taxable turnover. It has been judicially held⁴³ that the taxable turnover will be determined after deducting cost of establishment of the contractor to the extent it is relatable to supply of labour and services.

Test check of records of Dhanbad commercial taxes circle indicated that the assessing authority while assessing a contractor in December 2007, incorrectly allowed a deduction of Rs. 2.46 crore from gross turnover on account of financial and administrative overhead, not related to labour component during 2004-05. The exclusion of expenses on financial and administrative overhead from the taxable turnover resulted in short levy of tax of Rs. 21.65 lakh.

After the case was pointed out in January 2009, the assessing authority stated (October 2009) that an additional demand had been raised for the entire objected amount in October 2009.

2.5.5 Short/non-levy of surcharge

Under the Central Sales Tax Act, on inter-state sale of goods (other than declared 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, which ever is higher. In case of sale of declared goods not supported by declarations in prescribed form, tax is leviable at twice the rate applicable on sale or

⁴³ Larsen & Toubro Ltd. Vrs State of Bihar and others 134 STC 354.

purchase of such goods in the concerned State. It has been judicially held⁴⁴ that surcharge is leviable on inter-state sales under the Central Sales Tax Act.

Test check of records of four commercial taxes circles⁴⁵ indicated that in cases of six dealers the assessing authorities, while finalising the assessments between January 2003 and March 2008 for 2001-02 and 2005-06, levied tax including additional tax of Rs. 4.90 crore on sale of motor vehicles, cement, *kendu* leaves and India made foreign liquor valued at Rs. 39.53 crore but surcharge was either not levied or was levied short. This resulted in non/short levy of surcharge of Rs. 48.77 lakh.

After the cases were pointed out in December 2008 and February 2009, the assessing authority of Chirkunda commercial taxes circle stated (September 2009) that an additional demand of Rs. 10.04 lakh had been raised in one case in September 2009. The remaining assessing authorities stated that the matter would be reviewed. Further replies have not been received (January 2010).

2.5.6 Short levy of tax due to incorrect deduction

Under the JF Act, certain deductions from gross turnover are allowed to works/supplies contractors to compute their taxable turnover. Exemption is not admissible on tax deducted at source, royalty, income tax, and the value of works executed by the petty contractors, not supported by names and registration numbers.

Test check of sales tax records of seven contractors of four commercial taxes circles⁴⁶, assessed between May 2003 and June 2008 indicated that the contractors had claimed deduction of Rs. 32.51 crore from gross turnover on account of tax deducted at source, depreciation charges, income tax, security deposit, time extension and gross profits etc. during 2001-02 to 2005-06. The assessing authorities allowed these non-permissible deductions resulting in short determination of taxable turnover of Rs. 32.51 crore and short levy of tax of Rs. 3.06 crore, including additional tax and surcharge.

The matter was reported to the department and the Government in June 2009; their replies have not been received (January 2010).

2.6 Incorrect levy/computation of tax

Audit scrutiny of assessment records of seven commercial taxes circles indicated that the assessing authorities had not levied/computed tax correctly resulting in short realisation of Rs. 10.56 crore as mentioned in the succeeding paragraphs:

2.6.1 Test check of records of six commercial taxes circles⁴⁷ indicated that in case of 10 dealers, the assessing authorities while finalising the assessment for 1999-2000 to 2005-06 between March 2004 and November 2007 levied tax at incorrect rate on sale of goods valued at Rs. 95.76 crore. This resulted in short levy of tax of Rs. 3.54 crore, including additional tax and surcharge.

⁴⁴ DCCT Vrs Ayasha Hosiery (1992) 85 STC 196 SC.

⁴⁵ Chirkunda, Hazaribag, Palamu and Ranchi Special.

⁴⁶ Adityapur, Bokaro, Ranchi South and Ranchi Special.

⁴⁷ Bokaro, Dhanbad Urban, Jamshedpur, Ramgarh, Ranchi West and Ranchi Special.

After the cases were pointed out (between March 2008 and January 2009), the assessing authorities of three commercial taxes circles⁴⁸ raised additional demand of Rs. 97.80 lakh in case of three dealers between August and October 2009. The assessing authority of Ranchi West Circle stated (May 2008) that the dealer had sold goods that were taxable at the rate of 10 *per cent*. The reply is not tenable as the dealer had sold tinned food articles attracting tax at the rate of 12 *per cent* levied through a notification issued in July 2000. The remaining assessing authorities stated that the matter would be reviewed. Further replies have not been received (January 2010).

2.6.2 Test check of records of Hazaribag and Jamshedpur commercial taxes circles indicated that in case of three dealers, assessed between February 2005 and March 2008 for 2000-01 and 2003-04, the tax erroneously levied was Rs. 60.05 crore, instead of correct amount of Rs. 66.81 crore due to arithmetical mistake, in computation. This resulted in short levy of tax of Rs. 6.76 crore, including additional tax and surcharge.

After the cases were pointed out in May and August 2008, the assessing authorities stated (between September and October 2009) that additional demand had been raised for the entire objected amount in September 2009.

2.6.3 Under provisions of the JF Act, registered dealers are allowed to purchase goods required by them directly for use in manufacture or processing or for use in mining at concessional rate of tax on furnishing of prescribed declaration forms. It has been judicially held⁴⁹ that goods which are not directly consumed/used in the process of manufacture of other goods cannot be treated as raw materials. Diesel engine and its spares are not used directly for mining purposes.

Test check of records of Hazaribag and Ranchi West commercial taxes circles indicated that two dealers sold diesel engine and its spares valued at Rs. 4.63 crore during 2004-05 and tax was levied at concessional rate on the ground that the goods were directly used for mining purposes. This resulted in short levy of tax of Rs. 25.49 lakh, including surcharge.

The matter was reported to the department and the Government in June 2009; their replies have not been received (January 2010).

2.7 Irregularities in grant of exemptions

Exemptions from levy of sales tax have been allowed under different provisions of the Acts and notifications issued therein with specific objectives, terms and conditions. It is essential that the assessing authority should ensure, that the exemptions are granted in accordance with the provisions of the Act and notifications and subject to fulfilment of specified terms and conditions. Audit scrutiny however, indicated a number of discrepancies in the assessment finalised by the assessing authorities through which incorrect exemptions were granted. A few instances involving non/short levy of tax of Rs. 22.85 crore are mentioned in the following paragraphs:

⁴⁸ Bokaro, Ramgarh and Ranchi West.

⁴⁹ Rewa Coal Fields Vrs CCT Madhya Pradesh SC 1999.

2.7.1 Incorrect grant of exemption under Jharkhand Sales Tax

Under the provisions of JF Act and Rules made thereunder, a dealer is not liable to pay tax in respect of goods transferred to any other dealer/agent/principal within the State provided he furnishes, before the prescribed authority, a declaration in form 'IXD' issued by the transferee.

Test check of records of Bokaro and Ramgarh commercial taxes circles relating to 2002-05 indicated that the assessing authorities while finalising assessments of five dealers allowed exemption from levy of tax on intra-state sales/transfer of iron and steel, industrial gas and coal valued at Rs. 426.60 crore. It was, however, noticed that these sales were not supported by the prescribed declarations in form 'IXD'. Thus, the exemption allowed was not valid, resulting in short levy of tax of Rs. 17.11 crore.

After the cases were pointed out between November 2008 and January 2009, the assessing authorities stated (between September and October 2009) that additional demand of Rs. 12.07 crore in case of four dealers had been raised between September and October 2009 and stated that the matter would be reviewed in the remaining cases. Further reply has not been received (January 2010).

2.7.2 Incorrect allowance of exemption

Under provisions of the JF Act read with the Central Sales Tax Act and notifications issued thereunder in December 1995, the Government exempted the manufacturing units from levy of sales tax on sale of finished goods within the State and in the course of inter-state trade or commerce for a specific period and prescribed terms and conditions. Exemption on stock transfer of finished products is not admissible.

Test check of records of Giridih and Jamshedpur commercial taxes circles in September and November 2008 indicated that two assesseees, assessed between January 2005 and August 2008, were granted exemption from levy of tax on stock transfer of Mild Steel, Ingot, angle, sheet, plate etc. valued at Rs. 65.36 crore made during 2000-06, although exemption was allowable only on sales by such assesseees and not on transfer of stock. This was in contravention of the provisions of the Act and resulted in non-levy of tax of Rs. 2.72 crore.

2.7.3 Short levy of tax due to irregular exemption

Under provisions of JF Act and notification issued thereunder in December 1995, in case of expansion/diversification/modernisation of industrial units by a dealer, exemption from levy of sales tax is granted on the sale of incremental production⁵⁰ of goods, provided his basic production continues alongwith the incremental production.

Test check of records of Ranchi Special commercial taxes circle indicated that a manufacturer/seller was allowed exemption from levy of sales tax on sale of incremental production of 52,051.85 metric tonne valued at Rs. 16.60 crore out of total production of 64,000 metric tonne 'Supec' brand cement produced

⁵⁰ Incremental production means increase in production of finished goods due to expansion/diversification/modernisation of an industrial unit.

during September 2004, though his basic production was 'nil'. The incorrect allowance of exemption resulted in short levy of tax of Rs. 2.01 crore.

After the case was pointed out in February 2009, the assessing authority stated (October 2009) that an additional demand had been raised for the entire objected amount in October 2009.

2.7.4 Irregular grant of exemption on export sale

Under provisions of the Central Sales Tax Act and Rules framed thereunder, payment of sales tax is exempt on sale or purchase of goods having taken place in course of export out of the territory of India, provided the sale is substantiated by a certificate of export in form 'H' issued by the exporter in favour of the seller, registered under Central Sales Tax Act in the State, alongwith other documentary evidences of export of such goods.

2.7.4.1 Test check of records of Chaibasa commercial taxes circle indicated that a dealer made export sale of iron ore valued as Rs. 7.51 crore during 2004-05 through export agencies and claimed exemption on the basis of declaration in form 'H' issued in the name of the assessee registered in Orissa. As the assessee named in form 'H' was registered in Orissa, the dealer should not have been exempted in the State. However, the assessing authority while finalising the assessment incorrectly allowed the exemption. This resulted in allowance of irregular exemption and consequent non-levy of tax of Rs. 82.66 lakh.

After the case was pointed out in June 2008, the assessing authority stated (October 2009) that additional demand had been raised for the entire objected amount in August 2009.

2.7.4.2 According to orders issued by the Government of Bihar in March 1986 and August 1991, exemption from levy of tax on sales taking place in course of export to Nepal is allowed provided the transactions are supported by a bill of export issued by the customs officials of the Government of India.

Test check of records of Ranchi Special commercial taxes circle indicated that the assessing authority, while assessing in November 2007, allowed exemption from levy of tax on export sale of cement valued at Rs. 3.11 crore to Nepal during 2004-05. But the assessee had submitted bills of export and cost of packing material for only Rs. 2.08 crore in support of export sale. The assessing authority did not cross check the return with the records available with him resulting in excess exemption on export to Nepal of Rs. 1.03 crore and consequently under-assessment of tax of Rs. 12.52 lakh, including surcharge.

After the case was pointed out in February 2009, the assessing authority stated (October 2009) that an additional demand of Rs. 6.38 lakh had been raised in October 2009.

2.7.5 Excess exemption of sales tax

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

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

Test check of records of an assessee in Hazaribag commercial taxes circle indicated that the assessing authority while finalising the assessments for the period 1998-99 to 2005-06 between September 2001 and August 2007 allowed exemption of sales tax of Rs. 52.32 lakh on the sale of finished goods beyond the prescribed monetary limit of Rs. 46.58 lakh fixed by the department in August 1999. This resulted in excess exemption of sales tax of Rs. 5.74 lakh.

After the case was pointed out in January 2009, the assessing authority raised an additional demand of Rs. 5.58 lakh in August 2009.

The matter was reported to the Government in June 2009; their replies have not been received (January 2010).

2.8 Grant of incorrect exemption/concession under Central Sales Tax Act

Under the provisions of the Central Sales Tax Act, rules/ notifications issued thereunder, different declaration forms are prescribed for claiming exemptions/concessions from levy of tax. The Act further provides for imposition of penalty for misuse of declaration forms.

Audit noticed that the assessing authorities did not comply with the provisions of the Act and notifications issued thereunder resulting in short levy of tax and penalty of Rs. 16.32 crore. These cases are described in the succeeding paragraphs:

2.8.1 Under assessment of Central Sales Tax

Under the provisions of Central Sales Tax Act, submission of forms 'F' and 'C' is mandatory for availing exemption/concessional rate of tax. In case of inter-state sale of declared goods not supported by the prescribed declaration forms, tax is leviable at twice the rate applicable on sale of such goods in the concerned State. In case of goods other than the declared goods, tax is leviable at the rate of ten *per cent* or at the rate applicable in the State, whichever is higher.

Test check of records of four commercial taxes circles⁵¹ indicated that the assessing authorities finalised the assessment of four assesseees (March 2007 and June 2008) for the period from 2002-03 to 2004-05 and did not levy tax on sale of iron and steel, coal, rope wire and sheet, plate etc. valued at Rs. 188.84 crore not supported by declaration in Form 'C' and 'F'. This resulted in under-assessment of tax amounting to Rs. 15.16 crore.

After the cases were pointed out between May 2008 and February 2009, the assessing authority of Bokaro commercial taxes circle stated (September 2009) that an additional demand of Rs. 13.62 crore had been raised in September 2009 against one case. The remaining assessing authorities stated that the matter would be reviewed. Further replies have not been received (January 2010).

⁵¹ Bokaro, Jamshedpur, Jharia and Ranchi South.

2.8.2 Misuse of declaration forms

Under the Central Sales Tax Act, a registered dealer can purchase goods from outside the State at concessional rate of tax by using prescribed declaration, goods intended for resale by him or for use by him in the manufacture or processing of goods for sale or in mining or in the generation or distribution of electricity or any other form of power or in telecommunications network. A contractor can also avail the facility in the capacity of a dealer.

Test check of records of Dhanbad commercial taxes circle indicated that a contractor purchased high speed diesel valued at Rs. 2.98 crore at concessional rate of tax by using form 'C' from outside the State during 2004-05 and consumed the same in course of execution of works contract which was not admissible. However, the assessing authority did not verify the registration certificate before issuing the declaration forms. This resulted in unauthorised use of form 'C' declaration and consequential loss of tax amounting to Rs. 1.16 crore including penalty.

After the case was pointed out in December 2008, the assessing authority stated (October 2009) that an additional demand had been raised for the entire objected amount in October 2009.

The matter was reported to the Government in June 2009; their replies have not been received (January 2010).

2.9 Short raising of demand

Under provisions of the JF Act, if the prescribed authority is satisfied that the returns furnished by the dealers in respect of any period are correct and complete, he shall assess the amount of tax due from the dealer on the basis of such return and tax assessed shall be paid by the dealer as may be prescribed in a notice issued for this purpose including therein details of payment already made.

Test check of records in Ranchi special commercial taxes circle indicated that a dealer had deposited a tax of Rs. 8.38 lakh on account of goods utilised by him in a works contract valued at Rs. 1.12 crore during 2003-04. However, the assessing authority while finalising the assessment in November 2007 excluded the taxable turnover involved in the works contract from the assessment of the dealer. This resulted in short levy/raising of demand of Rs. 8.38 lakh.

After the case was pointed out in March 2009, the assessing authority stated (October 2009) that an additional demand of Rs. 8.32 lakh had been raised in October 2009.

The matter was reported to the Government in June 2009; their replies have not been received (January 2010).