

CHAPTER - II

COMMERCIAL TAXES

EXECUTIVE SUMMARY

What we have highlighted in this Chapter	<p>In this Chapter we present few illustrative cases of ₹ 224.67 crore including leviable penalty and interest selected from observations noticed during our test-check of records in 2012-13 relating to non/short levy, non/short realisation, underassessment etc., in the offices of the Commercial Taxes Department, where we found that the provisions of the Acts/Rules were not observed.</p> <p>It is a matter of concern that similar omissions had been pointed out by us repeatedly in the Audit Reports in the past years, but the Department did not take corrective action till we pointed out the same mistakes.</p> <p>We are also concerned that though these omissions were apparent from the records which were made available to us, the Assessing Authorities were unable to detect these mistakes in due course.</p>
Trend of receipts	<p>In 2012-13 the percentage of contribution of receipts from Taxes on Sales, Trade etc. decreased marginally in the total tax receipts of the State in comparison to the 2011-12 which requires to be looked into by the Department.</p>
Internal audit not conducted	<p>During the year 2012-13, the Commercial Taxes Department did not select any unit for internal audit. This shows weakness in the internal control mechanism leading to omissions on the part of AAs, which could not be detected till our audit and consequently there was substantial leakage of revenue.</p>
Impact of audit conducted by us during 2012-13	<p>In the course of audit of the records of 43 units relating to commercial taxes during the year 2012-13, we found underassessment of taxes and other irregularities involving ₹ 688.93 crore in 1,346 cases. The Department accepted underassessment and other deficiencies of ₹ 31.22 crore in 116 cases, of which 16 cases involving ₹ 4.07 crore were pointed out during 2012-13 and the rest in earlier years. An amount of ₹ 19.13 lakh was realised in 17 cases during the period.</p>
Our conclusion	<p>The Department needs to improve the internal control system so that weaknesses in the system are addressed and omissions detected by us are avoided in future.</p> <p>It also needs to take appropriate steps to recover the amount involved, at least in accepted cases.</p>

CHAPTER-II: COMMERCIAL TAXES

2.1 Tax administration

The levy and collection of commercial taxes¹ in the State is governed by the provisions of the following Acts and Rules made thereunder :

- Central Sales Tax (CST) Act, 1956;
- Bihar Value Added Tax (BVAT) Act, 2005;
- Bihar Tax on entry of goods into local areas (BTEG) Act, 1993;
- Bihar Entertainment Tax Act, 1948;
- Bihar Taxation on Luxuries in Hotels Act, 1988;
- Bihar Electricity Duties Act, 1948;
- Bihar Tax on Professions, Trade, Callings and Employments Act, 2011 and
- Bihar Tax on Advertisement Act, 2007.

It is administered by the Commercial Taxes Department which is headed by the Commissioner of Commercial Taxes (CCT). In the exercise of his functions, the CCT is assisted by five Additional Commissioners, three Joint Commissioners of Commercial Taxes (JCCT), 10 Deputy Commissioners of Commercial Taxes (DCCT)/Assistant Commissioners of Commercial Taxes (ACCT) and five Commercial Taxes Officers (CTOs) at the headquarters level including the Bureau of Investigation wing. At the field level the State is divided into nine² administrative divisions, seven³ appeals divisions and four⁴ audit divisions, each headed by a JCCT. The nine administrative divisions are further sub-divided into 49 circles each headed by a DCCT/ACCT assisted by CTOs. The circle is the basic activity centre of the Department.

2.2 Trend of receipts

2.2.1 Taxes on Sales, Trade etc.

The variation between budget estimates (BEs) and actual receipts from Taxes on Sales, Trade etc. during the period 2008-09 to 2012-13 along with the total tax receipts during the same period is mentioned in the following table:

¹ Commercial taxes include Taxes on Sales, Trade etc., Taxes on Goods and Passengers; Taxes and Duties on Electricity; Other Taxes on Income and Expenditure-Taxes on Professions, Trades, Callings and Employment and Other Taxes and Duties on Commodities and Services.

² Bhagalpur, Central, Darbhanga, Magadh, Patna East, Patna West, Purnea, Saran and Tirhut.

³ Bhagalpur, Central, Darbhanga, Magadh, Patna, Purnea and Tirhut.

⁴ Bhagalpur, Magadh, Patna and Tirhut.

Table- 2.1

(₹ in crore)

Year	Budget estimates	Actual receipts	Variation excess (+)/ shortfall (-)	Percentage of variation	Total tax receipts of the State	Percentage of actual receipts from Taxes on Sales, Trade etc. (col.-3) vis-à-vis total tax receipts (col.-6)
1	2	3	4	5	6	7
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
2010-11	5,627.69	4,557.18	(-)1,070.51	(-)19.02	9,869.85	46.17
2011-12	6,508.00	7,476.36	(+) 968.36	(+)14.88	12,612.10	59.28
2012-13	8,071.00	8,670.79	(+) 599.79	(+) 7.43	16,253.08	53.35

(Source: Revenue and Capital Receipt (Detail): Finance Accounts, Government of Bihar)

The above table indicates that the percentage of contribution of receipts from Taxes on Sales, Trade etc. decreased marginally in the total tax receipts of the State in 2012-13 in comparison to 2011-12 which requires to be looked into by the Department.

The reasons for variation in BEs and actual receipts during 2012-13 was attributed by the Department to enhancement of rate of tax from 13.5 per cent to 20 per cent for tobacco and tobacco products and also increase in the rate of tax deducted at source from four to five per cent.

2.2.2 Entry tax

The variation between BEs and actual receipts from entry tax during the period 2008-09 to 2012-13 along with the total tax receipts during the same period is mentioned in the following table:

Table- 2.2

(₹ in crore)

Year	Budget estimates	Actual receipts	Variation excess (+)/ shortfall (-)	Percentage of variation	Total tax receipts of the State	Percentage of actual entry tax receipts (col.-3) vis-à-vis total tax receipts (col.-6)
1	2	3	4	5	6	7
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
2010-11	1,623.76	2,006.32	(+)382.56	(+)23.56	9,869.85	20.33
2011-12	1,940.00	828.30	(-)1,111.70	(-) 57.30	12,612.10	6.57
2012-13	2,800.00	1,932.12	(-) 867.88	(-) 31.00	16,253.08	11.89

(Source: Revenue and Capital Receipt (Detail): Finance Accounts, Government of Bihar)

The above table indicates that there was a large gap in the actual receipts vis-à-vis BEs during 2012-13, which requires to be looked into by the

Department. It may be seen that the percentage of variation ranged between (-) 57.30 per cent and (+) 55.08 per cent during the period 2008-09 to 2012-13. The percentage of entry tax to total tax revenue which remained around 20 per cent during the period 2008-09 to 2010-11 had come down to 6.57 per cent during 2011-12 and 11.89 per cent during 2012-13.

2.3 Analysis of arrears of revenue

The arrears of revenue in respect of commercial taxes⁵ as on 31 March 2013 amounted to ₹ 1,071.77 crore, of which ₹ 447.34 crore was outstanding for more than five years. The following table depicts the position of arrears of revenue during the period 2008-09 to 2012-13.

Table- 2.3

(₹ in crore)

Year	Opening balance of arrears	Addition during the year	Amount collected during the year	Closing balance of arrears
2008-09	963.83	212.08	168.66	1,007.25
2009-10	1,007.25	463.68	112.15	1,358.78
2010-11	1,358.78	129.07	546.24	941.61
2011-12	941.61	532.99	258.18	1,216.42
2012-13	1,216.42	800.19	944.84	1,071.77

(Source: Information furnished by the Department)

The above table shows that there was substantial increase (265.96 per cent) in the collection of arrears of revenue in respect of commercial taxes during 2012-13 as compared to 2011-12. The Department needs to maintain its efforts in realising the arrears of revenue in subsequent years.

2.4 Cost of collection

The gross collection of commercial taxes⁶, expenditure incurred on collection and the percentage of such expenditure to gross collection during the years 2008-09 to 2012-13 along with the relevant all-India average percentage of expenditure on collection to gross collections for the relevant previous years are mentioned below:

⁵ Arrears of the Commercial taxes Department include arrears pertaining to Taxes on Sales, Trade etc., Taxes on Goods and Passengers; Taxes and Duties on Electricity and Other Taxes and Duties on Commodities and Services.

⁶ Gross collection by the Commercial taxes Department include Taxes on Sales, Trade etc., Taxes on Goods and Passengers; Taxes and Duties on Electricity; Other Taxes on Income and Expenditure-Taxes on Professions, Trades, Callings and Employment and Other Taxes and Duties on Commodities and Services.

Table- 2.4

(₹ in crore)

Year	Gross collection	Expenditure on collection	Percentage of expenditure to gross collection	All India average percentage for the previous year
2008-09	4,377.92	46.67	1.07	0.83
2009-10	5,541.00	48.84	0.88	0.88
2010-11	6,653.37	57.23	0.86	0.96
2011-12	8,414.43	66.17	0.79	0.75
2012-13	10,771.40	78.86	0.73	0.83

(Source: Finance Accounts, Government of Bihar)

The above table indicates that the percentage of expenditure to gross collection in respect of commercial taxes revenue during 2009-10 to 2012-13 were at par/below the all-India average percentage for the previous years, except in 2011-12. The Government/Department should ensure to keep the cost of collection below the all-India average in the subsequent years also.

2.5 Assessee profile

As reported by the Department the total number of registered dealers in the State as on 31 March 2013 was 2,32,897 of which 60,037 dealers were taxpayers. Out of 2,32,897 dealers, 86,113 dealers were not filing returns, against whom action under Section 24(8) of BVAT Act, 2005 has been taken.

2.6 Analysis of collection

The break-up of the total collection at the pre-assessment stage/scrutiny and after regular assessment/scrutiny of Taxes on Sales, Trade *etc.* during the year 2012-13 and the corresponding figures for the preceding four years as furnished by the Commercial Taxes Department is mentioned in the following table:

Table- 2.5

(₹ in crore)

Year	Amount collected at pre-assessment stage/scrutiny	Amount collected after regular assessment/scrutiny	Penalty for delay in payment of taxes and duties	Amount refunded	Net collection as per Finance Accounts	Percentage of column 2 to 6
1	2	3	4	5	6	7
2008-09	3,049.18	54.22	1.04	38.92	3,016.47	101.08
2009-10	3,793.15	50.25	1.40	19.86	3,839.29	98.80
2010-11	4,564.98	25.81	2.24	10.80	4,557.18	100.17
2011-12	5,556.18	186.65	2.08	36.99	7,476.36	74.32
2012-13	7,181.73	282.90	9.30	129.84	8,670.79	82.83

(Source: Finance Accounts, Government of Bihar and information furnished by the Department)

The percentage of tax collected before assessment/scrutiny during 2008-09 to 2012-13 reflects voluntary compliance with the provisions of the Acts/Rules by the dealers.

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. The Chief Controller of Accounts can also select units for internal audit on availability of audit team. The Finance Department did not conduct internal audit of the Commercial Taxes Department during 2012-13. In Commercial Taxes Department, there were four audit divisions responsible for ascertaining the correctness of accounts maintained by the dealers selected by the CCT. In 2012-13, the Department did not select any unit for internal audit.

2.8 Impact of audit

2.8.1 Status of compliance to Audit Reports (2007-08 to 2011-12)

In the Audit Reports for the years 2007-08 to 2011-12, we have pointed out audit observations involving ₹ 2,740.60 crore in respect of receipts from Commercial taxes. The Department/Government accepted cases involving ₹ 976.05 crore, of which an amount of ₹ 3.61 crore only was recovered till 31 March 2013 as mentioned in the following table:

Table- 2.6

(₹ in crore)

Year of Audit Report	Amount involved in the Audit Report	Amount accepted	Amount recovered
2007-08	153.70	105.74	0.07
2008-09	619.83	614.97	0.78
2009-10	841.96	62.48	0.42
2010-11	863.33	134.02	2.34
2011-12	261.78	58.84	Nil
Total	2,740.60	976.05	3.61

The negligible recovery of ₹ 3.61 crore (0.37 per cent) against accepted cases involving ₹ 976.05 crore indicates lack of promptness on the part of the Government/Department in recovering the Government dues.

2.8.2 Status of compliance to outstanding Inspection Reports (2007-08 to 2011-12)

During the period from 2007-08 to 2011-12, we have pointed out non/short levy, non/short realisation, underassessment of revenue, incorrect exemption, concealment/suppression of turnover, application of incorrect rate of tax, incorrect computation etc., through our inspection reports, with revenue implication of ₹ 4,123.31 crore⁷ in 3,997 cases in respect of Commercial Taxes. Of these, the Department/Government had accepted audit observations in 1,231 cases involving ₹ 1,426.52 crore which also include the cases pointed

⁷ Figures include the data relating to Taxes on sales, trade etc. Entry tax and Entertainment tax.

out by us during earlier years. The recovery, however, was just ₹ 3.98 crore as shown in the following table:

Table- 2.7

(₹ in crore)

Year	No. of units audited	Pointed out		Accepted		Recovered	
		No. of cases	Amount	No. of cases	Amount	No. of cases	Amount
2007-08	36	540	245.58	70	2.64	8	0.14
2008-09	41	445	433.50	41	377.94	19	0.10
2009-10	36	882	1,263.56	806	920.97	113	0.64
2010-11	48	1,106	1,622.53	136	57.98	121	0.86
2011-12	40	1,024	558.14	178	66.99	45	2.24
Total	201	3,997	4,123.31	1,231	1,426.52	306	3.98

This negligible recovery of ₹ 3.98 crore (0.28 per cent) against accepted cases involving ₹ 1,426.52 crore indicates lack of promptness on the part of the Government/Department in recovering the Government dues.

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

2.8.3 Status of compliance to Inspection Reports 2012-13

In the course of audit of the records of 43 units relating to commercial taxes during the year 2012-13, we found underassessment of taxes and other irregularities involving ₹ 688.93 crore in 1,346 cases which fall under the following categories:

Table- 2.8

(₹ in crore)

Sl. No.	Categories	No. of cases	Amount
A : Taxes on Sales, Trade etc.			
1.	Suppression of turnover taxes	159	107.36
2.	Excess allowance of Input Tax Credit (ITC)	72	16.01
3.	Irregular allowance of exemption from tax	235	78.40
4.	Application of incorrect rates of tax	104	56.21
5.	Non-levy/short levy of tax	16	1.26
6.	Underassessment of Central Sales Tax (CST)	18	1.17
7.	Irregular allowance of concessional rate of tax	6	0.48
8.	Short levy of tax due to incorrect determination of turnover	8	0.38
9.	Non-levy of penalty for excess collection of tax/mistake in computation	9	0.96
10.	Non-levy of purchase tax	6	0.34
11.	Other cases	497	79.01
Total		1,130	341.58

B : Entry Tax			
1.	Non/short levy of entry tax due to suppression of import value	44	55.23
2.	Application of incorrect rate of entry tax	18	55.50
3.	Other cases	126	82.75
Total		188	193.48
C : Entertainment tax/Luxury tax			
1.	Non/short levy of entertainment tax	12	1.30
2.	Non/short levy of luxury tax	3	1.03
3.	Other cases	8	0.32
Total		23	2.65
D : Electricity Duty			
1.	Irregular allowance of exemption of Electricity Duty	1	149.36
2.	Non/short levy of Electricity Duty	1	0.81
3.	Other cases	3	1.05
Total		5	151.22
Grand total		1,346	688.93

During the course of the year, the Department accepted underassessment and other deficiencies of ₹ 31.22 crore in 116 cases, of which 16 cases involving ₹ 4.07 crore were pointed out during 2012-13 and the rest in earlier years and an amount of ₹ 19.13 lakh was realised in 17 cases which were pointed out between 2008-09 and 2011-12.

A few illustrative cases involving tax effect of ₹ 224.67 crore are mentioned in the following paragraphs.

2.9 Non-compliance of the provisions of the Acts/Rules

The provisions of the Bihar Value Added Tax (BVAT) Act, 2005, Central Sales Tax (CST) Act, 1956, Bihar Tax on Entry of Goods into local areas (BTEG) Act, 1993, Bihar Taxation on Luxuries in Hotels Act, 1988, Bihar Electricity Duty Act, 1948 and Rules made thereunder require levy and payment of:

- *taxes on sales, trade etc., entry tax and surcharge, luxury tax, electricity duty etc. by the dealers at the appropriate rates;*
- *penalty at the rate of three times of the tax assessed on escaped turnover in case of concealment of sales/purchases; and*
- *interest at the rate of one and a half per cent for each calendar month or part thereof for delay in payment of tax.*

Non-compliance of the provisions of the Acts/Rules/instructions in some cases as mentioned in paragraphs 2.10 to 2.30 resulted in non/short levy, underassessment of tax, incorrect exemption/deductions etc. of ₹ 224.67 crore which is indicative of absence of adequate controls in the Department.

A : Taxes on Sales, trade etc.

2.10 Suppression of turnover

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.

Further, under the provision of Section 25 (1) of the BVAT Act, the prescribed authority shall, within the time and the manner prescribed, scrutinise every return filed under sub-sections (1) and (3) of Section 24 for the purpose of ascertaining that (a) calculations arithmetically accurate; (b) the output tax, input tax, tax payable and interest payable, if any have been computed correctly and properly, (c) the rates of tax have been applied correctly, (d) evidence, as prescribed, has been furnished with regard to payment of tax and interest payable, if any; and (e) the deductions claimed therein are substantiated in the manner and form prescribed under the Act or under any other law for the time being in force.

Under the provisions of Section 35 (1) (e) of the BVAT Act, 2005, a dealer is liable for deduction of the value of goods sold but returned to the dealer within a period of six months from the date of the original sales and in respect of which the selling dealer has issued to the purchasing dealer a credit note as specified in Section 53 of the Act *ibid.*

We observed that the scrutiny provision did not provide specifically for 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.

We observed between February 2012 and March 2013 in six Commercial Taxes circles⁸ that nine dealers (assessed: 1, scrutinised: 2 and self assessed: 6), out of 3,454 dealers whose records were test checked, purchased/sold goods of ₹ 262.73 crore during the period between 2009-10 and 2010-11 as shown in their utilisation statements of road permits (D-IX⁹), statements of declaration form 'C'¹⁰, Tax Audit Report¹¹ (TAR) and annual return furnished under Entry Tax Act. They, however, accounted for ₹ 220.20 crore only in

their annual returns thereby suppressing sale/purchase of goods worth ₹ 42.53

⁸ Nawada, Patna Central, Patna City West, Patna Special, Patna West and Saran.

⁹ D-IX- Road permit declaration used to import/purchase the goods for value of ₹ 10,000 or more from outside the State. This accompanies with the goods carrier.

¹⁰ Form C- Used to purchase goods at concessional rate in the course of inter-State trade and commerce.

¹¹ TAR- Every dealer having gross turnover of ₹ One crore and above is required to submit TAR certified by a Chartered Accountant before the stipulated date.

crore. As the Department had not issued any instruction for cross checking the information, the Assessing Authorities (AAs) could not detect the suppression of turnover. This indicates absence of adequate control mechanism in the Department which resulted in underassessment of tax of ₹ 18.07 crore including penalty of ₹ 12.51 crore and leviable interest of ₹ 1.39 crore as detailed in **Annexure –I**. A few illustrative cases are given below:

Table- 2.9

(₹ in lakh)

Sl. No.	Name of circle No. of dealers	Period	Actual purchase Accounted for	Actual sale Accounted for	Amount suppressed	Tax Penalty	Interest	Total
1.	Patna City West 1	2009-10	<u>5,551.18</u> 4,037.40	---	1,513.78	<u>189.22</u> 567.67	59.60	816.49
2.	Patna Special 3	2010-11	<u>4,747.03</u> 3,466.51	<u>6,722.28</u> 6,602.70	1,400.11	<u>164.08</u> 492.24	56.61	712.93
3.	Nawada 2	2010-11	---	<u>2,329.60</u> 1,655.37	674.24	<u>28.71</u> 86.13	7.34	122.19

After we pointed this out, the AA of Patna Special circle stated (July 2013) in one case, that the dealer had claimed and availed deduction on account of sales return of ₹ 28.08 lakh (within six months) and not ₹ 119.58 lakh (beyond six months: ₹ 91.50 lakh and within six months: ₹ 28.08 lakh) as claimed in audit. The reply is not in consonance with the fact that the dealer had actually admitted his gross turnover after deducting the value of sales return within/beyond six months amounting to ₹ 119.58 lakh and further claimed and availed deduction of ₹ 28.08 lakh and then admitted the tax accordingly. Thus the dealer had suppressed a sum of ₹ 119.58 lakh for which he was liable to pay tax. This fact was also not detected by the AA while doing the re-assessment in July 2013. Reply in remaining cases has not been received (November 2013).

In reply to similar issue pointed out in paragraph 2.4 of the Audit Report (Revenue Sector) for the year ended March 2012, the Department had stated that in some cases demand has been raised. The nature of lapses/irregularities are still persisting which shows ineffectiveness of the Internal Control System of the Department to prevent recurring leakage of revenue.

The matter was reported to the Government between March and July 2013; we are yet to receive their reply (November 2013).

2.11 Short levy of tax due to application of incorrect rate of tax

Under the provision of Section 25 (1) of the BVAT Act, the prescribed authority shall, within the time and the manner prescribed, scrutinise every return filed under sub-sections (1) and (3) of Section 24 for the purpose of ascertaining that the rates of tax have been applied correctly.

Further, under the provision of Section 31 (2) and 39 (4) of the BVAT Act, penalty equivalent to three times of the tax payable and interest at the rate of one and a half *per cent* per month are leviable if the dealer fails to disclose full and correct particulars of sale so as to reduce the amount of tax payable.

We observed in 17 Commercial Taxes circles¹² between February 2012 and April 2013 that 24 dealers (scrutinised: 2 and self-assessed: 22) assessed their tax at the lower rate of zero to four *per cent* on the sale of various goods valued at ₹ 270.24 crore instead of the correct rate of four to 12.5 *per cent* during 2008-09 to 2010-11. Due to non/deficient scrutiny, the application of incorrect rate of tax remained undetected by the AAs resulting in short levy of tax of ₹ 56.81 crore including interest of ₹ 4.38 crore and leviable penalty of ₹ 39.32 crore as detailed in **Annexure –II**. A

few illustrative cases are given below:

Table- 2.10

(₹ in lakh)

Sl. No.	Name of circle No. of dealer	Period	Sale value	Commodity	Rate leviable/ levied (in <i>per cent</i>)	Short levy Penalty	Interest	Total
1.	Patliputra 2	2009-10, 2010-11	19,697.85	Diesel Road Roller, Rice and Wheat.	12.5/4 1+3(AT)/0	846.70 2,540.10	279.41	3,666.21
2.	Patna Special 6	2008-09, 2009-10, 2010-11	3,038.75	Medikar shampoo, Olive oil & Sauce, Road marking paints, Jaljeera Medicines, Liv-52	12.5/ MRP 12.5/4 4/0	152.56 457.68	59.81	670.05
3.	Gandhi Maidan 1	2010-11	1,709.00	Ply boards	12.5/4	145.27 435.80	37.04	618.11
4.	Forbesganj 1	2009-10, 2010-11	826.12	Bed Misiles	12.5/4	70.22 210.66	22.76	303.64

After we pointed this out, the AA/Joint Commissioner (Administration) accepted the audit observation between September 2012 and October 2013 in respect of nine dealers of six circles¹³ and raised demand for ₹ 19.33 crore. However, in one case of above mentioned Patna Special circle, the AA partially raised the demand by disallowing the claim of the dealer on only five out of 19 products treating them as “Drug and Medicine” and allowed the

¹² Begusarai, Bettiah, Bhagalpur, Danapur, Forbesganj, Gandhi Maidan, Kadamkuan, Muzaffarpur West, Patliputra, Patna Central, Patna City East, Patna City West, Patna South, Patna Special, Patna West, Purnea and Sasaram .

¹³ Begusarai, Forbesganj, Patliputra, Patna Special, Purnea and Sasaram.

claim of exemptions on remaining products. But analysis of the assessment order passed by the AA under Section 33 of the BVAT Act proves that the remaining 14 products sold by the dealer also either contained vitamins or mineral and their intended use is either preventive or curative and thus they are medicines as per Section 3(b) of the “Drugs and Cosmetics Act, 1940” and therefore taxable at the rate of four *per cent* as per entry no. 45 of the Schedule III of the BVAT Act, 2005. We await recovery in the accepted cases and replies in the remaining cases (November 2013).

In reply to similar issue pointed out in paragraph 2.6 of Audit Report (Revenue Sector) for the year ended March 2012, the Department had stated that in some cases demand has been raised. The nature of lapses/irregularities are still persisting which shows ineffectiveness of the Internal Control System of the Department to prevent recurring leakage of revenue.

The matter was reported to the Government between March and July 2013; we are yet to receive their reply (November 2013).

2.12 Excess allowance of Input Tax Credit

Section 16 of the BVAT Act provides that when a registered dealer purchases any input within the State of Bihar from another registered dealer after paying him the tax under Section 14 or Section 4 of the Act, he is eligible to claim credit of input tax in the manner prescribed, if the goods are either sold within the State or in the course of inter-State trade and commerce or consumed in the manufacture of goods (other than Schedule-IV goods) for sale within the State or in the course of inter-State trade and commerce. Further, Section 31 of the Act *ibid* provides for imposition of penalty equivalent to three times of the tax payable for excess/incorrect claim of Input Tax Credit (ITC), besides the amount of interest.

We observed from the returns of 17 dealers (scrutinised: 3 and self-assessed: 14) in nine Commercial Taxes circles¹⁴ between February 2012 and March 2013 that they availed ITC of ₹ 41.32 crore on the purchase of goods valued at ₹ 936.60 crore in their annual returns during the period 2008-09 to 2010-11. However, as per the provision of the Act *ibid*, the dealers were entitled for ITC of ₹ 34.26 crore only on these purchases. Thus, the dealers availed excess ITC of ₹ 7.06 crore. The penalty for the excess claim amounted to ₹ 21.19 crore and interest thereof worked out to ₹ 2.81 crore. The AAs did not detect the excess availing of ITC, even

in the three scrutinised cases which is indicative of non-adherence of the provisions of scrutiny under Section 25 (1) of the BVAT Act. The total revenue impact was ₹ 31.06 crore as detailed in **Annexure –III**. A few illustrative cases are given in the following table:

¹⁴ Kishanganj, Muzaffarpur West, Nawada, Patna City West, Patliputra, Patna North, Patna Special, Saran and Teghra.

Table- 2.11

(₹ in lakh)

Sl. No.	Name of circle No. of dealers	Period of assessment	Actual entitlement ITC availed	Excess ITC availed	Penalty	Interest	Total
1.	Patna Special 6	2009-10, 2010-11	<u>77.75</u> 381.46	303.71	911.14	148.40	1,363.25
2.	Patliputra 1	2010-11	<u>162.38</u> 521.84	359.46	1,078.37	118.62	1,556.45
3.	Patna City West 4	2008-09, 2009-10, 2010-11	<u>2,837.21</u> 2,852.50	15.29	45.87	5.95	67.11

After we pointed this out, the AA/Joint Commissioner (Administration) accepted the audit observation between September 2012 and October 2013 in respect of four dealers of four circles¹⁵ and raised demand for ₹ 56.41 lakh. We await recovery in the accepted cases and replies in the remaining cases.

In reply to similar issue pointed out in paragraph 2.5 of Audit Report (Revenue Sector) for the year ended March 2012, the Department had stated that in some cases demand has been raised. The nature of lapses/irregularities are still persisting which shows ineffectiveness of the Internal Control System of the Department to prevent recurring leakage of revenue.

The matter was reported to the Government between June and July 2013; we are yet to receive their reply (November 2013).

¹⁵ Nawada, Patna city West, Saran and Teghra.

2.13 Incorrect adjustment of entry tax towards payment of VAT

Under Section 4 (A) of the Bihar Tax on Entry of Goods (BTEG) Act, 1993, if any dealer liable to pay tax under the BVAT Act, by virtue of sale of imported scheduled goods or sale of goods manufactured out of such imported scheduled goods incurs any liability to pay tax at the rate specified under Section 14 of the BVAT Act, his tax liability under the said Act shall stand reduced to the extent of tax paid under the BTEG Act.

Further, in case of a manufacturer the reduction in tax liability shall be allowed to the Small scale, Medium scale and Sick industrial units. Further, 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 inter-State 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.

The Micro, Small and Medium Enterprises Development (MSMED) Act, 2006 notified by the Government of India laid down the classification of industries on the basis of the investment in plant and machinery.

As per the Bihar Industrial policy, 2006, a small scale industrial unit is an industrial unit in which capital investment has been made up to the limit specified by the Government of India from time to time.

We observed in 12 Commercial Taxes circles¹⁶ between February 2012 and April 2013 that 23 dealers (assessed: 1; scrutinised: 3 and self-assessed: 19) claimed/were allowed entry tax adjustment of ₹ 33.75 crore toward their VAT liability during the period between 2008-09 and 2010-11. Our scrutiny, however, revealed that the dealers were eligible for adjustment of entry tax of ₹ 24.18 crore only because they were not fulfilling the criteria¹⁷ prescribed for availing of the adjustment of entry tax. Thus, the dealers were allowed incorrect adjustment of entry tax of ₹ 9.57 crore. The AAs, however, could not detect the availing of inadmissible adjustments even in the assessed/scrutinised cases. This resulted in excess adjustment of entry tax against VAT payable to the tune of ₹ 12.34 crore including leviable interest of ₹ 2.77 crore as detailed

in **Annexure –IV**.

After we pointed this out, the AA/Joint Commissioner (Administration) accepted the audit observation between September 2012 and October 2013 in respect of six dealers of six circles¹⁸ and raised demand for ₹ 1.16 crore. We await recovery in the accepted cases and replies in the remaining cases.

¹⁶ Bhagalpur, Forbesganj, Muzaffarpur West, Patliputra, Patna City East, Patna City West, Patna North, Patna South, Patna Special, Patna West, Saran (Chapra) and Sasaram.

¹⁷ (i) The goods imported were not re-sold. (ii) The dealers did not belong to small, medium and sick industries, (iii) The rates of VAT was less than the rate of ET and (iv) ET adjusted in full instead of proportionately.

¹⁸ Forbesganj, Muzaffarpur West, Patliputra, Patna South, Patna Special, and Sasaram.

In reply to similar issue pointed out in paragraph 2.7 of Audit Report (Revenue Sector) for the year ended March 2012, the Department had stated that in some cases demand has been raised. The nature of lapses/irregularities are still persisting which shows ineffectiveness of the Internal Control System of the Department to prevent recurring leakage of revenue.

The matter was reported to the Government in May and July 2013; we are yet to receive their reply (November 2013).

2.14 Incorrect allowance of deductions

Under Section 35 of the BVAT Act and Rule 18 of the BVAT Rules, 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 in 17 Commercial Taxes circles¹⁹ between February 2012 and March 2013 from the returns, assessment order, profit and loss account and statement furnished by 21 works contractors (assessed: 2 scrutinised: 1 and self-assessed: 18) that they availed deductions of ₹ 701.35 crore during the period between 2008-09 and 2010-11, though they were eligible for deduction of ₹ 490.33 crore only. The AAs, however, could not detect the claims of inadmissible deductions even in the assessed/scrutinised cases which is indicative of absence of adequate control mechanism in the Department. This resulted

in short levy of tax of ₹ 13.01 crore calculated on the material component value of ₹ 211.02 crore arrived at by apportioning the above claimed deductions of ₹ 701.35 crore between material and labour and services as detailed in **Annexure –V**.

After we pointed this out, the concerned AA/Joint Commissioner (Administration), accepted the audit observation between September 2012 and October 2013 in respect of eleven dealers of 10 circles²⁰ and raised demand for ₹ 10.46 crore. We await recovery in the accepted cases and replies in the remaining cases.

In reply to similar issue pointed out in paragraph 2.9 of Audit Report (Revenue Sector) for the year ended March 2012, the Department had stated that in some cases demand has been raised. The nature of lapses/irregularities

¹⁹ Bhabhua, Bhagalpur, Forbesganj, Gaya, Hajipur, Jehanabad, Kadamkuan, Motihari, Muzaffarpur East, Patliputra, Patna Central, Patna City East, Patna South, Patna Special, Patna West, Saran and Sasaram.

²⁰ Forbesganj, Hajipur, Kadamkuan, Motihari, Muzaffarpur East, Patliputra, Patna South, Patna Special, Patna West and Sasaram.

are still persisting which shows ineffectiveness of the Internal Control System of the Department to prevent recurring leakage of revenue.

The matter was reported to the Government in July 2013; we are yet to receive their reply (November 2013).

2.15 Incorrect allowance of deduction on account of Bonus sales

As per Section 15(5) of the BVAT Act, notwithstanding anything to the contrary contained in the Act, the State Government may, by notification and subject to such conditions and restrictions and in respect of such goods as may be specified in the notification, permit if any class of registered dealers, being an importer or a manufacturer, to pay, in lieu of the tax payable by him, tax at the rate specified in Section 14 of the BVAT Act on the maximum retail price (MRP) of such goods in the manner prescribed.

The State Government issued notification in May 2006 and allowed the dealers dealing in drugs and medicines to pay tax on MRP of the goods.

We found that the Department did not devise any mechanism to ensure the correctness of tax paid in cases where the dealer had opted to pay tax on the MRP of goods. We further observed that the dealers resorted to issue of medicines free of cost as bonus sale to avoid tax on supply of medicines. An illustrative case is mentioned below.

We observed in March 2013 in Patna Special Commercial Taxes circle that a dealer who had opted to pay tax on the MRP value of goods (Medicine, taxable at the rate of four *per cent on* MRP) sold/supplied medicines of ₹ 96.19 crore, of which medicines of ₹ 30.16 crore

were claimed as tax free bonus sale during the year 2010-11. The AA while scrutinising the case in July 2012 also allowed the claim of the dealer. However, there was no mention (on the available tax invoices placed on the record) to the effect that these medicines shall not be sold out to the consumers. In the absence of such kind of restrictions or any other mechanism there was possibility of further sale of these medicines without levy of tax causing loss to the exchequer.

After we pointed this out, the AA stated (October 2013) that it has judicially been held²¹ by the Hon'ble Patna High Court that quantitative discount which is a trade discount can not be part of the taxable turnover. It may be seen that in the paragraph we had pointed out the possibilities of leakage of revenue in the shape of bonus sale which is different from the trade practice of allowing trade discount. However, in a case of another dealer registered in the same circle, the AA had levied tax on the bonus sale.

The matter was reported to the Government in July 2013; we are yet to receive their reply (November 2013).

²¹ CWJC No. 1900 of 2003, M/s Mapra Laboratories Pvt. Ltd. Vrs State of Bihar and others.

We recommend that the Government may consider devising a mechanism to check leakage of revenue on medicines supplied in shape of bonus sale under MRP scheme.

2.16 Incorrect claim of deduction on export sales

Under the provision of sub-section (1) of Section 5 of the Central Sales Tax (CST) Act, 1956, a sale or purchase of goods shall be deemed to take place in the course of the export of the goods out of the territory of India only if the sale or purchase either occasions such export or is effected by a transfer of documents of title to the goods after the goods have crossed the customs frontier of India. Further, sub-section (5) provides that notwithstanding anything contained in sub-section (1), if any designated Indian carrier purchases Aviation Turbine Fuel (ATF) for the purposes of its international flight, such purchase shall be deemed to take place in the course of the export of goods out of the territory of India. As per the explanation given below sub-section (5), “designated Indian carrier” means any carrier which the Central Government may, by notification in the official Gazette, specify in this behalf.

2.16.1 We observed between January and March 2013 in Patna Special Commercial Taxes circle that two dealers of petroleum products (self assessed) had availed deduction of ₹ 2,930.08 crore in their returns on account of export sales during the year 2010-11. During scrutiny of the returns and the statement of export sales submitted by the dealers, we further noticed that out of the total export sales of ₹ 2,930.08 crore, the dealers had actually sold ATF (taxable at the rate of 29 per cent) to various foreign Aircraft/ Airlines valued at ₹ 2.74 crore and availed of deduction on account of export sales. The sales made to any foreign Aircraft/Airlines does not qualify as export sales under

the Act *ibid*. Thus the dealers had incorrectly availed of deduction of ₹ 2.74 crore which remained undetected by the AAs. This resulted in short levy of tax of ₹ 1.05 crore including leviable interest of ₹ 25.66 lakh.

After we pointed this out, the AA/Joint Commissioner (Administration), accepted the audit observation in one case and raised demand for ₹ 46.14 lakh. We await recovery in the accepted case and reply in the remaining case.

The matter was reported to the Government in July 2013; their reply has not been received (November 2013).

2.16.2 Irregular exemption of export sale

Under the provisions of Section 6 of the BVAT Act read with Section 5 of the CST Act, no tax shall be payable on the sale of goods in the course of export of the goods outside the territory of India. As per the circular issued by the Commissioner, Commercial Taxes (CCT), Bihar in 1986 and reiterated in 1991, the claim of exemption is required to be supported by proper documentary evidence viz bills of export.

We observed in Patna Special Commercial Taxes circle in March 2013 that a self-assessed dealer was allowed exemption from levy of tax on the sale of goods valued at ₹ 74.83 lakh in course of export outside the territory of India during the period 2010-11. However, examination of bill of export/custom clearance certificate submitted in support of claim revealed that these were issued in favour of other

dealer. Thus, due to non-scrutiny of the returns, the AA could not detect the deduction availed by the dealer on the ground of bill of export, which was actually issued in favour of the other dealer. This resulted in non-levy of tax of ₹ 4.03 lakh²² including leviabale interest of ₹ 1.03 lakh.

After we pointed this out, the AA accepted the audit observation and raised the demand for ₹ 2.99 lakh. We await further development in the case.

The matter was reported to the Government in July 2013; their reply has not been received (November 2013).

²²	Tax at the rate of 4 per cent on ₹ 74,82,722	= ₹ 2,99,308
	Interest at the rate of 1.5 per cent on ₹ 2,99,308 (for 23 months)	= ₹ 1,03,261
	Total	= ₹ 4,02,570

2.17 Incorrect allowance of concessional rate of tax

Under Section 8 (5) of the CST Act, the Government of Bihar issued a notification in October 2006 prescribing the rate of tax on the inter-State sale of goods manufactured by small and medium industries at one *per cent*. The Micro, Small and Medium Enterprises Development (MSMED) Act, 2006 notified by the Government of India laid down the classification of industries on the basis of the investment in plant and machinery. As per the Bihar Industrial policy, 2006, a small scale industrial unit is an industrial unit in which capital investment has been made up to the limit specified by the Government of India time to time.

The dealer availing this benefit had to produce the declaration in form 'C' to substantiate his claim.

We observed in three Commercial Taxes circles²³ in May 2012 and February 2013 that three dealers (self assessed) were not falling under the category of small or medium industries as per the prescribed parameters²⁴ of investment in plant and machinery between 2009-10 and 2010-11 but they availed the benefit of concessional rate of tax at the rate of one *per cent* on the inter-State sales of ₹ 7.31 crore. Due to non/deficient scrutiny, the AAs could not detect the incorrect availing of concessional rate of tax which resulted in short levy of tax of ₹ 29.99 lakh

including leviable interest of ₹ 7.64 lakh.

After we pointed this out the Joint Commissioner (Administration), Tirhut and Saran Division, Muzaffarpur accepted the fact in May 2013 in one case of Hajipur circle and raised demand for ₹ 17.25 lakh. We await recovery in the accepted case and replies in the remaining cases.

The matter was reported to the Government between May and July 2013; we are yet to receive their reply (November 2013).

²³ Hajipur, Patna city East and Patna North.

²⁴ Micro enterprises : investment in plant and machinery- not exceeding ₹ 25 lakh.
Small enterprises : investment in plant and machinery- more than ₹ 25 lakh but not more than ₹ five crore.
Medium enterprises : investment in plant and machinery- more than ₹ five crore but not more than ₹ 10 crore.

2.18 Non-levy of interest

Under the provisions of sub section (ii) of section 39 (4) of the BVAT Act, 2005 if the prescribed authority finds that any dealer has wrongly declared his turnover or any particulars thereof and thereby has reduced the amount of tax payable under this Act, the dealer shall pay, in addition to the amount of tax assessed under any proceeding, simple interest at the rate of one and a half *per cent* for each calendar month or part thereof on the difference of the amount previously admitted and tax finally assessed from the date the tax would have been payable.

We observed in two Commercial Taxes circles (Patliputra and Patna City East) between March 2012 and February 2013 that three dealers (scrutinised) had admitted their tax at ₹ 18.39 crore during the period between 2009-10 and 2010-11. While finalising the assessment/scrutiny between November 2011 and January 2013, the AAs had levied tax of ₹ 20.57 crore after disallowing the claims of deductions/payment availed by the

dealers, but did not levy any interest on the differential amount of assessed tax of ₹ 2.18 crore as provided in the Act. Thus, the AAs did not adhere to the provision of the Act *ibid* which resulted in non-levy of interest of ₹ 69.23 lakh.

After we pointed this out the Joint Commissioner (Administration), Central division, Patna accepted the fact in October 2013 in one case of Patliputra circle and since recovered the amount of ₹ 4.26 lakh. We await reply in remaining cases.

The matter was reported to the Government in July 2013; we are yet to receive their reply (November 2013).

2.19 Excess collection of tax

Under the provision of Section 43(2) of the BVAT Act, no registered dealer shall collect from any person any such amount exceeding the amount of tax payable under the Act. Further, Section 43 (3) of the Act *ibid* provides that in case of violation, a sum equal to twice the amount collected in contravention of the provision, is leviable as penalty.

We observed between February 2012 and March 2013 in three Commercial Taxes circles²⁵ that three dealers (self-assessed) had collected and deposited tax of ₹ 9.18 crore during the period between 2008-09 and 2010-11, though their tax liability was ₹ 9.03 crore only during the period. Thus, the dealers had collected excess tax of ₹ 14.81 lakh in

contravention of the provision of the Act *ibid*. Due to not scrutinising the cases the AAs could not detect the excess collection of tax which resulted in non-levy of penalty of ₹ 29.61 lakh.

²⁵

Bhagalpur, Dharbhanga and Patna City West.

After we pointed this out the AA, Patna City East circle accepted the fact in October 2013 and raised demand for ₹ 8.10 lakh in one case. We await recovery in the accepted case and replies in the remaining cases.

The matter was reported to the Government in July 2013; we are yet to receive their reply (November 2013).

2.20 Non/short calculation of reverse credit

Under Rule 15 and 16 of the BVAT Rules, 2005, a manufacturing dealer shall incur reverse credit when he makes inter-State stock transfer of the goods or manufactures Schedule-I goods 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 four Commercial Taxes circles²⁶ between April 2012 and February 2013 from the returns of four manufacturing dealers (assessed: 2 and self assessed: 2) that they either manufactured Schedule-I goods or made interstate stock transfer of taxable manufactured goods during the period between 2009-10 and 2010-11. The inputs for these goods were also purchased from within the State

after paying tax thereon in the State, for which Input Tax Credit of ₹ 2.56 crore was availed of by the dealer. Though the dealers were required to calculate the reverse credit and deduct the same from the total amount of ITC, the reverse credit of ₹ 13.88 lakh was either not calculated or calculated short by the dealers. Even in the assessed cases, the AA could not detect the omission and the two cases remained un-scrutinised which indicates inadequate internal controls in the Department. This resulted in excess allowance of ITC of ₹ 45.13 lakh including leviable penalty of ₹ 28.31 lakh and interest of ₹ 2.94 lakh.

After we pointed this out, the AA, Hajipur accepted the audit observation and raised the demand for ₹ 1.43 lakh and AA, Sasaram has since recovered the amount of ₹ 5.66 lakh while AA, Begusarai stated that the audit had applied the formula mentioned under Rule 16 (2) (b) of BVAT Rules, which is not for the manufacturing unit, it should be calculated on the basis of Rule 15 (2) of the said Rules. The reply is not in consonance with the provisions mentioned under Rule 16 (2) (a) (b) (c) of the said Rules, which clearly mention that notwithstanding anything contained in Rule 14 and Rule 15, every dealer to whom provisions of Rule 15 apply shall, at or before the time of filing of annual return, make a revised computation of the total amount of reverse credit, if any, incurred by him during the year. The revised reverse credit shall be computed in the manner prescribed under Rule 16 (2) (b) and (c). Further Rule 16 (2) (d) prescribes that if the revised reverse credit computed in terms of the provisions of clause (c) of this sub-rule is different from the aggregate of the reverse credit for the entire year computed under sub-rule (1), the dealer shall deposit the amount of difference, in case the revised reverse credit computed in terms of the provisions of clause (c) of this sub-rule exceeds the

²⁶

Begusarai, Hajipur, Patna city East and Sasaram.

aggregate of the reverse credit for the entire year computed under sub-rule (1) and enclose the proof of payment with the annual return.

The matter was reported to the Government in June 2013; their reply has not been received (November 2013).

2.21 Short payment of admitted tax and non-levy of interest for delayed payment

Under the provisions of section 24 of the BVAT Act, 2005, every dealer shall deposit the tax payable in respect of every month on or before the 15th day of the following month, failing which the dealer shall be liable to pay interest at the rate of one and a half *per cent* per month on the amount due from the date the tax was payable and became due to the date of its payment.

Under the provision of Section 25 (1) of the Act *ibid* the prescribed authority shall, within the time (by 31st March of next financial year to which the return relates) and the manner prescribed, scrutinise every return filed under sub-sections (1) and (3) of Section 24 for the purpose of ascertaining that evidence, as prescribed, has been furnished with regard to payment of tax and interest payable.

- We observed in three Commercial Taxes circles²⁷ between February and May 2012 that four dealers (self-assessed) had paid the admitted tax short by ₹ 17.21 lakh during 2008-09 and 2009-10. Though the AAs were required to scrutinise the returns and see the evidence of payment of tax and accordingly issue notice to the dealer, but no scrutiny was found to have been done till the date of audit, which indicates control weakness in the Department. This resulted in non-detection of short payment of the admitted tax of ₹ 33.59 lakh including leviable interest of ₹ 16.38 lakh.

- We observed in two Commercial Taxes circles (Hajipur and Muzaffarpur West) between May 2012 and April 2013 that two dealers (self-assessed) had paid their admitted tax with a delay ranging between three and 798 days during the period 2009-10 and 2010-11. The cases were not scrutinised by the AAs and therefore no interest could be levied by them which resulted in non-levy of interest amounting to ₹ 15.17 lakh.

After we pointed this out the AA/Joint Commissioner (Administration) accepted (between May and October 2013) the audit observations and raised the demand for ₹ 15.17 lakh. We await recovery in both the accepted cases.

In reply to similar issue pointed out in paragraph 2.13 of Audit Report (Revenue Sector) for the year ended March 2012, the Department had stated that in some cases demand has been raised. The nature of lapses/irregularities are still persisting which shows ineffectiveness of the Internal Control System of the Department to prevent recurring leakage of revenue.

²⁷ Danapur, Motihari and Patna City West.

The matter was reported to the Government in May and July 2013; we are yet to receive their reply (November 2013).

2.22 Short levy of tax due to submission of irregular evidence of payment of tax

Under the provision of Section 25(1) of the BVAT Act, the prescribed authority shall, within the time and manner prescribed, scrutinise every return for the purpose of ascertaining among other things, that evidence, as prescribed, has been furnished with regard to payment of tax and interest payable, if any. Rule 29(4) of BVAT Rules, provides that the works contractor from whose bills the deductions have been made shall furnish the portion of the C-II marked "Original" to the assessing authority as evidence of payment of tax by deduction at source along with the return filed under Section 24 of the Act *ibid*.

We observed in Patna Special Commercial Taxes circle in March 2013 that in case of a dealer, the AA had assessed tax of ₹ 5.58 lakh for the year 2010-11 in July 2012. The dealer had produced 'C-II' as evidence of payment of tax deducted by various tax deducting authorities. On scrutiny of the 'C-II', we noticed that two numbers of 'C-II' issued by the East Central Railway, Patna for tax amounting to ₹ 27.73 lakh was actually issued in favour of other dealer. Thus,

the dealer had irregularly claimed adjustment of tax liability of ₹ 27.73 lakh on the basis of those two 'C-II' issued in favour of other dealer which remained undetected by the AA while finalising the assessment. This resulted in short levy of tax of ₹ 27.73 lakh.

In reply to similar issue pointed out in paragraph 2.10 of Audit Report (Revenue Sector) for the year ended March 2012, the Department had stated that demand has been raised. The nature of lapses/irregularities are still persisting which shows ineffectiveness of the Internal Control System of the Department to prevent recurring leakage of revenue.

The matter was reported to the Government in July 2013; we are yet to receive their reply (November 2013).

2.23 Incorrect allowance of deduction on account of sales return

Under the provisions of Section 35 (1) (e) of the BVAT Act, 2005, a dealer is liable for deduction of the value of goods sold but returned to the dealer within a period of six months from the date of the original sales and in respect of which the selling dealer has issued to the purchasing dealer a credit note as specified in Section 53 of the Act *ibid*.

In Hajipur Commercial Taxes circle we observed in May 2012 that a self-assessed dealer had availed deduction of ₹ 80.39 lakh towards sales return during 2009-10. But examination of credit notes submitted by the dealer, it was noticed that the dealer had actually submitted the

credit notes amounting to ₹ 7.32 lakh only in support of his claim. Thus the

dealer was liable to pay tax on the value of goods of ₹ 73.07 lakh. The tax liability on such disallowable claim works out to ₹ 12.42 lakh²⁸ including leviable interest.

After we pointed this out, AA accepted (January 2013) the fact and raised demand for ₹ 12.42 lakh. We await recovery in the case.

The matter was reported to the Government in February and July 2013; their reply has not been received (November 2013).

2.24 Excess availing of rebate

Under the provisions of Section 24 (12) of the BVAT Act, a rebate at the rate of half *per cent* of the amount of tax admitted to be due in the return furnished under sub-section (1), subject to a maximum of ₹ 50,000 in a year, shall be allowed to a registered dealer who has furnished the return within the due dates specified under this Section and has paid such amount in full on or before the date specified for payment of tax under this Section.

In Patna Special circle, we observed in March 2013 that a self-assessed dealer had availed a rebate of ₹ 8.97 lakh in his annual return during 2009-10. The maximum limit prescribed for rebate under Section 24(12) of the BVAT Act was ₹ 50,000. Thus the dealer had claimed excess rebate of ₹ 8.47 lakh which remained undetected by the AA due to not scrutinising the case and therefore the dealer was liable to pay ₹ 12.91 lakh including interest of ₹ 4.44 lakh.

The matter was reported to the Government in July 2013; their reply has not been received (November 2013).

²⁸ Tax at the rate of 12.5 *per cent* on ₹ 73,06,738 = ₹ 9,13,334
Interest at the rate of 1.5 *per cent* on ₹ 9,13,334 = ₹ 3,28,799
(for 24 months) **Total = ₹ 12,42,133**

B: Entry Tax

2.25 Short levy of entry tax due to suppression of import value

Under the provision of Section 8 of the BTEG Act, read with Section 31(2) of the BVAT Act, 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 under-assessed 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 observed that the scrutiny provision did not provide specifically for 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.

During 2012-13 we conducted test-check in

40 Commercial Taxes circles in which 3,454 cases were test-checked and we observed in nine Commercial Taxes circles²⁹ from the cross-checking of the utilisation of road permits, declaration forms *etc.* with the returns filed by the 12 dealers (scrutinised: one and self-assessed: 11) and observed that the dealers had disclosed import value of scheduled goods³⁰ of ₹ 3,424.56 crore in their returns instead of the actual amount of ₹ 3,644.37 crore as shown in the declaration forms 'C'³¹, 'ET-V'³², *etc.* and thus suppressed import/purchase of scheduled goods of ₹ 219.81 crore between the period 2008-09 and 2010-11. Absence of a mechanism for such cross-verification coupled with non-scrutiny of the returns (11 out of 12) by the AAs resulted in short levy of entry tax of ₹ 86.88 crore including leviable penalty of ₹ 59.37 crore and interest of ₹ 7.72 crore as detailed in **Annexure-VI**. It also indicates control weaknesses in the Department towards compliance of the provision of the Act/Rules.

After we pointed this out, the AA/Joint Commissioner (Administration), accepted the audit observation between September 2012 and October 2013 in respect of four dealers of four circles³³ and raised demand for ₹ 1.28 crore.

²⁹ Bhabhua, Bhagalpur, Forbesganj, Hajipur, Muzaffarpur East, Nawada, Patna Special, Saran and Shahabad.

³⁰ Scheduled goods means goods specified in the schedule to the BTEG Act, 1993.

³¹ Form C- Used by registered dealers to purchase goods at concessional rate of tax in the course of interstate trade and commerce.

³² ET-V- Annual return prescribed under BTEG Act 1993 to be furnished by the dealer for import of scheduled goods during the year.

³³ Bhabhua, Forbesganj, Hajipur, and Muzaffarpur East.

Information regarding recovery in the accepted cases is still awaited and replies in the remaining cases are yet to be furnished.

Similar issue was pointed out in paragraph 2.14 of the Audit Report (Revenue Sector) for the year ended March 2012. The nature of lapses/irregularities are still persisting which shows ineffectiveness of the Internal Control System of the Department to prevent recurring leakage of revenue.

The matter was reported to the Government in July 2013; we are yet to receive their reply (November 2013).

2.26 Application of incorrect rate of entry tax

Under the provision of Section 3 of the BTEG Act, 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, under the provision of Section 8 of the BTEG Act, read with Section 31(2) of the BVAT Act, penalty equivalent to three times of the amount of tax on escaped assessment and interest at the rate of 1.5 per cent per month is also leviable on the amount under-assessed.

During 2012-13 we conducted test-check in 40 Commercial Taxes circle in which 3,454 cases were test-checked and we observed in four Commercial Taxes circles³⁴ that six dealers (self-assessed) imported scheduled goods of ₹ 21.06 crore during the period between 2008-09 and 2010-11 and assessed themselves by admitting the entry tax at rates lower than the prescribed rates in their returns. Though the AAs were required to scrutinise these returns within the prescribed time and verify the correctness of the application of rates, the

same was not done in any of these cases which indicates control weakness in the Department towards compliance of the provision of the Act/Rules. This resulted in underassessment of entry tax of ₹ 3.63 crore including leviable penalty of ₹ 2.51 crore and interest of ₹ 28.44 lakh as detailed in **Annexure -VII.**

After we pointed this out between March 2012 and March 2013 the JCCT (Administration) concerned accepted (between January and August 2013) the facts and stated that demand for ₹ 72.16 lakh had been raised in case of two dealers of Patliputra circle and also reported recovery of ₹ 42.62 lakh in case of two dealers, one each from Patliputra and Muzaffarpur East circle. We await recovery in the accepted cases and replies in the remaining cases.

In reply to similar issue pointed out in paragraph 2.15 of the Audit Report (Revenue Sector) for the year ended March 2012, the Department had stated that demand has been raised. The nature of lapses/irregularities are still

³⁴ Forbesganj, Muzaffarpur East, Patliputra and Samastipur.

persisting which shows ineffectiveness of the Internal Control System of the Department to prevent recurring leakage of revenue.

The matter was reported to the Government in June 2013; we are yet to receive their reply (November 2013).

2.27 Non-levy of entry tax and penalty due to non-registration

Under the provision of Rule 3 of the Bihar Tax on Entry of Goods (BTEG) Rules, read with Section 5 of the BTEG Act, every dealer who is liable to pay tax under the BTEG Act, by virtue of import of scheduled goods, shall make an application for registration to the officer in-charge of the circle within seven days of becoming liable to pay tax under the Act. Further, under the provision of Section 28 of the Bihar Value Added Tax (BVAT) Act, read with Section 8 of BTEG Act, if the prescribed authority is satisfied that any dealer was liable to pay tax and wilfully failed to apply for registration, he shall assess to the best of his judgement, the amount of tax due, if any, and he may direct that the dealer shall pay by way of penalty, in addition to the amount of tax assessed, a sum of rupees one hundred for every day of default or an amount equal to the amount of tax assessed, whichever is higher.

During 2012-13 we conducted test-check in 40 Commercial Taxes circle in which 3,454 cases were test-checked and we observed from the examination of TAR, utilisation statements of declaration forms etc. in nine Commercial Taxes circles³⁵ that 16 dealers (scrutinised: two; self-assessed: 14) registered under the BVAT Act had imported various scheduled goods of ₹ 153.64 crore during 2008-09 to 2010-11. However, they did not get themselves registered under the BTEG Act, though they were liable to do so. The AAs could not detect the fact of non-registration even in the scrutinised cases, though the

information relating to their liability for registration was available with the AAs in the VAT records which indicates slackness of the AAs towards compliance of the provision of the Act/Rules. This resulted in non-levy of entry tax of ₹ 6.61 crore. Besides penalty of ₹ 6.61 crore was also leviable (**Annexure -VIII**).

After we pointed this out, the AA, Gaya accepted the audit observation and raised the demand of ₹ 3.42 lakh. We await recovery in the accepted case and reply in remaining cases.

The matter was reported to the Government between March and July 2013; we are yet to receive their reply (November 2013).

³⁵

Bhagalpur, Danapur, Gandhi Maidan, Gaya, Madhepura, Nawada, Patna South, Patna West and Purnea.

2.28 Non/short realisation of entry tax

2.28.1 Short realisation of entry tax

Under the provisions of Section 24 of the BVAT Act, read with Section 8 of the BTEG Act every dealer shall deposit the tax payable in respect of every month on or before the 15th day of the following month, failing which the dealer shall be liable to pay interest at the rate of one and a half *per cent* per month on the amount due from the date the tax was payable and became due to the date of its payment.

Under the provision of Section 25 (1) of the BVAT Act read with Section 8 of the BTEG Act the prescribed authority shall, within the time and the manner prescribed, scrutinise every return filed for the purpose of ascertaining that evidence, as prescribed, has been furnished with regard to payment of tax and interest payable.

During 2012-13 we conducted test-check in 40 Commercial Taxes circle in which 3,454 cases were test-checked and we observed in three Commercial Taxes circles³⁶ that three dealers (self-assessed) had admitted their entry tax liability worth ₹ 1.20 crore during 2008-09 and 2010-11 in their annual return, but they actually paid the entry tax of ₹ 48.14 lakh only. The AA did not detect the short payment of admitted tax due to non-scrutiny of the returns within the prescribed time which indicates control weakness in the Department towards compliance of the

provision of the Act/Rules. This resulted in non-realisation of admitted entry tax of ₹ 1.03 crore including leviable interest of ₹ 31.34 lakh.

The matter was reported to the Government in July 2013; we are yet to receive their reply (November 2013).

2.28.2 Non-realisation of entry tax

We observed in Bhabhua Commercial Taxes circle in June 2012 that a dealer (self-assessed) had not admitted his entry tax liability in the return nor paid the entry tax. But examination of utilisation statement of declaration forms revealed that the dealer had actually imported scheduled goods worth ₹ 3.81 crore during 2008-09. The AA did not detect the non-payment of entry tax due to non-scrutiny of the returns within the prescribed time resulted in non-realisation of entry tax of ₹ 47.91 lakh including leviable interest of ₹ 17.39 lakh.

The matter was reported to the Government in July 2013; we are yet to receive their reply (November 2013).

³⁶ Patna City West, Patna Special and Saran.

C : Luxury Tax

2.29 Short levy of Luxury Tax

As per Section 2 (m) of the Bihar Taxation on Luxuries in Hotels Act, 1988, 'Rent' means aggregate of all charges, by whatever called, realised from the occupier of a room in a hotel and includes lodging, boarding or service charges or any sum charged. Section 3 (2) of the Act *ibid* stipulates that the tax on luxuries shall be levied and paid by the proprietor at the rate of 10 *per cent* of the rent of such room or suit of rooms provided with luxuries as carry a rent of rupees one thousand or more per day. Further, Section 10 of the Act *ibid* provides that in case any proprietor fails to pay the tax within the due or extended date, he shall be liable to pay, by way of penalty a sum calculated at the rate of rupees fifty for every day of default or an interest at the rate of two and a half *per cent* of the amount of tax due for every month or part thereof, whichever is higher.

We observed in March 2012 in Patna West Commercial Taxes circle that a dealer had admitted the gross rent received of ₹ 7.46 crore and ₹ 8.11 crore during the period 2008-09 and 2009-10 respectively. On cross-verification of the assessment order/returns with the profit and loss account of the dealer we observed that the dealer had actually received ₹ 8.09 crore and ₹ 8.51 crore respectively during these periods as room rent. Thus the dealer had suppressed ₹ 1.03 crore received as gross rent. The Assessing Authority, while doing the assessment in May 2009 and June 2010, could not detect the suppression of turnover although sufficient evidence was available on the record of the dealer. This resulted in

short levy of Luxury Tax of ₹ 18.05 lakh³⁷ including leviable interest.

The matter was reported to the Government in August 2012; we are yet to receive their reply (November 2013).

³⁷ Calculation of Luxury tax:

(Amount in ₹)						
Year	Actual Room rent received as shown in profit and loss account	Amount of Room rent shown in the return	Difference (Suppressed value)	Short levy of Luxury tax at the rate of 10 <i>per cent</i>	Interest leviable	Total
2008-09	8,09,09,675	7,46,15,783	62,93,892	6,29,389	5,50,715	11,80,104
2009-10	8,51,11,895	8,11,45,805	39,66,090	3,96,609	2,28,050	6,24,659
Total	16,60,21,570	15,57,61,588	1,02,59,982	10,25,998	7,78,765	18,04,763

D : Electricity duty

2.30 Irregular allowance of exemption of electricity duty

Section 3(1) of the Bihar Electricity Duty Act, 1948, provides that, subject to the provision of sub-section (2), there shall be levied and paid to the State Government, either on the units or on the value of energy consumed or sold, excluding losses of energy in transmission and transformation, a duty at the rate or rates to be specified by the State Government in a notification. Sub-section (2) provides that no duty shall be leviable on units of energy – (a) consumed by the Government of India, or sold to the Government of India, for consumption by that Government; (b) consumed in the construction, maintenance, or operation of any railway company operating that railway, or sold to that Government or any such railway company for consumption in the construction, maintenance or operation of any railway; (c) consumed by the licensee in the construction, maintenance and operation of his electrical undertaking; (d) consumed by or sold by any class of persons exempted from payment of duty under section 9; (e) consumed by the Damodar Valley Corporation for the Generation, transmission or distribution of electricity by that Corporation; (f) consumed for any purpose which the State Government may, by notification, in this behalf declare to be a public purpose and such exemptions may be subject to such conditions and exemptions if any, as may be mentioned in the said notification.

In Patna Special circle, we observed in March 2013 that a licensee was allowed exemption of ₹ 2,489.29 crore (5617.1847 million units) from payment of electricity duty (ED) during the period from 2006-07 to 2011-12 by the AA while doing the assessments in January 2013. During examination of assessment order as well as the copy of annual accounts and other relevant returns filed by the licensee, we observed that the dealer had availed exemption from the ED in his return on different category of consumers at fixed percentage rather than on the actual energy sold to the aforesaid category of consumers for whom the exemption were provided in the Act *ibid*. The exemptions were allowed by the AA without having any such provision under the Electricity Duty Act or Rules made thereunder for exemptions on the basis of fixed percentage.

Thus, allowance of exemption at fixed percentage, without obtaining the details of actual sales made to the consumers of category as required in the return's format, by the AA was irregular and hence inadmissible.

The amount of electricity duty involved on such exemptions worked out to ₹ 148.34 crore³⁸.

The matter was reported to the Government in July 2013; we are yet to receive their reply (November 2013).

³⁸ ED leviable at the rate of 6 per cent on ₹ 24,23,19,39,850 (4879.0707 mkwh)-
₹ 1,45,39,16,391 (On the value of energy used for other than irrigation)
ED leviable at the rate of 4 paise per unit on ₹ 66,10,05,600(738.114 mkwh)-
₹ 2,95,24,560 (Used for irrigation purpose)
Total – (₹ 1,45,39,16,391 + ₹ 2,95,24,560) = ₹ 1,48,34,40,951