

## CHAPTER-II: COMMERCIAL TAXES

### 2.1 Tax administration

The collection of commercial taxes<sup>1</sup> in the State is administered by the Finance (Commercial Taxes) Department which is headed by the Commissioner of Commercial Taxes (CCT). In the exercise of his functions, the CCT is assisted by six Additional Commissioners and three Joint Commissioner of Commercial Taxes (JCCT) at the headquarters level. At the field level for administrative convenience, the State is divided into nine<sup>2</sup> administrative divisions, seven appeal divisions<sup>3</sup> and four audit divisions<sup>4</sup> each headed by a JCCT. The nine administrative divisions are further sub-divided into 50 circles each headed by a Deputy Commissioner Commercial Taxes (DCCT)/Assistant Commissioner Commercial Taxes (ACCT) assisted by Commercial Taxes Officers. The circle is the basic activity centre of the Department for actual tax collection.

### 2.2 Trend of receipts

#### 2.2.1 Taxes on sales, trade etc./VAT

The variation between Budget estimates (BEs) and actual receipts from taxes on sales, trade etc./VAT during the period 2005-06 to 2009-10 along with the total tax receipts during the same period is mentioned below:

(₹ in crore)

Year	Budget estimates	Actual receipts	Variation excess (+)/ shortfall (-)	Percentage of variation	Total tax receipts of the State	Percentage of actual Sales tax/VAT receipts vis-a-vis total tax receipts
2005-06	2,356.31	1,733.60	(-) 622.71	(-) 26.43	3,561.10	48.68
2006-07	2,364.67	2,081.49	(-) 283.18	(-) 11.98	4,033.08	51.61
2007-08	2,879.93	2,534.80	(-) 345.13	(-) 11.98	5,085.53	49.84
2008-09	2,937.72	3,016.47	78.75	2.68	6,172.74	48.87
2009-10	3,948.03	3,839.29	(-) 108.74	(-) 2.75	8,089.67	47.46

The above table indicates that the percentage of actual sales tax/VAT receipts in comparison to the total tax receipts of the State consistently decreased from the year 2006-07 to 2009-10.

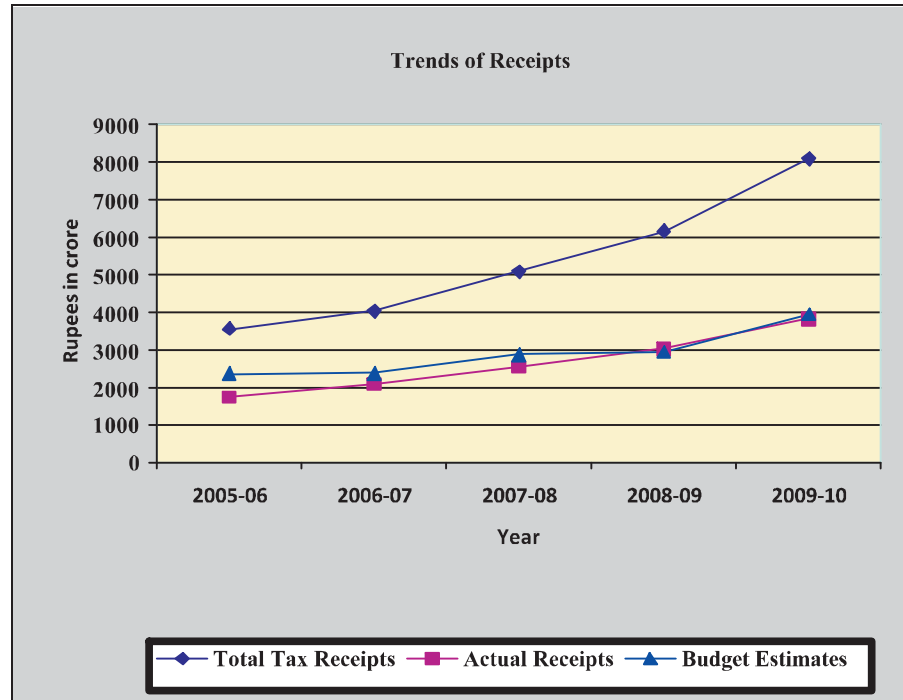
<sup>1</sup> Commercial taxes include taxes on sales, trade etc./VAT, entry tax, electricity duty and entertainment tax.

<sup>2</sup> Bhagalpur, Central, Darbhanga, Magadh, Patna East, Patna West, Purnea, Saran and Tirhut.

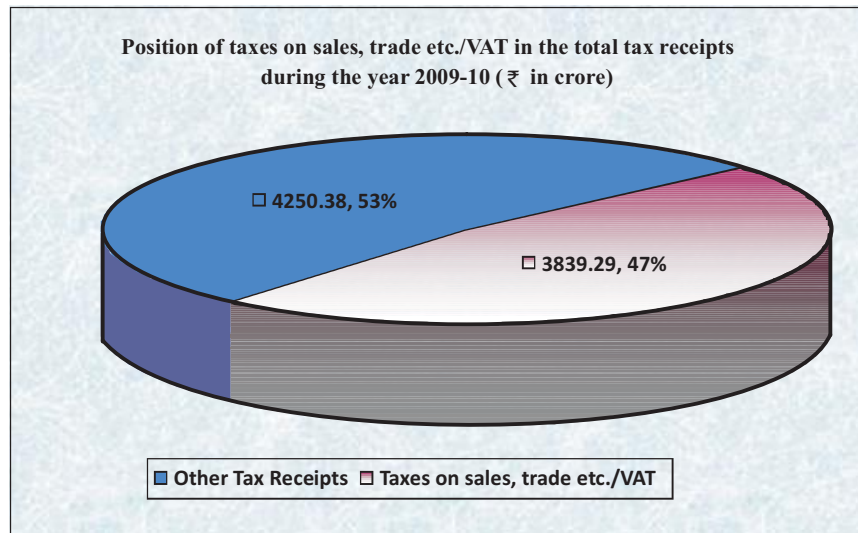
<sup>3</sup> Bhagalpur, Central, Darbhanga, Magadh, Patna, Purnea and Tirhut.

<sup>4</sup> Bhagalpur, Magadh, Patna and Tirhut.

The trend of receipts vis-à-vis the BEs and total tax receipts is given in the following graph:



The chart below depicts the contribution of taxes on sales, trade etc./VAT receipts to the total tax receipts (₹ 8,089.67 crore) of the State during 2009-10:



### 2.2.2 Entry tax

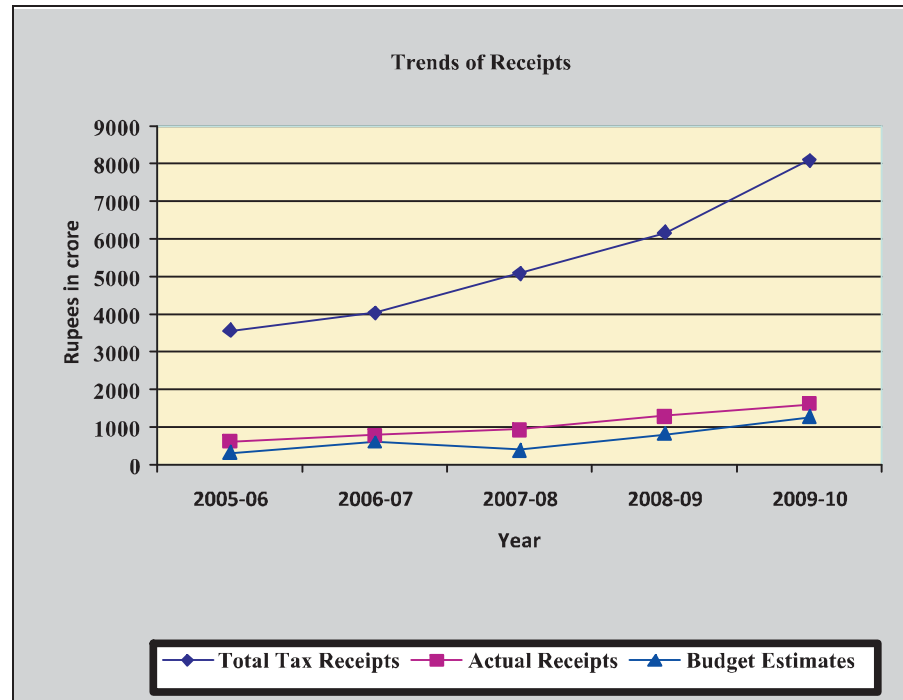
The variation between BEs and actual receipts from entry tax during the period 2005-06 to 2009-10 along with the total tax receipts during the same period is mentioned in the following table:

(₹ in crore)

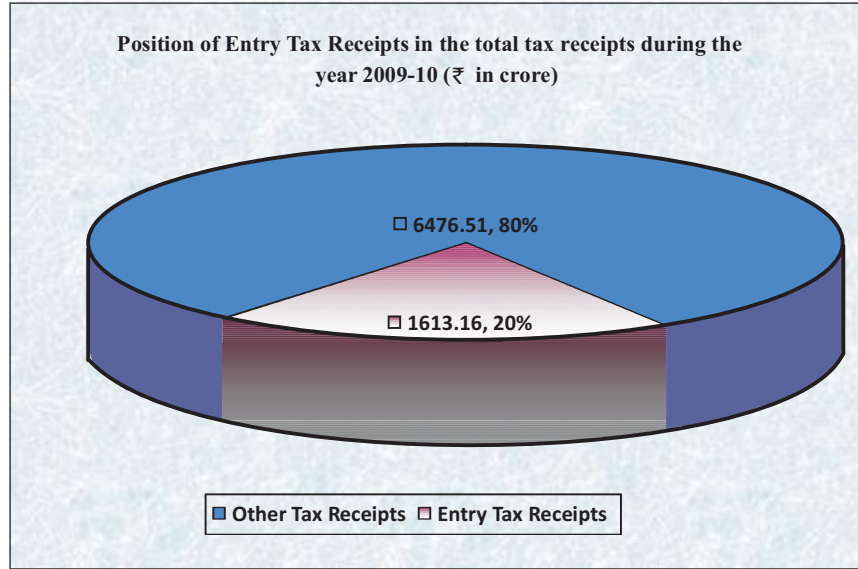
Year	Budget estimates	Actual receipts	Variation	Percentage of variation	Total tax receipts of the State	Percentage of actual entry tax receipts vis-a-vis total tax receipts
2005-06	312.00	613.38	301.38	96.60	3,561.10	17.22
2006-07	603.64	783.01	179.37	29.71	4,033.08	19.41
2007-08	381.33	937.87	556.54	145.95	5,085.53	18.44
2008-09	825.00	1,279.41	454.41	55.08	6,172.74	20.73
2009-10	1,270.00	1,613.16	343.16	27.02	8,089.67	19.94

The above table indicates that there was no consistency in the actual receipts against BEs during 2005-06 to 2009-10. The percentage of actual entry tax receipts in comparison to the total tax receipts of the State declined in 2007-08 and 2009-10 over 2006-07 and 2008-09 respectively.

The trend of receipts vis-à-vis the BEs and total tax receipts is given in the graph below:



The following chart depicts the contribution of entry tax receipts to the total tax receipts (₹ 8,089.67 crore) of the State during 2009-10.



### 2.3 Analysis of arrears of revenue

The arrears of revenue in respect of commercial taxes as on 31 March 2010 amounted to ₹ 1,358.78 crore of which ₹ 330.19 crore was outstanding for more than five years. The following table depicts the position of arrears of revenue during the period 2005-06 to 2009-10.

(₹ in crore)

Year	Opening balance of arrears	Amount collected during the year	Closing balance of arrears
2005-06	715.05	215.82	916.01
2006-07	916.01	212.21	994.17
2007-08	994.17	196.01	963.83
2008-09	963.83	168.66	1,007.25
2009-10	1,007.25	112.15	1,358.78

The above table shows that the arrears of revenue in respect of commercial taxes sharply increased in 2009-10 in comparison to 2008-09, while the collection decreased consistently during the period 2006-07 to 2009-10.

**The Government may take suitable steps to arrest this downward slide in collection of arrears of revenue against increasing trend of accumulation of arrears.**

### 2.4 Assessee profile

As reported by the Department the total number of registered dealers in the State during 2009-10 was 1,76,788 of which 50,211 dealers were taxpayers.

The Department did not furnish (December 2010) any other information in respect of dealers, such as number of large tax payers, small dealers, number of dealers required to file returns, number of returns received and action taken by the Department against dealers who had failed to furnish returns etc., despite being requested between August and October 2010.

## 2.5 Analysis of collection

The break-up of the total collection at the pre-assessment stage and after regular assessment of taxes on sales, trade *etc.*/VAT during the year 2009-10 and the corresponding figures for the preceding four years as furnished by the Finance (Commercial Taxes) Department is mentioned in the following table:

(₹ in crore)

Head of revenue	Year	Amount collected at pre-assessment stage	Amount collected after regular assessment	Penalty for delay in payment of taxes and duties	Amount refunded	Net collection as per Department	Net collection as per Finance Accounts	Percentage of column 3 to 8
1	2	3	4	5	6	7	8	9
Taxes on sales, trade <i>etc.</i> /VAT	2005-06	1,664.13	69.92	0.89	17.36	1,716.70	1,733.60	95.99
	2006-07	2,002.62	81.25	2.81	11.96	2,071.92	2,081.49	96.21
	2007-08	2,537.11	39.86	2.24	38.00	2,538.97	2,534.80	100.09
	2008-09	3,049.18	54.22	1.04	38.92	3,065.52	3,016.47	101.08
	2009-10	3,793.15	50.25	1.40	19.86	3,823.54	3,839.29	98.80

Thus, the percentage of tax collected before regular assessment consistently increased over the period 2005-06 to 2008-09. This, however, decreased by 2.28 *per cent* during 2009-10 over the previous year.

## 2.6 Impact of audit

### Revenue impact

During the period 2004-05 to 2008-09, we have, through our inspection reports, pointed out non/short levy, non/short realisation, underassessment/loss of revenue, incorrect exemption, concealment/suppression of turnover, application of incorrect rate of tax, incorrect computation *etc.*, with revenue implication of ₹ 1,216.89 crore in 2,288 cases in respect of taxes on sales, trade *etc.*/VAT. Of these, the Department/Government had accepted audit observations in 271 cases involving ₹ 644.13 crore. The recovery, however, was just ₹ 1.48 crore as shown in the following table:

(₹ in crore)

Year	No. of units audited	Objected		Accepted		Recovered	
		No. of cases	Amount	No. of cases	Amount	No. of cases	Amount
2004-05	33	576	142.82	25	10.82	1	0.01
2005-06	48	460	30.32	58	12.29	54	1.25
2006-07	40	365	62.82	76	2.12	Nil	Nil
2007-08	36	479	315.60	70	2.64	-	0.14
2008-09	41	408	665.33	42	616.26	15	0.08
<b>Total</b>	<b>198</b>	<b>2,288</b>	<b>1,216.89</b>	<b>271</b>	<b>644.13</b>	<b>70</b>	<b>1.48</b>

This negligible recovery of ₹ 1.48 crore (0.23 per cent) against accepted cases involving ₹ 644.13 crore indicates lack of promptness on the part of the Government/Department in recovering the Government dues.

**We recommend that the Government take appropriate steps to recover the amount involved, at least in accepted cases.**

## 2.7 Working of internal audit wing

The internal audit wing called Finance (Audit) works under the Finance Department. The internal audit of the different offices of the Government is conducted on the basis of requisitions received from the administrative Departments. Generally an audit team of Finance (Audit) comprises of three members, one being the head of the team. Taking into consideration the quantum of requisitions for audit, personnel for audit teams are drawn from headquarters/divisional offices. In Finance (Commercial Taxes) Department, there were four audit divisions responsible for ascertaining the correctness of accounts maintained by the dealers selected by the CCT.

The Department did not furnish information regarding the number of offices due for audit, audit conducted, number of observations issued and the amounts involved, to us.

## 2.8 Results of audit

In 2009-10, we test checked the records of 36 units relating to commercial taxes and found underassessment of taxes and other irregularities involving ₹ 1,263.56 crore in 882 cases which fall under the following categories:

(₹ in crore)			
Sl. no.	Categories	No. of cases	Amount
<b>A : Taxes on Sales, trade etc./VAT</b>			
1.	Non/short levy of tax	144	66.91
2.	Irregular allowance of exemption from tax	149	587.09
3.	Non-levy of penalty	107	56.39
4.	Irregular allowance of concessional rate of tax	45	7.63
5.	Application of incorrect rates of tax	84	123.04
6.	Short levy due to incorrect determination of turnover	201	317.86
7.	Non-levy of penalty for excess collection of tax/mistake in computation	04	10.28
8.	Non/short levy of additional tax and surcharge	06	0.21
9.	Other cases	91	27.12
<b>Total</b>		<b>831</b>	<b>1,196.53</b>
<b>B : Entry Tax</b>			
1.	Non/short levy of entry tax	28	9.29
2.	Application of incorrect rate of entry tax	09	8.65
3.	Other cases	14	49.09
<b>Total</b>		<b>51</b>	<b>67.03</b>
<b>Grand total</b>		<b>882</b>	<b>1,263.56</b>

During the course of the year, the Department accepted underassessment and other deficiencies of ₹ 920.97 crore in 806 cases, of which 754 cases involving ₹ 901.22 crore were pointed out during 2009-10 and the rest in the earlier years. An amount of ₹ 52.21 lakh was realised in 110 cases during the year 2009-10.

A few illustrative cases involving ₹ 841.96 crore are mentioned in the following paragraphs.

## 2.9 Audit observations

*Our scrutiny of the records of the Commercial Taxes Department revealed several cases of non-compliance of the provisions of the relevant Act/Rules and Departmental orders as mentioned in the succeeding paragraphs of this chapter. These cases are illustrative and are based on test checks carried out by us. Such omissions on the part of the Departmental officers are pointed out by us each year, but not only do the irregularities persist, they also remain undetected till we conduct audit. There is need for the Government to improve the internal control system and the internal audit.*

## A : Taxes on Sales, trade etc./VAT

### 2.10 Suppression of turnover

#### Ten<sup>5</sup> Commercial Taxes Circles

Under Section 31 (2) of the Bihar Value Added Tax (BVAT) Act, 2005, if the Assessing Authority (AA) is satisfied that any turnover liable to tax under the Act has been underassessed/escaped assessment, he shall assess or reassess the tax payable within four years and shall impose, besides tax and interest, penalty equivalent to three times the tax payable on escaped turnover.

We observed that the Government/Department did not prescribe a mechanism for cross verification of the turnover as disclosed in the returns with other records of the dealer like utilisation statements of road permits, declaration forms as well as Tax

Audit Report (TAR) or information of sales and purchases obtained from the records of other dealers while scrutinising the returns.

**2.10.1** Between March 2009 and March 2010, we observed that 16 dealers (12 self assessed, three scrutinised and one assessed) purchased/sold goods of ₹ 1,035.06 crore during the period 2005-06 to 2007-08 as shown in their purchase/sale statements, utilisation statements of road permits/declaration forms and TAR. They, however, accounted for ₹ 953.32 crore only in their returns thereby suppressing purchases/sales of goods worth ₹ 81.74 crore. As the Department had not issued any instruction for cross checking the information, the AAs could not detect the suppression in cases where the audit findings were based on the self assessed/scrutinised returns and in the one remaining case (Sitamarhi) the AA could not detect the suppression despite

<sup>5</sup> Barh, Gaya, Hajipur, Madhepura, Patliputra, Patna Special, Patna West, Shahabad, Sitamarhi and Teghra.

the assessment being done in October 2008. This resulted in underassessment of tax of ₹ 62.22 crore including penalty of ₹ 46.67 crore.

After we pointed this out, the Government/Department raised demand of ₹ 3.03 crore in 11 cases including one case of Patna West circle where the AA did not levy penalty citing that section 33 of the BVAT Act (assigned for assessment on the basis of CAG's audit) does not provide for levy of penalty. The reply is not as per the rule because section 33 read with section 31 provides for reassessment by the AA including levy of penalty. We await the report on the status of recovery in the accepted cases and replies in the remaining cases (December 2010).

**2.10.2** We observed in March 2010 from the self assessed returns of a dealer of petroleum products registered in Patna Special circle that the dealer actually made purchase of goods of ₹ 19,426.14 crore during 2007-08 as per the annual return filed under the entry tax but accounted for ₹ 18,740.92 crore only in his VAT returns/TAR. The dealer had thus suppressed purchase of goods of ₹ 685.22 crore. Due to absence of the aforesaid provision, the AA could not detect the suppression of turnover which resulted in underassessment of tax of ₹ 548.18 crore including penalty of ₹ 411.14 crore.

After we pointed this out, the Government/Department in August 2010 accepted the fact of short accounting of purchase value in VAT returns, but stated that there was no difference in terms of quantity and there was no relation between the values of receipts and value of sales and any change in the value of receipts in TAR would only impact the residual profit/loss which is meaningless and therefore it can be concluded that no sale has escaped taxation and that there has been no under reporting of tax liability. The reply is not correct because the audit observation relates to suppression of purchase and the assessee as well as the AA had stated that the receipt value reported under entry tax was correct and the error in reporting of receipt in quarterly returns filed under VAT occurred primarily in the second and fourth quarter due to time lag. Thus, it is clear that an erroneous valuation process was adopted in arriving at the purchase value while filing the quarterly VAT return leading to suppression/under reporting of purchase value under VAT. Further, under section 31 (2) of BVAT Act, tax and penalty on the concealed purchases was also leviable.



## 2.11 Incorrect allowance of Input Tax Credit

### Patliputra and Patna Special Commercial Taxes Circles

Section 16 of the BVAT Act, 2005 deals with Input Tax Credit (ITC). Under this Section, when a registered dealer purchases any input within the State of Bihar from another registered dealer after paying him the tax, he is eligible to claim credit of input tax in the manner prescribed, if the goods are sold within the State or in the course of interstate trade and commerce. Further, Section 31 of the Act provides for imposition of penalty equivalent to three times of the tax payable for excess/incorrect claim of ITC. Tax paid under Sections 4 and 14 only are eligible for ITC claimed under Section 16 and any additional tax paid under Section 3AA is not allowable for ITC.

**2.11.1** We observed in March 2010 from the self assessed returns of two dealers of Patna Special circle that they availed of ITC of ₹ 50.78 crore on the purchase value of goods of ₹ 481.63 crore during 2007-08. We cross checked the purchase value with the sales statement annexed to the TAR of the selling dealer and found that the selling dealer had made sales of ₹ 196.04 crore only

to the purchasing dealers and realised tax of ₹ 25.05 crore thereon. Thus, the purchasing dealers were entitled to ITC of ₹ 25.05 crore only. This resulted in excess claim of ITC of ₹ 25.73 crore. The penalty for this excess claim works out to ₹ 77.18 crore.

**2.11.2** We observed in March 2010 from the self assessed return of a dealer of Patna Special Circle that he availed of ITC of ₹ 20.82 crore on the purchase of goods valued at ₹ 154.69 crore in his annual return during 2006-07. However, as per the purchase figures shown in the annual return, the dealer was entitled for ITC of ₹ 15.26 crore only on the same purchase of goods valued at ₹ 154.69 crore. Thus, the dealer claimed excess ITC of ₹ 5.56 crore. The penalty for this excess claim works out to ₹ 16.70 crore.

**2.11.3** We observed in January 2010 from the self assessed return of a dealer of Patliputra circle, for the period 2005-06 to 2007-08, that the dealer who was eligible for ITC of ₹ 3.62 crore claimed ITC of ₹ 6.62 crore which also included the additional tax paid by him under Section 3AA which was not admissible for ITC. Thus, the dealer claimed excess ITC of ₹ three crore. The penalty for this excess claim works out to ₹ nine crore.

Irregular claim of ITC in all the above cases resulted in excess allowance of the ITC of ₹ 137.17 crore including leviable penalty of ₹ 102.88 crore.

After we pointed this out, the Government/Department accepted the audit observation of Patliputra Circle and raised demand of ₹ 12 crore. Further, in January 2011, the AA Patna Special circle stated that hearing in these cases has not been completed yet. We await the report on recovery in the accepted cases and further development in the remaining cases (December 2010).

## 2.12 Application of incorrect rate of tax

### Seven<sup>6</sup> Commercial Taxes Circles

Under the provision of the BVAT Act, 2005, interest and penalty at prescribed rates are leviable if the dealer failed to disclose full and correct particulars of sale so as to reduce the amount of tax payable.

We observed between June 2009 and March 2010 that 11 dealers (five assessed and six self assessed) assessed their tax at the lower

rate of four *per cent* on the sale of various goods valued at ₹ 75.76 crore instead of the correct rate of 12.5 *per cent* during 2005-06 to 2007-08. Such application of incorrect rate remained undetected by the AAs resulting in short levy of tax of ₹ 28.51 crore including interest of ₹ 2.75 crore and leviable penalty of ₹ 19.32 crore (**Annexure-III**).

After we pointed this out, the Government/Department accepted the audit observation in 10 cases and raised demands for ₹ 10.79 crore. We await the report on recovery in the accepted cases and reply in respect of the remaining case (December 2010).

## 2.13 Short calculation of reverse credit

### Teghra Commercial Taxes Circle

Under Rule 15 and 16 of the BVAT Rules, 2005, a manufacturing dealer shall incur reverse credit when he makes interstate stock transfer of the goods which were manufactured by him from inputs other than those specified in Schedule-I. The amount of ITC for which a dealer is entitled will be arrived at after deduction of the reverse credit from the amount of input tax paid on the purchases.

We observed in January 2010 from the self assessed returns that a manufacturing dealer of calcined petroleum coke made interstate stock transfer of taxable goods valued at ₹ 72.10 crore during the period

2005-06 to 2007-08. The inputs for these goods were also purchased from within the State after paying tax thereon in the State, for which ITC was availed of by the dealer. Though the dealer was required to calculate the reverse credit and deduct the same from the total amount of ITC, the reverse credit of ₹ 77.58 lakh was calculated short by the dealer. The AA while scrutinising the return failed to detect the omission. The audit observation based on self assessment by the dealer revealed excess allowance of ITC of ₹ 3.10 crore including leviable penalty of ₹ 2.33 crore.

After we pointed this out, the Government/Department accepted the audit observation, but raised a demand of ₹ 1.89 crore only, instead of ₹ 3.10 crore. On examination of the reply we noticed that the AA had erred in calculation of reverse credit. We await further replies (December 2010).

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<sup>6</sup> Bettiah, Danapur, Patliputra, Patna Central, Patna South, Patna Special and Raxaul.

## 2.14 Incorrect allowance of deductions

### Five<sup>7</sup> Commercial Taxes Circles

Under Section 35 of the BVAT Act, 2005 and Rule 18 of the BVAT Rules, 2005, a works contractor is liable for deduction on the items of labour and any other charges such as amount paid to a sub-contractor on account of labour and services, charges for planning, designing and architect fees, charges for obtaining machinery and tools used on hire, cost of consumables, cost of establishment to the extent it is relatable to supply of labour and services, other similar expenses relatable to supply of labour and services, profit earned by the contractor to the extent it is relatable to supply of labour and services and goods or transactions exempted under Section 6 or Section 7 of the BVAT Act.

We observed between October 2009 and February 2010 from the self assessed returns of six dealers (works contractors) that they availed of deductions of ₹ 27.73 crore during 2005-08 on items which were not eligible for deduction under the Act. This resulted in short levy of tax of ₹ 1.85 crore calculated on the apportioned value of materials of ₹ 15.96 crore.

After we pointed this out, the Government/

Department accepted the audit observation in respect of three<sup>8</sup> circles and raised a demand of ₹ 1.02 crore in three cases. We await the report on recovery in the accepted cases and replies in the remaining cases (December 2010).

## 2.15 Non-detection of underassessed tax

### Hajipur Commercial Taxes Circle

Under Section 31(2) of the BVAT Act, 2005, the prescribed authority shall, in a case where the dealer has concealed, omitted or failed to disclose full and correct particulars of such sale or purchase or ITC, direct that the dealer shall, besides the amount of interest, pay by way of penalty a sum equal to three times the amount of tax which is or may be assessed on the turnover of sale or purchase which escaped assessment.

We observed in October 2009 from the self assessed returns that a dealer having gross turnover (GTO) of ₹ 19.54 crore and taxable turnover of ₹ 12.97 crore during 2006-07, declared his tax liability as

₹ 86.78 lakh only, instead of the correct amount of tax of ₹ 110.87 lakh. This incorrect assessment of tax liability remained undetected by the AA resulting in short recovery of tax of ₹ 24.09 lakh. Further, the dealer was also liable to pay penalty of ₹ 72.26 lakh besides interest of ₹ 13 lakh calculated at the rate of 1.5 per cent per month upto March 2010. The total impact of the above case works out to ₹ 1.09 crore.

<sup>7</sup> Begusarai, Forbesganj, Hajipur, Patliputra and Patna South.

<sup>8</sup> Hajipur, Patliputra and Patna South.

After we pointed this out, the Government/Department accepted the audit observation and raised demand for ₹ 29.52 lakh. The reply, however, does not explain the reason for non-raising of demand for the differential amount of ₹ 79.73 lakh. We await the report on recovery (December 2010).

## **2.16 Short levy of tax due to underassessment of Central Sales Tax**

### **Patna West Commercial Taxes Circle**

Under Section 6 (A) of the CST Act, 1956, if any dealer claiming exemption on account of interstate stock transfer does not produce the required declaration, the said transaction will be treated as sale. Section 8 (2) of the CST Act further provides that the rate of tax on interstate sale of goods (other than declared goods) will be 10 *per cent* or at the rate applicable in the State, whichever is higher. It has been judicially held in the cases of DCST Vs Aysha Hosiery Factory (1992) 85 of STC 106 SC and Sidval Refrigeration Vs State of Haryana (1993) 89 STC 97 P&H. that while levying the State rate, any other levies such as surcharge and additional tax are also leviable.

We observed between July and August 2009, that a dealer did not furnish any declaration to substantiate the claim of interstate stock transfer of television valued at ₹ 19.09 crore during 2003-04 and 2004-05. The AA while finalising the assessment in April 2009 rejected the claim of the dealer and levied tax at the rate of 10 *per cent* instead of the State rate of tax of 12 *per cent*, besides additional tax and surcharge. This resulted

in short levy of tax of ₹ 84.62 lakh.

After we pointed this out, the Government/Department accepted the audit observation and raised demand for ₹ 84.62 lakh. We await the report on recovery (December 2010).

## 2.17 Non-levy of tax and penalty on closing stock after closure of business

### Patliputra Commercial Taxes Circle

Under the provision of Section 3 (5) of the BVAT Act, 2005 a registered dealer shall, within a period of twelve consecutive months, pay tax on the stock of the goods remaining with him on the date on which he closes or discontinues his business or on a later date, provided that the Commissioner may extend the period. Further, Section 31 (2) (a) and (b) provides that in case a dealer has concealed, omitted or failed to disclose full and correct particulars of sale or purchase, then the AA shall direct the dealer to pay, besides the tax payable, interest thereon and penalty equal to three times the amount of tax payable on such concealment.

We observed between December 2009 and January 2010 from the self assessed returns of a dealer engaged in construction business that he had closed his business after 2006-07 and applied for the cancellation of his registration in May 2007 stating the stock as 'Nil'. But the Annexure to the dealer's TAR for the period 2006-07 showed closing stock of goods

of ₹ 1.18 crore as on 31 March 2007, thereby indicating that the declaration of 'Nil' stock in the application for cancellation of registration was false. But this fact was not detected by the AA resulting in non-realisation of tax to the tune of ₹ 12.88 lakh. Further, the dealer was also liable for payment of penalty of ₹ 38.64 lakh along with interest of ₹ 6.96 lakh resulting in undetected revenue dues of ₹ 58.48 lakh.

After we pointed this out, the Government/Department accepted the audit observation and raised demand of ₹ 12.88 lakh. We await the report on recovery (December 2010).

## 2.18 Non-levy of surcharge

### Patna Special Commercial Taxes Circle

Notification issued under Section 3A of the BVAT Act, 2005 provides for levy of surcharge on the sale of High Speed Diesel and Light Diesel Oil. Further, Section 8(2) of the CST Act, 1956 prescribes that the tax rate on the interstate sales of goods (other than declared goods) to unregistered dealers shall be at the same rate as applicable under the sales tax law of that State. In addition, any other levy such as surcharge and additional tax applicable under the sales tax law of the State should also be levied.

We observed between February and March 2010 from the self assessed return of a dealer that he made interstate sale of High Speed Diesel and Light Diesel Oil of ₹ 15.58 crore to unregistered dealers during

2007-08 on which tax of ₹ 3.12 crore at the rate of 20 per cent was admitted by the dealer. But surcharge of ₹ 31.15 lakh, at the rate of 10 per cent on the tax, though leviable, was not levied.

The matter was reported to the Government/Department in May 2010; we are yet to receive their reply (December 2010).

## **2.19 Incorrect adjustment of entry tax towards payment of VAT**

### **Danapur Commercial Taxes Circle**

Under Section 4 (A) of the Bihar Tax on Entry of Goods (BTEG) Act, 1993, tax paid under the BTEG Act shall be adjusted against the liability under the BVAT Act provided that the said reduction in tax shall be available to the manufacturer, if the imported scheduled goods are used or consumed in the manufacture of goods for resale. In case only a part of the goods manufactured out of the imported scheduled goods is sold within the State of Bihar or in the course of interstate trade and commerce or in the course of export out of the territory of India, the claim for the reduction in tax liability shall stand proportionately reduced.

We observed in October 2009 from the self assessed returns of a manufacturer that during 2007-08 he paid entry tax of ₹ 1.77 crore on the import of scheduled goods valued at ₹ 40.68 crore and claimed an entry tax adjustment of ₹ 1.71 crore towards his VAT liability. We further observed that this adjustment included goods worth

₹ 9.83 crore that were not sold, but instead the dealer had made interstate stock transfer of goods for which no entry tax adjustment against VAT was allowable. The entry tax adjustment against VAT had to be proportionately reduced by ₹ 25.79 lakh but ₹ 6.04 lakh only was reduced by the dealer. This short deduction resulted in excess entry tax adjustment against VAT payable to the tune of ₹ 19.75 lakh which remained undetected by the AA.

After we pointed this out to the Government and to the AA concerned, the AA stated that for the previous assessment year of the same dealer, the appellate authority had quashed the demand on the ground that the assessment was not made under section 33 of BVAT Act and cited a judgement of Hon'ble Patna High Court. The reply is not as per rule because the AA had the opportunity of assessment under section 33 in the present case and the aforesaid judgement pertaining to the year 2003 related to a trading concern in Bihar and not to a manufacturer and was also decided before the insertion of the proviso for manufacturers. We await further reply in this regard (December 2010).

## 2.20 Incorrect allowance of concessional rate of tax

### Forbesganj and Hajipur Commercial Taxes Circles

Under Section 8 (5) of the CST Act, 1956, the Government of Bihar issued a notification in October 2006 prescribing the rate of tax on the interstate sale of goods manufactured by small and medium industries at one *per cent*. Further, the Micro, Small and Medium Industries (Regulation and Development) Act, 2006 notified by the Government of India laid down the classification of industries on the basis of the investment in plant and machinery.

We observed between September 2009 and February 2010 from the self-assessed returns of four dealers that they were not falling under the criteria of either small or medium industries as per the prescribed parameters<sup>9</sup> of investment in plant and machinery during 2006-07 and 2007-08, but they availed of the benefit of concessional rate of tax at the rate of one *per cent* on

the interstate sales of ₹ 4.21 crore, which remained undetected by the AAs. This incorrect allowance of concessional rate of tax resulted in short levy of tax of ₹ 9.04 lakh.

After we pointed this out, the Government/Department accepted the audit observation in respect of Hajipur circle and raised demand for ₹ 3.59 lakh in two cases. We await the report on recovery in accepted cases and replies in the remaining cases (December 2010).

<sup>9</sup> Micro enterprises : investment in plant and machinery not exceeding ₹ 25 lakh.  
Small enterprises : more than ₹ 25 lakh but not more than ₹ five crore.  
Medium : more than ₹ five crore but not more than ₹ 10 crore.

## B: Entry Tax

### 2.21 Short levy of entry tax due to suppression of import value

#### Five<sup>10</sup> Commercial Taxes Circles

Under the provision of Bihar Tax on Entry of Goods (BTEG) Act, 1993, read with BVAT Act, 2005, if the prescribed authority is satisfied that in respect of any assessment, any sale or purchase of goods liable to tax under the Act, has been underassessed or has escaped assessment, the prescribed authority shall assess or reassess the tax payable by such dealer within four years. In case of wilful omission by the dealer to disclose full and correct particulars of such sale or purchase or input tax credit, the prescribed authority shall impose, besides the amount of interest payable, penalty equal to three times the amount of tax which escaped assessment. The penalty imposed shall be in addition to the amount of tax on the escaped turnover.

We cross checked the utilisation of road permits, declaration forms, purchase statements, trading and manufacturing accounts *etc.* with the returns filed by five dealers (self assessed) and observed between May 2009 and January 2010 that the dealers suppressed import/purchase of scheduled goods of ₹ 238.39 crore during 2006-07 and 2007-08. The AAs either did not scrutinise the

returns or in scrutiny failed to detect the suppression which resulted in short levy of entry tax of ₹ 56.58 crore including leviable penalty and interest till the date of audit as mentioned below:

(₹ in lakh)

Sl. No.	Name of circle No. of dealer	Period	Commodity Rate (per cent)	Actual purchase Purchase accounted for	Suppression	Entry Tax Penalty	Period of interest Amount of interest leviable @ 1.5 per cent per month	Total
1	Bhagalpur 1	2007-08	Electrical goods 8	8,565.16 278.04	8,287.12	662.97 1,988.91	14 months 139.22	2,791.10
2	Danapur 1	2007-08	Electrical goods 8	20.62 Nil	20.62	1.65 4.95	18 months 0.45	7.05
3	Gaya 1	2007-08	Cement 12	368.63 304.93	63.70	7.64 22.93	16 months 1.83	32.40
4	Muzaffarpur West 1	2007-08	Chassis of motor vehicles and lubricants 8	300.32 Nil	300.32	24.02 72.08	13 months 4.69	100.79

<sup>10</sup> Bhagalpur, Danapur, Gaya, Muzaffarpur West and Patliputra.



5	Patliputra 1	2006-07	Telecom goods 4	51,997.44 36,830.08	15,167.36	606.70 1,820.08	33 months 300.31	2,727.09
<b>Total</b>				<b>61,252.17</b> <b>37,413.05</b>	<b>23,839.12</b>	<b>1,302.98</b> <b>3,908.95</b>	<b>446.50</b>	<b>5,658.43</b>

After we pointed this out, the Government/Department accepted the audit observations in July 2010 and raised demand for ₹ 31.23 crore in four cases of four<sup>11</sup> circles. We await the report on recovery in the accepted cases and the reply in respect of Danapur circle (December 2010).

## 2.22 Application of incorrect rate of tax

### Four<sup>12</sup> Commercial Taxes Circles

Under the provision of the BTEG Act, 1993, there shall be levied and collected a tax on entry of scheduled goods into a local area at such rate not exceeding 20 per cent of the import value of such goods as may be specified by the State Government in a notification published in the Official Gazette subject to such conditions as may be prescribed, provided different rates for different scheduled goods and different local areas may be specified by the State Government. Further, interest at the rate of 1.5 per cent per month is also leviable on the amount underassessed.

We observed between May and December 2009 that nine dealers (self assessed) imported scheduled goods of ₹15.61 crore during 2006-07 and 2007-08 and admitted entry tax at rates lower than the prescribed rates. The AAs either did not scrutinise the returns filed by the dealers or in respect of certain scrutinised returns,

levied entry tax at incorrect rates. This resulted in short levy of entry tax of ₹ 1.23 crore including interest of ₹24.26 lakh as mentioned below:

Sl. No.	Name of circle No. of dealer	Name of commodity	Year	Import value	Rate of tax Leviable Levied (in per cent)	Amount short levied	Period of interest Amount of interest at the rate of 1.5 per cent per month	Total
1	Bhagalpur 3	Tobacco	2006-07 and 2007-08	203.97	8 5	6.12	13 to 25 months 1.40	7.52
2	Hajipur 2	Tobacco product	2007-08	370.49	16 5	40.75	17 months 10.39	51.14
		Electrical goods	2007-08	268.19	8 4	10.73	17 months 2.74	13.47

<sup>11</sup> Bhagalpur, Gaya, Muzaffarpur West and Patliputra.

<sup>12</sup> Bhagalpur, Hajipur, Muzaffarpur West and Patliputra.

3	Muzaffarpur West 3	Tobacco product	2007-08	171.28	<u>16</u> 5	18.84	<u>13 months</u> 3.68	22.52
		Electrical goods	2007-08	349.06	<u>8</u> 4	13.96	<u>13 months</u> 2.72	16.68
4	Patliputra 1	Electrical goods	2007-08	198.27	<u>8</u> 4	7.93	<u>28 months</u> 3.33	11.26
<b>Total</b>				<b>1,561.26</b>		<b>98.33</b>	<b>24.26</b>	<b>122.59</b>

After we pointed this out, the Government/Department accepted the audit observations between September and November 2010 and raised demand of ₹ 1.21 crore in eight cases relating to all the four circles. The Government/Department also reported recovery of ₹ 4.49 lakh in one case of Bhagalpur circle. Further, in another case of Bhagalpur circle, the Government/Department replied (October 2010) that before coming into force of the notification no. 38 dated 1 April 2008, there was no rate of entry tax notified for scheduled goods during the period from 6 November 2001 to 31 March 2008. Hence, the rate specified for tobacco (*i.e.*, five *per cent*) was applicable in terms of S.O.-92 dated 25 July 2001. The reply is not correct because as per Gazette notification dated 15 April 2008 (Amendment and Validation Act, 2008), the Government validated all the previous notifications. As such the rate of entry tax on tobacco at eight *per cent* was applicable during the year 2007-08 as per S.O.-159 dated 22 August 2003 and thus the dealer was liable to pay the entry tax at the rate of eight *per cent*. We await a report on recovery in the accepted cases and further developments in the other case (December 2010).