

CHAPTER VI - OTHER TAX RECEIPTS

6.1 Results of audit

Test check of the records of the Registration and Commercial Taxes department during 2008-09 indicated non/short levy of fee, duty and loss of revenue etc. amounting to Rs. 18.47 crore in 931 cases, which could be classified under the following categories:

(Rupees in crore)

Sl. no.	Category	No. of cases	Amount
STAMPS AND REGISTRATION FEES			
1.	Blocking of Government revenue due to non-disposal of impound/referred cases	744	1.35
2.	Non-levy of duty on power of attorney	103	1.32
3.	Other cases	73	0.06
Total		920	2.73
COMMERCIAL TAXES			
GOODS AND PASSENGER TAX/ENTRY TAX			
1.	Non-levy of penalty	2	9.41
Total		2	9.41
ELECTRICITY DUTY			
1.	Non / short levy of surcharge	7	3.19
2.	Short levy of electricity duty	1	3.04
Total		8	6.23
ENTERTAINMENT TAX			
1.	Short levy of entertainment tax	1	0.10
Total		1	0.10
Grand Total		931	18.47

During 2008-09, the concerned departments accepted non/short levy of fee, duty and loss of revenue etc. of Rs. 9.06 crore in 924 cases of which 920 cases involving Rs. 2.73 crore were pointed out in audit during 2008-09 and rest in earlier years.

A few illustrative audit observations involving Rs. 6.30 crore are mentioned in the succeeding paragraphs:

6.2 Audit observations

Scrutiny of records in the offices of Commercial Taxes departments revealed cases of non-recovery, short recovery and non-deposit of tax 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 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 so that recurrence of such lapses in future can be avoided.

6.3 Non-observance of the provisions of Acts/Rules

The Bihar Electricity Duty Act, 1948 and Bihar Entertainment Tax Act, 1948 (adopted by the Government of Jharkhand) provide for:

- (i) payment of electricity duty on mining purposes in all premises where total load exceeds 100 BHP;*
- (ii) payment of penalty for belated payment of surcharge; and*
- (iii) payment of a consolidated amount of tax, for every show, at the prescribed rate of gross collection capacity of the cinema.*

The Commercial Taxes department did not observe some of the provisions of the Act/Rules in cases as mentioned in the paragraph 6.3.1 to 6.3.3 for levy and collection of electricity duty, surcharge, entertainment tax etc. which resulted in non/short realisation of duty, surcharge and tax of Rs. 6.30 crore.

ELECTRICITY DUTY

6.3.1 Short levy of electricity duty

Under the provisions of Bihar Electricity Duty Act, electricity duty is leviable on the units of electrical energy consumed or sold, excluding losses of electrical energy in transmission and transformation, at the rate or rates specified in the schedule. Further, the State Government notified (August 1993) the rate of electricity duty for mining purposes in all premises where the total load exceeded 100 British horse power, to be 15 paise per unit of energy sold or consumed. The duty on sale of electrical energy for industrial purposes is leviable at the rate of two paise per unit. It has been judicially held¹ that the process of mining comes to an end only when the ore extracted from the mines is washed, screened, dressed and then stacked at the mining site.

6.3.1.1 Test check of records of Ramgarh Commercial Taxes Circle in January 2009 indicated that an assessee, engaged in mining activity, consumed 23.38 crore units of electrical energy in washing of coal between 2001-02 and 2004-05. The assessing authority while finalising the assessments between October 2006 and February 2007 incorrectly levied electricity duty at the rate of two paise per unit treating it as industrial consumption instead of 15 paise per unit prescribed for mining purposes. This resulted in short levy of duty of Rs. 3.04 crore.

¹ Chowgule & Co. Vrs Union of India (1981) 47 STC-124 SC.

6.3.1.2 In Ramgarh Commercial Taxes Circle, cross verification of purchase of electrical energy in case of a dealer company assessed in December 2006 with the assessment records of selling dealer of the same circle revealed that during 2003-04 to 2005-06 the dealer company had shown purchase of 4.64 crore units against actual purchase of 9.93 crore units of electrical energy. This resulted in suppression of purchase of electrical energy of 5.29 crore units and consequent short levy of electricity duty of Rs. 89.90 lakh including surcharge of Rs. 10.58 lakh.

6.3.2 Non-levy of penalty for belated payment of surcharge

Under the provisions of the Bihar Electricity Duty Act and Rules made thereunder, every assessee shall pay electricity duty due from him within two calendar months of the month to which the duty relates. In case of failure to pay duty and/ or surcharge within the due date, the prescribed authority shall impose a penalty upto five *per cent* but not less than two and half *per cent* for each of the first three months or part thereof following the due date and upto 10 *per cent* but not less than five *per cent* for each subsequent month or part thereof.

Test check of records of Ramgarh Commercial taxes circle in January 2009 indicated that six licensees² consumed 51.45 crore units of electrical energy between 1996-97 and 2005-06. The licensees did not pay surcharge of Rs. 1.03 crore leviable till the date of assessment. The assessing authority while finalising the assessment between December 2006 and January 2007 levied surcharge but did not impose penalty for the period of default. This resulted in non-levy of penalty of Rs. 2.26 crore calculated at the minimum rate.

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

ENTERTAINMENT TAX

6.3.3 Short levy of entertainment tax

Under the provisions of Bihar Entertainments Tax Act and Rules framed thereunder, a proprietor of an entertainment house, is liable to pay a consolidated amount of tax, for every show, at the prescribed rate of gross collection capacity of the cinema house, as fixed by the Government. The Act also empowers the State Government to grant permission to an owner of a cinema house to pay a fixed weekly compounded tax in lieu of the consolidated amount of tax deposited by the proprietor in advance for every week before the week begins and default in any payment shall invalidate the permission and in such case it shall be deemed that no permission has been granted and the proprietor is liable to pay tax, for every show at the prescribed rate (16 *per cent*) of gross collection capacity of the concerned cinema house.

Test check of records of Commercial Taxes Circle, Ramgarh in February 2009 indicated that the proprietor of a cinema house had opted and was allowed to

² M/s CCL, Saunda Colliery, Central Saunda Colliery, Sayal D Colliery, Rajrappa washery, Rajrappa Project and Bhurkunda Colliery

pay tax at the compound rate. However, he had not deposited weekly compounded tax in advance during 2005-06. As the assessee defaulted in payment of tax at compounded rate, the permission granted was required to be treated as cancelled and the proprietor was liable to pay tax, for every show at the prescribed rate (16 *per cent*) of gross collection capacity of the concerned cinema hall, which was neither levied by the assessing authority nor was it paid by the assessee. This resulted in short levy of tax of Rs. 9.94 lakh³.

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

³ Rs. 5,431.70 x 28 (shows per week) x 52 (weeks per year) x 16 *per cent*
= Rs. 12,65,368.00. Less tax already levied: Rs. 2,70,925.00.
Tax leviable = Rs. 9,94,443.00.