

## **CHAPTER-II**

# **VALUE ADDED TAX/ TAXES ON SALES, TRADE ETC.**

## EXECUTIVE SUMMARY

<b>What we have highlighted in this Chapter</b>	<p>In this Chapter we present a few illustrative cases having recoverable financial implication of ₹ 224.20 crore selected from observations noticed during our test check of records relating to assessment and collection of VAT/Sales tax in the office of the Deputy Commissioners of Commercial Taxes/Assistant Commissioners of Commercial Taxes, where we found that the provisions of the Acts/Rules were not observed.</p> <p>It is a matter of concern that similar omissions have been pointed out by us repeatedly in the Audit Reports for the past several years, but the Department has not taken corrective action.</p>
<b>Marginal increase in tax collection</b>	<p>In 2011-12, the collection of taxes from Value Added Tax (VAT)/Central Sales Tax increased by 23.44 <i>per cent</i> over the previous year which was attributed by the Department to better and effective tax administration.</p>
<b>Internal Audit Wing started functioning</b>	<p>The system of VAT audit has been envisaged in the Jharkhand VAT Act. The criteria and guidelines for selection of dealers for the purposes of audit assessment and audit thereof have been notified (July 2011). The Wing has started functioning at the Headquarters' level and at the divisional level at Ranchi, Jamshedpur and Dhanbad. The Department reported that assessment records of 812 dealers were selected for VAT audit in March 2012.</p>
<b>Recovery by the Department against observations pointed out by us in earlier years</b>	<p>During the period 2006-07 to 2010-11, we had pointed out non/short levy, non/short realisation, under-assessment/loss of revenue, incorrect exemption, concealment/suppression of turnover, application of incorrect rate of tax, incorrect computation etc., with revenue implication of ₹ 2,501.25 crore in 1,861 cases. Of these, the Department/Government accepted audit observations in 266 cases involving ₹ 637.11 crore but recovered only ₹ 77.13 crore.</p>
<b>Results of audits conducted by us in 2011-12</b>	<p>In 2011-12, we test checked the records of 21 units relating to Taxes on sales/VAT and found non/short realisation/levy of tax, penalty etc. involving ₹ 794.65 crore in 629 cases.</p> <p>The Department accepted non/short realisation/levy of tax and other deficiencies of ₹ 68.06 crore in 28 cases pointed out by us during 2011-12. An amount of ₹ 47.81 lakh was recovered in four cases during 2011-12.</p>
<b>Our conclusion</b>	<p><b>The Commercial Taxes Department needs to improve the internal control system so that weaknesses in the system are addressed and omissions of the nature detected by us are avoided in future.</b></p>

## CHAPTER-II: VALUE ADDED TAX/TAXES ON SALES, TRADE ETC.

### 2.1 Tax administration

The levy and collection of Commercial Taxes which include Sales Tax/Value Added Tax, Central Sales Tax, etc. are governed by the Jharkhand Finance (JF) Act, 2001(repealed from 1 April 2006), Jharkhand Value Added Tax (JVAT) Act, 2005 and the Central Sales Tax (CST) Act, 1956. The Secretary-cum-Commissioner of Commercial Taxes is responsible for administration of these Acts and Rules in the Commercial Taxes Department (CTD). He is assisted by Additional Commissioners and Joint Commissioners of Commercial Taxes, Joint Commissioners of Commercial Taxes of Bureau of Investigation (IB), Vigilance and Monitoring, along with other Deputy/Assistant Commissioners of Commercial Taxes.

The State is divided into five commercial taxes divisions<sup>1</sup>, each under the charge of a Joint Commissioner (Administration) and 28 circles<sup>2</sup>, each under the charge of a Deputy/Assistant Commissioner of Commercial Taxes (DCCT/ACCT). The DCCT/ACCT of the circle, responsible for levy and collection of tax due to the Government, besides market survey, is assisted by Commercial Taxes Officers. A Deputy Commissioner of IB is posted in each division to assist the JCCT (Administration) and a DCCT (Vigilance and Monitoring) is posted under the control of Headquarters in each division.

### 2.2 Trend of receipts

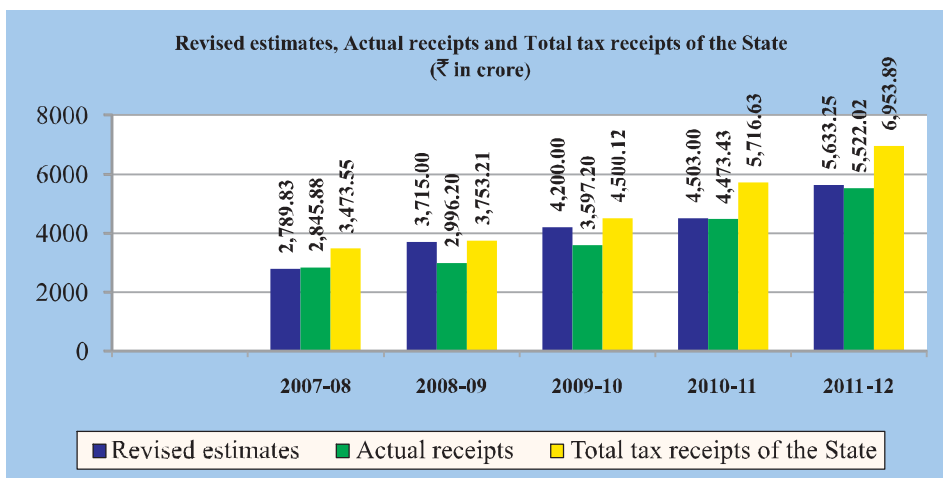
Actual receipts from VAT/Taxes on Sales, Trade etc. during the period 2007-08 to 2011-12 along with the total tax receipts during the same period is exhibited in the following table and chart:

(₹ in crore)						
Year	Revised budget estimates	Actual receipts	Variation excess (+)/shortfall (-)	Percentage of variation	Total tax receipts of the State	Percentage of actual Sales Tax/VAT receipts vis-à-vis total tax receipts
2007-08	2,789.83	2,845.88	(+) 56.05	(+) 2.00	3,473.55	82
2008-09	3,715.00	2,996.20	(-) 718.80	(-) 19.35	3,753.21	80
2009-10	4,200.00	3,597.20	(-) 602.80	(-) 14.35	4,500.12	80
2010-11	4,503.00	4,473.43	(-) 29.57	(-) 0.66	5,716.63	78
2011-12	5,633.25	5,522.02	(-) 111.23	(-) 1.97	6,953.89	79

Source: Finance Accounts and the revised estimates as per Statement of Revenue and Receipts of Government of Jharkhand for 2012-13.

<sup>1</sup> Dhanbad, Dumka, Hazaribag, Jamshedpur and Ranchi.

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



### 2.3 Cost of collection

The gross collection under Sales Tax/VAT receipts, expenditure incurred on their collection and the percentage of such expenditure to gross collection during 2007-08 to 2011-12 along with the all-India average of the relevant preceding year are mentioned in the following table:

(₹ in crore)

Year	Collection	Expenditure on collection of revenue	Percentage of expenditure on collection	All-India average percentage of the preceding year
2007-08	2,845.88	16.66	0.59	0.82
2008-09	2,996.20	24.88	0.83	0.83
2009-10	3,597.20	31.17	0.87	0.88
2010-11	4,473.43	37.48	0.84	0.96
2011-12	5,522.02	50.20	0.91	0.75

Source: Finance Accounts of the Government of Jharkhand.

From the above it may be seen that during 2011-12 the percentage of expenditure on collection was higher than the all-India average.

### 2.4 Working of Internal Audit Wing

The system of VAT audit has been envisaged in the JVAT Act. The criteria and guidelines for selection of dealers for the purposes of audit assessment and audit thereof have been notified (July 2011). The Wing has started functioning at Headquarters' level and divisional level at Ranchi, Jamshedpur and Dhanbad. The Department reported that assessment records of 812 dealers were selected for VAT audit in March 2012.

### 2.5 Impact of Audit

#### Revenue impact

During the period 2006-07 to 2010-11 we 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 ₹ 2,501.25 crore in 1,861 cases. Of these, the Department/Government accepted audit observations in 266 cases involving ₹ 637.11 crore and recovered ₹ 77.13

crore. The number of cases in which recovery was effected not intimated by the Department. The details are shown in the following table:

Year	No. of units audited	Amount objected		Amount accepted		Amount recovered during 2011-12
		No. of cases	Amount	No. of cases	Amount	
2006-07	20	262	428.80	36	36.66	0.03
2007-08	19	446	663.08	84	138.42	12.74
2008-09	17	228	298.33	53	131.51	24.69
2009-10	22	525	640.42	31	6.49	17.39 <sup>3</sup>
2010-11	24	400	470.62	62	324.03	22.28
<b>Total</b>	<b>102</b>	<b>1,861</b>	<b>2,501.25</b>	<b>266</b>	<b>637.11</b>	<b>77.13</b>

## 2.6 Analysis of arrears of revenue

The arrears of revenue as on 31 March 2012 were ₹ 1,860.83 crore, of which ₹ 371.31 crore were outstanding for more than five years as reported by the Department. The year-wise position of arrears of revenue during the period 2007-08 to 2011-12 is depicted in the following table:

Year	Opening balance of arrears	Closing balance of arrears
2007-08	1,256.80	1,261.41
2008-09	1,261.41	1,737.21
2009-10	1,737.21	1,856.26
2010-11	1,856.26	1,737.74
2011-12	1,737.74	1,860.83

Source: Commercial Taxes Department, Government of Jharkhand.

The Department did not furnish information regarding the addition and clearance of the arrears during these years. However, the Department furnished the stages at which action on arrears of ₹ 1,917.81<sup>4</sup> crore was pending. Out of ₹ 1,917.81 crore, demands of ₹ 154.45 crore were certified for recovery as arrears of land revenue. Recovery of ₹ 1,304.85 crore and ₹ 2.58 crore was stayed by the Courts and the Government respectively. Demand of ₹ 1.73 crore was held up due to rectification/review of applications. Specific action taken in respect of the remaining arrears of ₹ 454.20 crore has not been intimated (February 2013).

Thus, it would be seen from the above that 68.17 *per cent* of the total amount of arrears was pending settlement with the Courts or with the Government. The arrears recoverable as arrears of land revenue by invoking the provisions of the Bihar and Orissa Public Demands Recovery Act, 1914 were only 8.05 *per cent* of the total amount pending settlement.

**The Government may consider issuing directions to the Department for speedy settlement of the arrear cases by constant monitoring and recovering the arrears as arrears of land revenue by invoking the provisions of the Bihar and Orissa Public Demands Recovery Act, 1914.**

<sup>3</sup> The Department reported recovery of ₹ 17.39 crore against accepted audit observations of ₹ 6.49 crore during 2009-10.

<sup>4</sup> The Department furnished stages of recovery of arrears for an amount of ₹ 1,917.81 crore against the reported arrears of revenue of ₹ 1860.83 crore as on 31 March 2012. This discrepancy needs to be reconciled by the Department.

## 2.7 Arrears in assessment

The details of cases pending at the beginning of the year 2011-12, cases becoming due for assessment during the year, cases disposed during the year and number of cases pending finalisation at the end of the year as furnished by the Commercial Taxes Department is shown in the following table:

Year	Opening balance	New cases due for assessment	Total assessments due	Cases disposed of	Balance at the end of the year	Percentage of column 6 to 4
1	2	3	4	5	6	7
2008-09	15,009	36,770	51,779	38,544	13,235	25.56
2009-10	13,235	56,106	69,341	49,422	19,919	28.73
2010-11 <sup>5</sup>	19,919	64,145	84,064	66,874	17,190	20.45
2011-12	17,190	63,515	80,705	50,473	30,232	37.46

Source: Commercial Taxes Department, Government of Jharkhand.

From the above it would be seen that pendency in finalisation of assessments ranged between 20 to 37 *per cent*. This would result in delay in realisation of revenue/loss of revenue due to cases becoming barred by limitation.

**The Department may consider evolving an action plan to finalise the outstanding assessments in a time-bound manner.**

## 2.8 Analysis of collection

The break-up of the total collection at the pre-assessment stage and after regular assessment of VAT/taxes on sales, trade *etc.*, during the year 2011-12 and corresponding figures for the preceding three years as furnished by the Commercial Taxes Department is mentioned in the following table:

							(₹ in crore)
Year	Amount collected at pre-assessment stage	Amount collected after regular assessment	Penalties for delay in payment of taxes	Amount refunded	Net collection as per Department (2+3-5)	Net collection as per Finance Accounts	Percentage of column 2 to 7
1	2	3	4	5	6	7	8
2008-09	2,797.40	54.07	0.56	0.47	2,851.00	2,996.20	93.36
2009-10	3,319.44	84.74	0.82	0.06	3,404.12	3,597.20	92.27
2010-11	4,446.53	98.59	2.53	0.07	4,545.05	4,473.43	99.40
2011-12 <sup>6</sup>	5,557.94	77.30	2.00	4.25	5,630.99	5,522.02	100.65

<sup>5</sup> The figures furnished by the Department are different from those reflected in the Audit Reports 2009-10 and 2010-11.

<sup>6</sup> The figures for 2011-12 (Col. 2 to Col. 6) includes amount collected under VAT, Luxury Tax and Entry Tax.

## 2.9 Results of Audit

During 2011-12 we test checked the records of 21 units relating to VAT/ Taxes on sales, trade etc., and found non/short realisation/levy of tax, penalty etc. involving ₹ 794.65 crore in 629 cases which fall under the following categories:

Sl. No.	Categories	₹ in crore)	
		No. of cases	Amount
1	Non-levy or short levy of tax	278	325.55
2	Irregular allowance of exemption from tax	114	75.31
3	Application of incorrect rates of tax	74	66.48
4	Non-levy of penalty	67	58.08
5	Short levy due to incorrect determination of turnover	31	212.88
6	Irregular allowance of concessional rate of tax	9	1.57
7	Non-levy of penalty for excess collection of tax/ mistake in computation	12	16.91
8	Other cases	44	37.87
<b>Total</b>		<b>629</b>	<b>794.65</b>

During the course of the year, the Department accepted underassessment and other deficiencies of ₹ 68.06 crore in 28 cases pointed out by us during 2011-12 and recovered ₹47.81 lakh in four cases.

In this chapter we present a few illustrative cases having recoverable financial implication of ₹ 224.20 crore. Of these, the Government/Department accepted audit observations of ₹ 68.02 crore in 27 cases and recovered ₹ 44.19 lakh in three cases which have been discussed in the succeeding paragraphs.

## **2.10 Audit observations**

*Our scrutiny of assessment records of Value Added Tax (VAT) and Central Sales Tax (CST) indicated several cases of non-observance of the provisions of the Acts/Rules and notifications issued thereunder, suppression of sales/purchase turnover, non registration of dealers, turnover escaping assessment, non/short levy of tax/penalty, incorrect adjustment of Input Tax Credit (ITC), incorrect application of rate of tax etc., as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on a test check carried out by us. Such omissions on the part of Assessing Authorities (AAs) are pointed out by us each year, but not only do the irregularities persist; these remain undetected till audit is conducted. There is need for the Government to improve the internal control system including strengthening of internal audit.*

## **2.11 Irregularities in determination of turnover**

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

We noticed that the AAs while finalising the assessments had not assessed the taxable turnover of the dealers correctly as per the provisions of the Act. This resulted in non/short levy of tax and penalty of ₹ 72.83 crore as mentioned in paragraphs 2.11.1 and 2.11.2.

### **2.11.1 Suppression of sales/purchase turnover under JVAT Act**

Under the JVAT Act read with the Central Sales Tax Act, if the prescribed authority has reasons to believe that the dealer has concealed, omitted or failed to disclose wilfully, the particulars of such turnover or has furnished incorrect particulars of such turnover and thereby the returned figures are below the real amount, the prescribed authority shall proceed to assess or reassess the amount of tax due from the dealer in respect of such turnover and shall direct the dealer to pay, besides the tax assessed on escaped turnover, by way of penalty a sum equivalent to twice the amount of the additional tax so assessed.

**2.11.1.1** We noticed (between July 2010 and January 2012) from the assessment records in 11 Commercial Taxes Circles<sup>7</sup> that 20 dealers had filed their returns for purchase/sale of ₹ 913.96 crore during the years 2007-08 and 2008-09. The assessments were finalised between February 2009 and January 2012 on the basis of returns filed by them. However, our scrutiny of records<sup>8</sup> along with available returns indicated

---

<sup>7</sup> Dhanbad, Dhanbad Urban, Giridih, Jamshedpur, Jamshedpur Urban, Jharia, Ranchi East, Ranchi West, Ranchi South, Singhbhum and Tenughat.

<sup>8</sup> Utilisation certificates of declaration forms, audited annual accounts, trading and manufacturing accounts.



that the dealers had actually sold/purchased goods worth ₹ 1,097.69 crore. We further noticed that the AAs did not cross-verify the returns with the relevant information available in the records submitted by the concerned dealers. Thus, the dealers concealed ₹ 183.73 crore on account of purchase/sale turnover in their returns. The concealment was on account of suppression of sale/purchase of coal, iron ingots, auto parts, cooked food, India Made Foreign Liquor (IMFL), electronic goods, gold and silver, computers and their spare parts etc. This resulted in non/short levy of tax of ₹ 66.36 crore including penalty of ₹ 44.24 crore. We mention specific cases in respect of five dealers in four Commercial Taxes Circles in the following table:

Sl. No.	Name of the circle TIN of the dealer	Period Month of assessment	Nature of observations	(₹ in crore)	
				Suppressed turnover Rate of tax (%)	Short levy of VAT Penalty
1	Ranchi South 20420100082	2007-08 and 2008-09 October 2009 and February 2010	Non-accounting of other expenditure of ₹ 45.63 crore during the years 2007-08 and 2008-09 forming part of trading/manufacturing account resulted in suppression of sale turnover.	45.63 35	15.97 31.94
2	Tenughat 20122200394	2007-08 March 2010	On the basis of Tax Deducted at Source (₹ 49.73 lakh) the actual sales worked out to ₹ 24.87 crore, whereas the dealer had reflected sales turnover of ₹ 12.20 crore through his periodical returns and trading account on which the assessment was finalised.	12.67 12.5	1.58 3.16
3	Dhanbad 20051700252	2007-08 March 2010	Actual sales as per VAT audit report in Form JVAT 409 was ₹ 49.50 crore (domestic sale: ₹ 30.82 crore + export sale: ₹ 18.67 crore). However, the dealer in his annual return and trading account had shown sales of ₹ 12.55 crore (gross sales: ₹ 12.97 crore less tax collected: ₹ 0.42 crore) on which the assessment was finalised.	36.95 4	1.48 2.96
4	Singhbhum 20661100020	2007-08 March 2010	Actual sales as per Form C, Form F, Road permit 504B, VAT audit report and inventories was ₹ 688.26 crore whereas the dealer had reflected sales turnover through his periodical returns and trading account for ₹ 648.72 crore on which the assessment was finalised.	39.54 4 and 1	1.06 2.12
5	Ranch South 20020101563	2007-08 March 2010	The dealer had disclosed purchase turnover of ₹ 34.90 crore in his trading account and GTO was determined at ₹ 72.59 crore by the AA on which tax was levied. However, we noticed that the actual purchase as per annual return in Form JVAT 204 was ₹ 49.54 crore.	14.64 4	0.58 1.16

After we pointed out the cases between July 2010 and January 2012, the AAs of three Commercial Taxes Circles<sup>9</sup> in three cases raised (between February and September 2012) additional demands of ₹ 3.29 crore. The AA of Ranchi South Commercial Taxes Circle, in the case at Sl. no. 1 of the Table above, stated (January 2012) that the cost of production of the goods was ₹ 45.43 crore and the final product value for sale was ₹ 91.42 crore as reflected in the trading account on which assessments for the years 2007-08 and 2008-09 were finalised. The reply was not relevant as the difference of ₹ 45.99 crore as pointed by the AA pertains to gross profit for both the years. However, the AA did not reply on the issue of non-incorporation of other/manufacturing expenditure of ₹ 45.63 crore in the trading account.

The concerned AAs in all the other cases stated between July 2010 and January 2012 that the cases would be reviewed/examined. Further reply has not been received (February 2013).

The Government in its reply in one case of Ranchi East Commercial Taxes Circle stated (September 2012) that purchase figures were not mentioned in JVAT 409 correctly. The reply was not in order as non-accounting of purchases of LPG and packing materials in the trading account resulted in suppression of purchase turnover and consequential short levy of tax. Replies in all other cases have not been received (February 2013).

**2.11.1.2** We collected (September 2011) data relating to payments made to different works contractors under Rajiv Gandhi Gramin Vidyutikaran Yojana (RGGVY) by Jharkhand State Electricity Board (JSEB) and cross-verified (September 2011) the same with the records of Ranchi South Commercial Taxes Circle. We noticed that a works contractor had received payment for a total sum of ₹ 66.19 crore from JSEB during the period 2008-09 under the RGGVY on account of supply and erection. However, our scrutiny (September 2011) of the assessment records of the contractor for the above period indicated that the contractor had shown sales turnover of ₹ 55.46 crore only on which the assessment was finalised in January 2011. Thus, there was suppression of sales turnover by ₹ 10.73 crore. This resulted in underassessment of tax of ₹ 1.29 crore including penalty of ₹ 85.81 lakh.

After we pointed (September 2011) out the matter, the AA of Ranchi South Commercial Taxes Circle stated (January 2012) that the total amount received is the sum of the amounts of two financial years which is under observation. The reply is not in order as the assessment is required to be done on the basis of the amount received in a particular financial year and tax calculated accordingly. In the instant case, the receipts for the financial year 2008-09 only have been taken into account in audit for working out the underassessment of ₹ 1.29 crore. Further reply has not been received (February 2013).

**2.11.1.3** We noticed (September 2011) in Ranchi South Commercial Taxes Circle that a dealer, dealing in manufacturing of alumina, assessed between March 2009 and March 2010, did not account for any intra-State stock transfer receipts of bauxite during 2006-07 and 2007-08 from its captive mines at Lohardaga. However, information collected (May 2010) by us from

---

<sup>9</sup> Jamshedpur Urban, Ranchi West and Singhbhum.

Lohardaga Commercial Taxes Circle and SE Railway, Lohardaga revealed that the same dealer, registered separately in Lohardaga Commercial Taxes Circle, had shown intra-State stock transfer of bauxite valued at ₹ 41.60 crore in 2006-07 and 2007-08 to its alumina manufacturing unit, registered in Ranchi South Commercial Taxes Circle. This resulted in suppression of stock transfer receipt turnover of ₹ 41.60 crore and consequential underassessment of tax of ₹ 4.99 crore<sup>10</sup> including penalty of ₹ 3.33 crore.

After we pointed (September 2011) out the matter, the AA stated (September 2011) that the case would be reviewed. Further reply has not been received (February 2013).

### 2.11.2 Incorrect determination of gross turnover under JVAT Act

Under the JVAT Act, gross turnover (GTO) is the aggregate of all amounts received and receivable by a dealer including the gross amount received and receivable for execution of works contract during any given period.

Our scrutiny (January 2012) of the assessment records in Deoghar Commercial Taxes Circle in case of a works contractor revealed that the AA, while finalising the ex-parte assessment for the period 2007-08 in January 2010, determined the GTO at ₹ 1.93 crore without specifying the source and basis of determination of such turnover and levied tax accordingly. However, we noticed from the periodical returns furnished by the dealer that the actual GTO was ₹ 3.46 crore. Failure of the AA to scrutinise the returns while finalising the assessment, resulted in short determination of taxable turnover of ₹ 1.53 crore and consequential short-levy of tax of ₹ 19.20 lakh.

After we pointed out the case in January 2012, the AA raised (September 2012) additional demand of ₹ 19.59 lakh including penalty of ₹ 39526. Report on recovery is awaited (February 2013).

We reported the matter to the Government in June 2012; their reply has not been received (February 2013).

<sup>10</sup> Tax at the rate of four *per cent* on ₹ 41,59,82,364.73 = ₹ 1,66,39,294.59.  
Penalty = 2 x ₹ 1,66,39,294.59 = ₹ 3,32,78,589.18.  
Total: Tax + Penalty = ₹ 4,99,17,883.77.

## 2.12 Application of incorrect rate of tax under JVAT Act

Under the provisions and the Schedules of the JVAT Act, components and parts of motor vehicles, leather products, cement, retreaded tyres and explosives/matrix emulsions are taxable at the rate of 12.5 per cent. By a notification issued in March 2007, the rate of tax was reduced to four per cent from the earlier 12.5 per cent on sale of Heavy Earth Moving Machine (HEMM) parts and High Density Poly Ethylene/Poly Plastic (HDPE/PP) woven fabrics with effect from 6 March 2007. The Act further provides for levy of interest at the rate of one per cent per month (p.m.) and penalty at the rate of two per cent p.m. on non payment of tax and interest payable as per return without sufficient cause.

In four Commercial Taxes Circles<sup>11</sup>, we noticed between September 2011 and January 2012 from the assessment records that 19 dealers, dealing in components and parts of motor vehicles, explosives/matrix emulsions, retreaded tyres of heavy vehicles, cement, HEMM parts, HDPE/PP woven fabrics and leather products, had filed their returns for the period 2006-07 to 2008-09 at the rate of four per cent though tax on the above commodities was leviable at the rate of 12.5 per cent. The AAs, at the time of finalising

the assessments between January 2009 and March 2011, did not scrutinise the returns *vis-à-vis* the Schedules of the Act and levied tax at the incorrect rate. Incorrect application of the provisions of the Act and notifications by the AAs resulted in short levy of tax of ₹ 24.17 crore including interest and penalty of ₹ 10 crore as mentioned in the following table:

Sl. No.	Number of dealers Circle	Period Month of assessment	Nature of observation	(₹ in crore)
				Short levy of tax including interest and penalty
1.	Sixteen Adityapur	2006-07 to 2008-09 Between January 2009 and March 2011	Tax was levied at the incorrect rate of four per cent instead of the correct rate of 12.5 per cent on sale of auto parts, HEMM parts and HDPE woven fabrics etc. valued at ₹ 163.78 crore during the period 2006-09.	23.82
2.	One Dhanbad	2007-08 February 2010	Tax was levied at the incorrect rate of four per cent instead of the correct rate of 12.5 per cent on sale of cement.	0.17
3.	One Dhanbad Urban	2008-09 April 2010	Tax was levied at the incorrect rate of four per cent instead of the correct rate of 12.5 per cent on sales turnover of explosives valued at ₹ 1.06 crore.	0.12
4.	One Jharia	2007-08 March 2010	Tax was levied at the incorrect rate of four per cent instead of the correct rate of 12.5 per cent on sale of retreaded tyres valued at ₹ 63.87 lakh.	0.06
<b>Total</b>				<b>24.17</b>

<sup>11</sup> Adityapur, Dhanbad, Dhanbad Urban and Jharia.

After we pointed out the cases, three AAs<sup>12</sup> raised additional demands of ₹ 9.50 crore in 16 cases (between February and October 2012) of which ₹ 44.19 lakh was recovered in three cases (September 2012).

We reported the matter to the Government in June 2012; their reply has not been received (February 2013).

### 2.13 Irregularities in grant of Input Tax Credit (ITC)

Under the JVAT Act, a registered dealer is entitled for Input Tax Credit (ITC) on the amount of tax paid by the dealer to another registered dealer on his turnover of purchases made during the tax period. Further, ITC shall not be allowed to a registered dealer in respect of goods used for manufacture of goods for transfer of stock or other than by way of sale or for sale outside the State; however, ITC may be allowed on the tax paid in excess of four *per cent* on such materials used in manufacturing of finished products. Further, where the goods purchased by a registered dealer are returned or incentive is allowed on such purchases by the selling dealer and necessary adjustment is made in the respective accounts, the purchasing dealer shall reverse the ITC already availed by him. The Act also provides for imposition of penalty of a sum equivalent to twice the amount of incorrect ITC availed by him.

We test checked (between July 2009 and February 2012) the assessment records of six assesseees in five Commercial Taxes Circles<sup>13</sup> for the period 2006-07 to 2008-09 and found that excess ITC of ₹ 1.04 crore was claimed on stock transfer of finished products, incentive on purchase of goods, payment of less input tax at the time of purchase *vis-a-vis* that claimed by the dealer, etc. However, we noticed that the AAs, while finalising the assessments between June 2008 and March 2011, allowed the same

in deviation from the provisions of the Act. This resulted in allowance of excess ITC of ₹ 1.04 crore. Besides, penalty of ₹ 1.80 crore was also leviable. We highlight specific cases in respect of three dealers in the following table:

<sup>12</sup> Adityapur, Dhanbad and Dhanbad Urban.

<sup>13</sup> Chirkunda, Dhanbad Urban, Giridih, Ranchi West and Tenughat.

				(₹ in lakh)
Sl. No.	Number of dealers Circle	Period Month of assessment	Nature of observation	Inadmissible ITC Penalty leviable
1	One Giridih	2007-08 July 2009	The dealer had reflected purchase of raw materials for ₹ 48.76 crore and claimed ITC of ₹ 1.95 crore (involved in manufacturing activity) which was restricted to ₹ 1.93 crore by the assessing authority under Rule 26 of the JVAT Rules as the dealer had stock transferred its manufactured goods worth ₹ 19.33 crore. However, we calculated the actual admissible ITC as ₹ 1.61 crore on the basis of the formula prescribed under the Act/Rule. Thus, the dealer was allowed excess ITC of ₹ 31.88 lakh <sup>14</sup> .	<u>31.88</u> 63.76
2	One Chirkunda	2007-08 and 2008-09 Between March and December 2010	The dealer was allowed ITC of ₹ 1.14 crore on intra-State purchase of goods valued at ₹ 28.57 crore though the actual purchase of goods was ₹ 21.59 crore during 2007-08 and 2008-09 on which VAT of ₹ 86.36 lakh was paid by the dealer.	<u>27.87</u> 55.74
3	One Tenughat	2007-08 March 2010	The dealer had claimed ITC of ₹ 96.79 lakh which was limited to ₹ 96.72 lakh by the AA under Rule 26 of the JVAT Rules as the dealer had made stock transfer of goods to outside the State for ₹ 93.48 crore. However, we calculated the admissible ITC as ₹ 73.73 lakh on the basis of the formula prescribed under the Act/Rules. Thus, the dealer was allowed excess ITC of ₹ 22.99 lakh.	<u>22.99</u> 45.98

After we pointed out the cases between July 2009 and February 2012, the AA of Chirkunda Commercial Taxes Circle raised additional demand of ₹ 84.08 lakh in August 2012 in one case and the AAs in all the other cases stated (between August 2009 and September 2011) that the cases would be reviewed. Further reply has not been received (February 2013).

We reported the matter to the Government in June 2012; their reply has not been received (February 2013).

<sup>14</sup> ITC eligible = (Input tax paid × Taxable turnover) ÷ Total turnover:  
i.e, (₹ 1,95,04,555.36 × 92,08,56,203.00) ÷ 111,23,17,003.00 = ₹ 1,61,47,277.03.  
ITC allowed = ₹ 1,93,35,569.19.  
Excess ITC = ₹ 31,88,292.16 (₹ 1,93,35,569.19 - ₹ 1,61,47,277.03).

## 2.14 Irregularities in grant of exemptions

Under Section 9(3) of the JVAT Act and rules made thereunder, if tax is levied at the first stage of sale in the State of goods specified in Part E of Schedule II of the Act, subsequent sale of the same goods in the State shall not be levied to tax if the dealer making subsequent sale of such goods produces declaration in form JVAT 403, issued by the selling dealer, evidencing that the goods in question have already been subjected to tax at the first point of their sale in the State.

We noticed (July 2011) from the assessment records in Ranchi West Commercial Taxes Circle, that an assessee had purchased liquor (IMFL) valued at ₹ 16.25 lakh during 2008-09 and furnished two declarations in form JVAT 403 to substantiate the claim for tax paid purchase of goods. The AA, while finalising the assessment in October 2010, allowed exemption from levy of tax on sales turnover of

liquor valued at ₹ 68.21 lakh on the basis of declarations furnished. Our scrutiny of the declaration forms however, revealed that these forms were issued in the name of another dealer and were liable to be rejected. This resulted in incorrect grant of exemption and consequent underassessment of tax of ₹ 5.69 lakh<sup>15</sup>.

After we pointed out the matter in July 2011, the AA revised the assessment and raised (January 2012) additional demand of ₹ 5.69 lakh. Report on recovery is awaited (February 2013).

We reported the matter to the Government in June 2012; their reply has not been received (February 2013)

## 2.15 Irregularities in compliance to the Central Sales Tax Act

*Under the provisions of the Central Sales Tax (CST) Act, 1956 and the rules/notifications issued thereunder, different declaration forms are prescribed for claiming exemptions/concessions from levy of tax. The Act further provides for imposition of penalty for misuse of declaration forms.*

*We noticed that the AAs did not comply with the provisions of the Act and notifications issued thereunder resulting in short levy of tax and penalty of ₹ 46.70 crore. The cases are described in the succeeding paragraphs:*

<sup>15</sup> Tax at the rate of 35 per cent on ₹ 16,25,175.00 = ₹ 5,68,811.25.

### Misuse of declaration forms

Under the CST Act, a registered dealer can purchase goods from outside the State at concessional rate of tax by using prescribed declarations in form 'C' for goods intended for resale by him or for use by him in the manufacture or processing of goods for sale or in mining or in the generation or distribution of electricity or any other form of power or in telecommunication network provided such goods are covered by his registration certificate (RC). Failure to do so renders the dealer liable to prosecution or in lieu of prosecution, the AA may impose penalty of a sum not exceeding one and a half times of the tax leviable as if the purchase is not supported by the prescribed declaration in Form 'C'. A contractor can also avail the facility for concessional rate in the capacity of a dealer.

The AA while finalising the assessments in March and November 2009 did not levy tax and penalty on misuse of form 'C'. This resulted in unauthorised use of declaration form 'C' and consequential short levy of tax of ₹ 31.31 crore including penalty of ₹ 18.79 crore.

After we pointed out the matter in January 2012 the AA raised (August 2012) an additional demand of ₹ 31.31 crore as pointed out by audit. However, report on recovery is awaited (February 2013).

### Incorrect allowance of transit sale

Under the CST Act, a claim on account of transit sale is exempted from levy of tax, when the sale has been effected by transfer of documents of the title of the goods during the movement of goods and such subsequent sale should also take place during the same movement occasioned by the previous sale subject to furnishing of declarations in Form 'C'\* and Form 'E1'†.

\* 'C' is the central declaration form issued by the purchasing dealer for availing concessional rate of tax.

† The certificate in form 'E1' is issued by the selling dealer in proof of subsequent sale during movement of goods.

**2.15.1** We test checked (January 2012) the assessment records of an assessee in Dhanbad Commercial Taxes Circle, which indicated that a contractor had purchased spare parts, lubricants, tyres, high speed diesel and machinery items valued at ₹ 35.96 crore and ₹ 49.51 crore at concessional rate of tax by utilising declarations in form 'C' during 2007-08 and 2008-09 respectively and consumed the same in course of execution of contracts instead of re-selling them which was not admissible as per the provision of the CST Act.

**2.15.2** We noticed between September 2011 and December 2011 from the assessment records that in case of three dealers in three Commercial Taxes Circles<sup>16</sup>, the AAs while finalising the assessments between March 2009 and March 2011 for the period 2006-07 to 2008-09 allowed exemption on transit sale valued at ₹ 115.78 crore, though the sales were either not supported by Form 'C' or the exemption was allowed in excess of the

<sup>16</sup> Jamshedpur, Jamshedpur Urban and Jharia.



eligible turnover on account of transit sale. This resulted in incorrect allowance of exemption from tax of ₹ 14.32 crore.

After we pointed out the cases between September 2011 and December 2011, the AAs stated between September 2011 and December 2011 that the cases would be examined/reviewed. Further reply has not been received (February 2013).

### **Incorrect allowance of concessional rate of tax under CST**

Under the CST Act, every registered dealer who in course of inter-State trade and commerce sells to another registered dealer, goods of the class or classes, specified in the certificate of registration of the purchasing dealer, shall be liable to pay tax at concessional rate of four *per cent* upto March 2007, three *per cent* from April 2007 to May 2008 and two *per cent* from June 2008 of such turnover provided such sales are supported by declarations in Form 'C' issued by the purchasing dealer.

**2.15.3** Our test check of the assessment records in Chirkunda and Katras Commercial Taxes Circles between February and March 2012 revealed that two assessees had claimed concessional rate of tax on inter-State sale of goods valued at ₹ 22.75 crore and ₹ 166.41 crore during 2007-08 and 2008-09 respectively. The AAs, while finalising the assessments in March 2010 and February 2011, allowed the claim in full

on the basis of declarations in form 'C' submitted by them. However, our scrutiny of the declaration forms revealed that in one case the dealer was allowed concessional rate of tax on turnover of ₹ 22.75 crore against 18 numbers of form 'C' valued at ₹ 16.17 crore only. In the other case, out of 34 declaration forms for ₹ 166.41 crore furnished by the dealer in support of concessional rate of tax for the period 2008-09, three forms valued at ₹ 16.22 crore pertained to the year 2009-10. This resulted in incorrect allowance of concession and consequential short levy of tax of ₹ 39.02 lakh.

After we pointed out the cases in February 2012 and March 2012, the AAs agreed to examine/review the cases. Further reply has not been received (February 2013).

**2.15.4** We test checked the assessment records of three assessees in three Commercial Taxes Circles<sup>17</sup> (between September 2011 and February 2012) which revealed that the assessees had claimed concessional rate of tax on inter-State sale of goods valued at ₹ 94.01 crore, ₹ 144.09 crore and ₹ 84.23 crore respectively during 2008-09. In the case of an assessee in Dhanbad Commercial Taxes Circle, the AA, while finalising the assessment in March 2011, allowed the claim of ₹ 73.84 crore on submission of declarations in form 'C' and levied tax at the rate of two and three *per cent* on sales turnover of ₹ 65.56 crore and ₹ 8.28 crore respectively. Our scrutiny, however, revealed that the dealer had made inter-State sale of ₹ 23.64 crore during April to May 2008. Thus, an amount of ₹ 15.36 crore was leviable to tax at the rate of three *per cent* instead of two *per cent* levied by the AA. In the remaining cases, the

<sup>17</sup> Dhanbad, Jharia and Katras.

AAs, while finalising the assessments in February and March 2011, levied tax at the rate of two *per cent* instead of the correct rate of three *per cent* on the entire transaction of ₹ 33.31 crore and ₹ 19.32 crore respectively during April to May 2008. These mistakes resulted in short levy of tax of ₹ 68 lakh.

After we pointed out the cases in between September 2011 and February 2012, the AAs stated that the cases would be reviewed. Further reply has not been received (February 2013).

We reported the matter to the Government in June 2012; their reply has not been received (February 2013).

## 2.16 Non-imposition of penalty for excess collection of tax

Under the provision of the JVAT Act, 2005, if any person, being a registered dealer, collects any amount by way of tax in excess of the tax payable by him, he shall be liable to pay, in addition to the tax for which he may be liable, a penalty of an amount equal to twice the sum so collected by way of tax. The Act further provides forfeiture of the excess tax so collected to the State Government.

We noticed (January and February 2012) from the assessment records in the Katras Commercial Taxes Circle, that two dealers dealing in extraction of coal had collected tax of ₹ 24.16 crore from the purchasing dealers against the tax of ₹ 15.86 crore payable by them for the period 2008-09. Thus, the dealers had collected and retained ₹ 8.30 crore in

excess of the tax payable by them. The AA, while finalising the assessments in February 2011, did not detect the excess collection of tax by the dealers. Thus, the dealers were liable to pay penalty of ₹ 16.60 crore<sup>18</sup> besides the excess tax collected of ₹ 8.30 crore.

After we pointed out the cases between January and February 2012, the AA in one case raised (August 2012) an additional demand of ₹ 6.06 lakh while in the other case it was stated in February 2012 that the case would be reviewed. Further reply has not been received (February 2013).

We reported the matter to the Government in June 2012; their reply has not been received (February 2013).

<sup>18</sup>

(₹ in crore)					
Circle/TIN	Period/ Month of assessment	Collection of tax admissible	Tax collected	Excess collection of tax	Penalty equivalent to twice the amount of excess tax collected
1	2	3	4	5	6
Katras/ 20851505091	2008-09 February 2011	7.40	7.43	0.03	0.06
Katras/ KT82(c)	2008-09 February 2011	8.46	16.73	8.27	16.54
<b>Total</b>		<b>15.86</b>	<b>24.16</b>	<b>8.30</b>	<b>16.60</b>

## 2.17 Assessment being barred by limitation of time

Under the provision of Section 35 (6) read with Section 35(8) of JVAT Act, 2005, no assessment for levy of tax and penalty shall be made after expiry of three years from the end of the tax period, in respect of which the tax is assessable. Further, under Section 40(1) read with Section 37(6), if the prescribed authority has reasons to believe that the dealer has concealed, omitted or failed to disclose wilfully, the particulars of his turnover or has furnished incorrect particulars of such turnover and thereby the returned figures are below the real amount, the prescribed authority shall proceed to assess or reassess the amount of tax due from the dealer in respect of such turnover and shall direct the dealer to pay, besides the tax assessed on escaped turnover, by way of penalty a sum equivalent to twice the amount of the additional tax so assessed.

We noticed (August 2011) from the assessment records in Ranchi South Commercial Taxes Circle that in case of a dealer, though the notice for assessment was served (October 2009), the assessment for 2007-08 was not completed within the stipulated period i.e, upto March 2011. As a result, the assessment became barred by limitation of time. We further noticed that according to the report on inspection carried out in the business premises of the dealer in February 2008 by a team of the Department, there was

sales turnover of ₹ 134.50 crore in the first three quarters of 2007-08 alone. As per returns furnished by the dealer, the turnover for the fourth quarter was ₹ 41.41 lakh. Thus, the dealer during 2007-08 had actually sold goods worth ₹ 134.91 crore but had accounted for sales of ₹ 1.61 crore only resulting in suppression of sales turnover by ₹ 133.30 crore. Failure on the part of the AA to complete the assessment within the stipulated period resulted in consequential loss of revenue of ₹ 49.99 crore including penalty of ₹ 33.33 crore.

After we pointed out the matter, the AA accepted (March 2012) the audit observation and raised additional demand of ₹ 20.19 crore by levying tax of ₹ 16.66 crore and interest of ₹ 3.53 crore. However, the reply of the AA is not in consonance with the provisions of the Act as the assessment had already been barred by limitation of time. Further reply has not been received (February 2013).

We reported the matter to the Government in June 2012; their reply has not been received (February 2013).

## 2.18 Mistakes in computation of tax

Under the provision of the CST/JVAT Act, the AA is to finalise the assessment with utmost care and efficiency. He should see that computation of tax has been done accurately to the best of his knowledge and belief.

We noticed (between September 2011 and January 2012) from the assessment records in three Commercial Taxes

Circles<sup>19</sup>, in case of three assesseees that the AAs while finalising the assessments (between February 2011 and March 2011) for the period 2008-09, erroneously levied tax of ₹ 8.57 crore instead of the correct amount of ₹ 11.28 crore due to mistake in computation. This resulted in short levy of tax of ₹ 2.71 crore.

After we pointed out the cases between September 2011 and January 2012, the AAs, Dhanbad and Ramgarh Circles in two cases raised (March and August 2012) additional demand of ₹ 2.58 crore. The AA, Jamshedpur Circle stated (December 2011) that the case would be reviewed. Further reply has not been received (February 2013).

We reported the matter to the Government in June 2012; their reply has not been received (February 2013).

---

<sup>19</sup> Dhanbad, Jamshedpur and Ramgarh.