

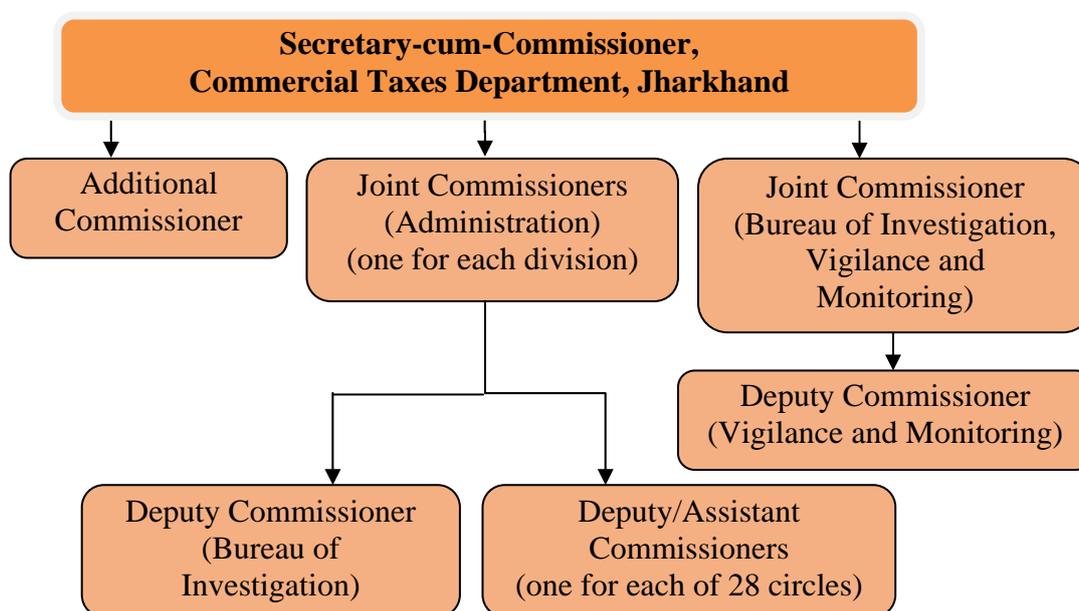
CHAPTER-II
TAXES ON SALES,
TRADE ETC.

CHAPTER – II: TAXES ON SALES, TRADE ETC.

2.1 Tax administration

The levy and collection of Sales Tax/Value Added Tax and Central Sales Tax are governed by the Jharkhand Value Added Tax (JVAT) Act 2005, the Central Sales Tax (CST) Act 1956 and Rules made thereunder. The Secretary-cum-Commissioner of Commercial Taxes is responsible for administration of these Acts and Rules in the Commercial Taxes Department (CTD) and is assisted by an Additional Commissioner and Joint Commissioners of Commercial Taxes (JCCT), Joint Commissioners of Commercial Taxes of Bureau of Investigation (IB), Vigilance and Monitoring, along with other Deputy/Assistant Commissioners of Commercial Taxes.

The organisational chart of the department is as under:



The State is divided into five commercial taxes divisions¹, each under the charge of a Joint Commissioner (Administration) and 28 circles², each under the charge of a Deputy/Assistant Commissioner of Commercial Taxes (DCCT/ACCT). The DCCT/ACCT of the circle, who is responsible for levy and collection of tax due to the Government, besides 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 Results of audit

We planned for test check of records of 25 annual units and two biennial units out of the total 45 units of Commercial Taxes Department during 2015-16 and

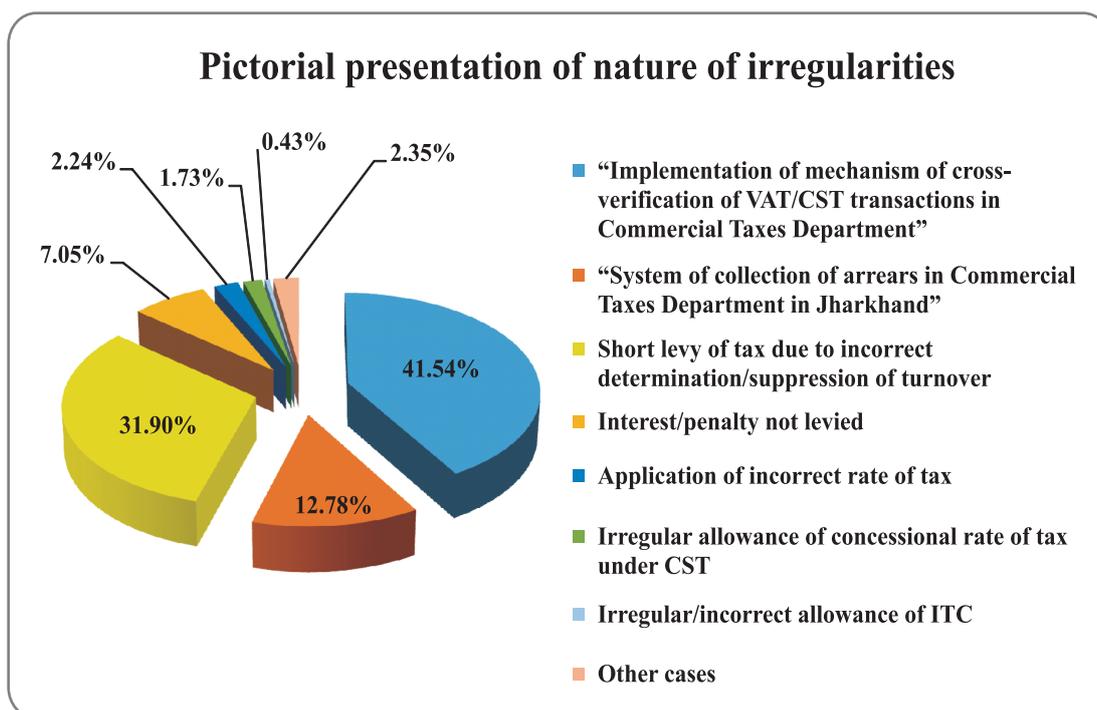
¹ Dhanbad, Dumka, Hazaribag, Jamshedpur and Ranchi.

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

test checked all the above planned units³, which collected revenue of ₹ 7,807.49 crore, relating to ‘VAT/Taxes on Sales, Trade etc.’ Our Audit revealed under-assessment of tax and other irregularities involving ₹ 2,952.62 crore in 597 cases, which fall under the following categories as given in the **Table –2.1**.

Table – 2.1

| Sl. No. | Categories | ₹ in crore) | |
|--------------|---|--------------|-----------------|
| | | No. of cases | Amount |
| 1 | Implementation of mechanism of cross-verification of VAT/CST transactions in Commercial Taxes Department | 1 | 1,226.44 |
| 2 | System of collection of arrears in Commercial Taxes Department in Jharkhand | 1 | 377.28 |
| 3 | Short levy of tax due to incorrect determination/suppression of turnover | 207 | 941.78 |
| 4 | Interest/penalty not levied | 120 | 208.10 |
| 5 | Application of incorrect rate of tax | 49 | 66.01 |
| 6 | Irregular allowance of concessional rate of tax under CST | 38 | 51.05 |
| 7 | Irregular/incorrect allowance of ITC | 30 | 12.61 |
| 8 | Other cases | 151 | 69.35 |
| Total | | 597 | 2,952.62 |



During the year, the Department accepted under-assessment and other deficiencies of ₹ 2,151.03 crore in 168 cases, out of which ₹ 2,150.38 crore in

³ Offices of DCCT/ACCT, Adityapur, Bokaro, Chaibasa, Chirkunda, Deoghar, Dhanbad, Dhanbad Urban, Giridih, Godda, Gumla, Hazaribag, Jamshedpur, Jamshedpur Urban, Jharia, Katras, Koderma, Lohardaga, Pakur, Palamu, Ramgarh, Ranchi East, Ranchi South, Ranchi Special, Ranchi West, Singhbhum and Tenughat and Commissioner, Commercial Taxes, Ranchi.

128 cases were pointed out by us in 2015-16 and rest in earlier years. An amount of ₹ 2.43 crore was realised in 30 cases.

In this chapter we present two audits on “**Implementation of mechanism of cross-verification of VAT/CST transactions in Commercial Taxes Department**” and “**System of collection of arrears in Commercial Taxes Department in Jharkhand**” having financial implication of ₹ 1,603.72 crore and a few illustrative cases having financial implication of ₹ 546.66 crore. The Department accepted all the audit observations having financial implication of ₹ 2,150.38 crore which are discussed in the succeeding paragraphs.

2.3 Implementation of mechanism of cross-verification of VAT/CST transactions in Commercial Taxes Department

2.3.1 Introduction

The JVAT Act 2005 provides for a Bureau of Investigation (IB) to function under the control and supervision of the Commissioner of Commercial Taxes (CCT) and shall discharge such duties as may be assigned to it from time to time. By an order issued in August 2009 by the CCT, the Divisional IB under the JCCT (Administration) was entrusted with the task to verify additional places of business and entries in their registration certificates in accordance with CST Act 1956 for dealers making inter-State stock transfers, to inspect big manufacturers/dealers and to collect data regarding purchases/imports made by them from State/Central undertakings and railway godowns.

The Commissioner also directed IB to obtain the data of purchases/receipt in respect of big manufacturers/undertakings/dealers and cross-verify the same with their returns in order to check the evasion/avoidance of tax. Further, the JVAT Act also empowers the Commissioner to collect statistics from all dealers or any class of dealer or persons for better administration of the Act.

2.3.2 Audit objective

Audit was conducted with an objective to examine whether the mechanism of cross-verification of transactions with other Departments, was adhered to in order to safeguard Government revenue.

2.3.3 Audit criteria

- Jharkhand Value Added Tax Act 2005;
- Jharkhand Value Added Tax Rules 2006;
- Central Sales Tax (CST) Act 1956;
- Central Sales Tax (Registration and Turnover) Rules 1957;
- Central Sales Tax (Jharkhand) Rules 2006; and
- Notifications/instructions issued from time to time.

2.3.4 Audit Scope and Methodology

2.3.4.1 Audit was conducted between July 2015 and June 2016 covering the period 2010-11 to 2014-15 along with regular compliance audit. We cross-verified the data/information collected from State Government Departments/Central Government Departments, Private/Public Sector

Undertakings with assessment records of dealers/contractors to detect evasion of tax as well as identification of unregistered contractors/dealers.

2.3.4.2 Collection of data was made from the following Departments/Corporations of Government of Jharkhand: - **State Excise and Prohibition Department** (Quantity and value of India Made Foreign Liquor (IMFL) dispatched/sold, import fee and excise duty paid), **Mines and Geology Department** (Quantity of minerals extracted and dispatched), **Jharkhand Bijli Vitran Nigam Ltd. (JBVNL)/Public Works Divisions** (Gross payment made to contractors for execution of works contract).

2.3.4.3 Collection of data from Departments/Public Sector Undertakings (PSUs) of Government of India (GOI) was made from **Central Excise Department** (Annual Financial Information Statement in Form-ER-4), **Central Coal Fields Limited** (Audited Annual Accounts of the concerned coalfield areas), **Directorate of Systems, Central Excise and Customs** (CIF value of goods imported from outside the Country in the State of Jharkhand), **Indian Railways** (Gross payment made to suppliers of Jharkhand for supply of stone ballast) and **Indian Bureau of Mines** (Quantity of minerals dispatched, average price and royalty paid by the lessees of Jharkhand).

2.3.4.4 Collection of data was also made from the assessment records of the dealers registered in Commercial Taxes Department.

2.3.4.5 Cross-verification of the data obtained from the above department(s) was carried out with the returns filed by a dealer.

An exit conference was held on 2 August 2016 with the Principal Secretary-cum-Commissioner, Commercial Taxes Department, Government of Jharkhand in which the findings, conclusion and recommendations of the audit were discussed. The views of Government/Department have been suitably incorporated in the report.

2.3.5 Acknowledgement

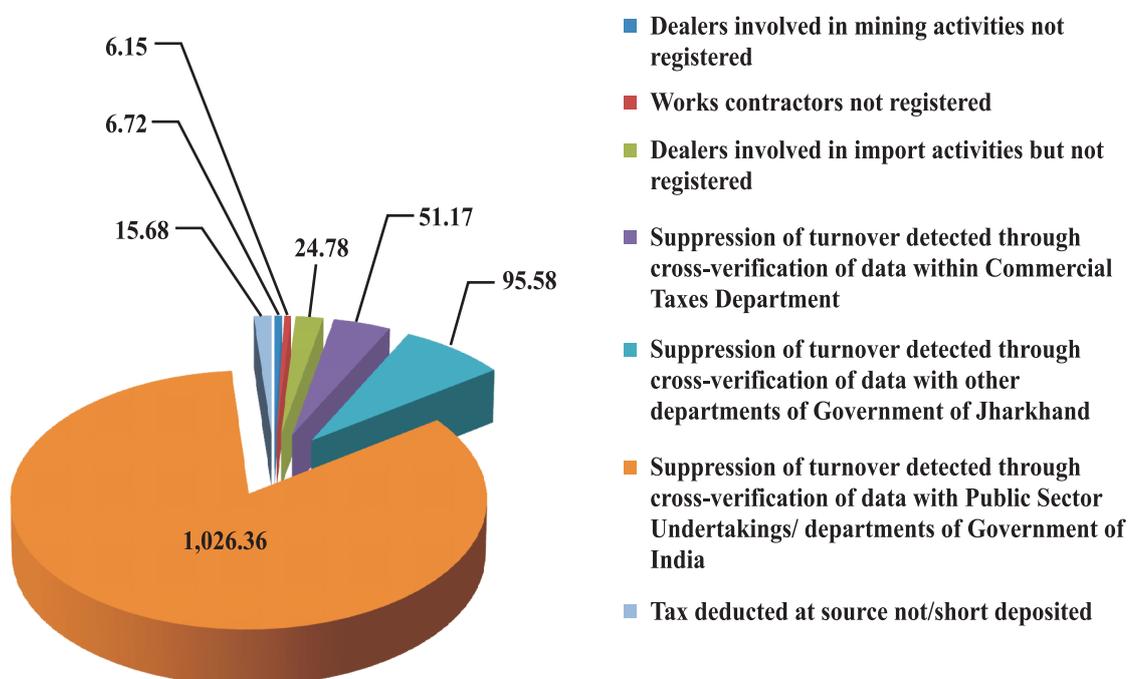
The Indian Audit and Accounts Department acknowledges the co-operation of the Commercial Taxes Department, Government of Jharkhand and other Departments of Government of Jharkhand and Government of India in providing the necessary information and records to Audit.

Audit Findings

The data collected from the above mentioned departments in respect of 790 dealers pertaining to the period 2010-11 and 2014-15 was cross-verified with the records⁴ filed by the dealers and the database maintained in the CTD. We noticed that the implementation of mechanism of cross-verification of VAT/CST transactions prescribed in the Act was deficient which resulted in leakage of revenue of ₹ 1,226.44 crore, noticed in case of 412 dealers out of 790 dealers test checked. These findings are discussed in the succeeding paragraphs. A pictorial diagram depicting nature of irregularities has been shown below:

⁴ Assessment order passed by the assessing authority, periodical returns filed by the dealer, VAT Audit Report in JVAT-409 and registration certificates of the dealers.

Pictorial diagram of irregularities involving ₹ 1,226.44 crore
(₹ in crore)



2.3.6 Eligibility criteria for registration of dealers with CTD

Section 25 of the JVAT Act provides that no dealer shall, while being liable to pay tax, carry on business unless he has been registered. According to Section 8(5) of the Act and notification issued thereunder, the dealers were liable to get themselves registered based on a specified quantum of turnover as shown in the **Table - 2.2**.

Table-2.2

| Category of dealers | Quantum (₹) |
|--|-------------|
| Persons dealing in mining of stone chips/boulders etc. | 1,00,000 |
| Persons dealing in works contract | 25,000 |
| Persons dealing in trading activities | 5,00,000 |
| Persons dealing in import of goods from outside the Country and purchase from other States for sale in Jharkhand | Nil |

Further, Section 38 provides that if a dealer liable to pay tax, in respect of any period, has failed to get himself registered under the Act, the prescribed authority shall proceed to assess the dealer to tax to the best of his judgement and may also direct the dealer to pay by way of penalty a sum equal to the amount of tax so assessed or ₹ 10,000 whichever is greater.

2.3.6.1 Dealers engaged in mining activities but not registered

Cross-verification of data collected from Mining Department/Indian Railways revealed that 204 lessees, whose supply turnover crossed the threshold limit, were not registered with the CTD because of which tax of ₹ 6.72 crore including penalty was not assessed.

We obtained (between August 2015 and June 2016) the data of stone chips/boulders extracted and despatched by the lessees from three District



Mining Offices⁵ on a test check basis and found that 203 lessees, out of 268 lessees, had despatched 9.30 lakh cubic meter of stone chips/boulders between 2010-11 and 2014-15 valued at ₹ 23.19 crore⁶. Our cross verification of the database of the CTD revealed that these lessees were not

registered despite their turnover exceeding the specified quantum of ₹ 1 lakh, as per prevailing law. Consequently, tax of ₹ 6.32 crore including penalty was not levied.

Further, in case of a dealer of Pakur Commercial Taxes Circle, it was noticed



that the dealer was granted registration with tax liability from 1 November 2011. However, cross-verification of data received from Divisional Railway Manager (DRM), Adra revealed that the dealer had actually received payment of ₹ 1.60 crore for supply of stone ballast during 2010-11. Thus, the dealer was liable to pay tax of ₹ 40.00 lakh including penalty of ₹ 20.00 lakh for the period 2010-11.

Test check revealed tax of ₹ 6.72 crore including penalty was not assessed (Appendix-I).

After we reported the matter to the Department/Government in June 2016, the Department/Government accepted (August 2016) the audit observations in the exit conference and stated that action to distinguish the unregistered dealers

⁵ Giridih, Gumla and Ramgarh.

⁶ Calculated at the minimum Government rate: 2010-11- ₹ 230/M³, 2011-12 and 2012-13- ₹ 260/ M³ and 2013-14 & 2014-15- ₹ 354/ M³.

and recovery thereof would be taken in a time bound manner. It was, further, stated that the data of dispatches of major/minor minerals by the lessees of Jharkhand would be procured from all the mining offices of the State. Subsequently, the Department raised demand of ₹ 1.75 crore in case of 23 lessees pertaining to Ramgarh Commercial Taxes Circle and recovered ₹ 0.67 lakh (August 2016). Further reply has not been received (October 2016).

2.3.6.2 Works contractors not registered

The department did not utilise the details of Tax Deducted at Source (TDS) of sub-contractors available in the assessment records of main contractors to detect 71 unregistered sub-contractors. Consequently, tax of ₹ 6.15 crore including penalty was not levied.

We noticed (January 2016) from test check of assessment records⁷ of four works contractors, registered in Ranchi East and Ranchi South Commercial



Taxes Circles, that the above contractors had made payments of ₹ 243.61 crore to 223 sub-contractors during 2010-11 and 2011-12 for execution of works contract and had availed exemption from levy of tax. We cross-verified the database of the CTD and found that 71 out of 223 sub-contractors, who received payments of ₹ 23.47 crore, were not registered, though they had

crossed the threshold limit of ₹ 25,000. The Assessing Authorities (AAs) assessed the main works contractors but did not identify those 71 unregistered sub-contractors. Thus, tax of ₹ 6.15 crore including penalty payable by the sub-contractors was not levied.

After we reported the matter to the Department/Government in June 2016, the Department/Government accepted (August 2016) the audit observations in the exit conference and stated that the tax effect would be meagre due to TDS of four *per cent* already being deducted by the main contractor. However, they assured to take corrective measures to register the sub-contractors after proper verification in a time bound manner. Our response was that the rate of TDS was two *per cent* during 2010-11 and VAT on materials consumed in execution of works contract varies between five and 14 *per cent*. Thus, the reply was not in order and the Department may take necessary steps to bring those 71 unregistered contractors under tax net. Further reply has not been received (October 2016).

⁷ Assessment order passed by the assessing authority, JVAT-409 and TDS certificates.

2.3.6.3 Dealers involved in import activities but not registered

Goods imported by two unregistered dealers were not detected and tax and penalty of ₹ 24.78 crore was not levied.

We collected (June 2016) data for import of goods from outside the Country into Jharkhand from Directorate General of Systems, Central Excise and Customs, New Delhi. We test checked (June 2016) the transactions of 21 dealers who had imported goods from outside the Country, out of which two dealers had imported mobile phones with accessories and furniture worth ₹ 226.01 crore between 2012-13 and 2013-14. We cross-verified the database of the CTD and found that the above two dealers were not registered with CTD. Thus, dealers involved in import activities were not detected and tax of ₹ 24.78 crore including penalty was not levied as shown in the **Table -2.3**.

Table -2.3

(₹ in crore)

| Sl. No. | Name of the Circle Name of the dealer | Address | Commodity | Period | Value of goods imported | Rate of tax (%) | Tax payable Penalty leviable | Total |
|--------------|--|--|--|---------------------------|-------------------------|-----------------|---------------------------------|--------------|
| 1 | Jharia Guljar Ahmad | H. NO.-124, Village – Idgah Muhalla, Patherdih, Dhanbad | Mobile Phone with double SIM with/without T.V., headphone, back cover etc. | 2012-13 | 213.87 | 5 | $\frac{10.69}{10.69}$ | 21.38 |
| 2 | Deoghar Bhuneshwar Nath | S/o Kunwar Dwarika Nath Jalsar Road, H Sah Lane, Near Jagdamba Ashram, Deoghar | Furniture | 2012-13 and 2013-14 | 12.14 | 14 | $\frac{1.70}{1.70}$ | 3.40 |
| Total | | | | | 226.01 | | | 24.78 |

After we reported the matter to the Department/Government in June 2016, the Department/Government accepted (August 2016) the audit observations in the exit conference and stated that matter would be looked into and tax along with penalty would be imposed. Further, on being pointed out by audit that presently no declaration forms have been prescribed to keep a check on goods imported from outside the country, the Department stated that possibility would be explored to devise some mechanism to check proper accountability of import of goods. Subsequently, the Department detected the unregistered dealer under the jurisdiction of Jharia Commercial Taxes Circle, gave the dealer reasonable opportunity of being heard and raised (August 2016) a demand of ₹ 21.38 crore. Further reply has not been received (October 2016).

We recommend that the Government may consider conducting periodic surveys and inter/intra departmental exchange of data to identify unregistered dealers along with proper monitoring at the apex level to bring them under tax net.

2.3.7 Suppression of sale/purchase turnover(s)

Under the provisions of Section 40(1) read with Section 37 (6) of the JVAT Act, 2005 and the Section 9 of the CST Act, if the prescribed authority has reasons to believe that the dealer has concealed 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 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. Further, according to the provisions of Section 40(2) of the Act, if the prescribed authority upon any information for concealment or suppression of turnover, which has come into his possession before assessment or otherwise, shall direct the dealer to, in addition to any tax payable, pay by way of interest, a sum of five *per centum* for each month of such suppression. Further, interest was replaced with penalty, with effect from July 2014, which is equivalent to thrice the amount of the additional tax so assessed.

2.3.7.1 Results of cross verification conducted within CTD

Cross-verification of intra-departmental data revealed suppression of purchase/sales turnover by 42 dealers and consequent under-assessment of tax and penalty of ₹ 51.17 crore.

We test checked (between August 2015 and April 2016) the assessment records of 278 dealers, out of which 42 dealers of coal, iron ore, iron & steel and works contract materials registered in 13 Commercial Taxes Circles⁸ had shown purchase/sale of ₹ 450.58 crore during the period between 2010-11 and 2012-13 on which the assessments were finalised (between June 2013 and March 2015) by the AAs.

We cross-verified the records of the counterparties to the transactions who were registered in the same or other Commercial Taxes Circles in Jharkhand to verify the correctness of transactions reported and found that these dealers had actually purchased or sold goods valued at ₹ 693.49 crore during the above period. Thus, these dealers had suppressed turnover of ₹ 242.91 crore. Though the information regarding sale/purchase was available within the same circle or other circles of the CTD, the AAs failed to cross-verify, as per stipulation, to ascertain the actual turnover. This resulted in under-assessment of tax of ₹ 51.17 crore including penalty (**Appendix-II**).

After we reported the matter in June 2016, the Department/ Government agreed with the audit observation and stated that the concerned Commercial Taxes Circles would be instructed to take appropriate action. Further reply has not been received (October 2016).

2.3.7.2 Results of cross verification conducted from other departments of Government of Jharkhand

Cross-verification of data obtained from other departments of Government of Jharkhand revealed suppression of purchase/sale turnover by 25 registered dealers and consequent under-assessment of tax and penalty of ₹ 95.58 crore.

We collected data from Works Department(s)/Excise & Prohibition Department/JBVNL regarding payment received for works contract/

⁸ Adityapur, Dhanbad, Dhanbad Urban, Giridih, Jamshedpur, Jharia, Katras, Palamu, Ranchi East, Ranchi South, Ranchi Special, Ranchi West and Tenughat.

sale/purchase/excise duty, license fee, import fee for dealers registered in Jharkhand and cross-verified it with their returns available in CTD. We noticed (between October 2015 and January 2016) from the assessment records that out of 75 dealers, 25 dealers registered in four Commercial Taxes Circles⁹, dealing in IMFL and works contract materials, had shown purchase/sale of ₹ 104.70 crore during the period between 2010-11 and 2012-13 on which the assessments were finalised (between January 2012 and March 2015) by the AAs. However, we noticed that these dealers had made transactions worth ₹ 333.20 crore resulting in suppression of turnover of ₹ 228.50 crore. Thus, failure to conduct cross-verification of returns furnished by the dealers with data from other departments of the State Government resulted in under-assessment of tax of ₹ 95.58 crore including penalty (Appendix-III).

After we reported the matter in June 2016, the Department/Government accepted our audit observation in the exit conference (August 2016) and stated that the concerned Commercial Taxes Circles would be instructed to take appropriate action. Subsequently, the Department raised (August 2016) an additional demand of ₹1.16 crore involved in eight cases of Gumla Commercial Taxes Circle. Further reply has not been received (October 2016).

We recommend that the Government may consider strengthening the system of cross-verification of transactions made between the dealers registered with CTD and transactions effected with other departments of Government of Jharkhand on regular basis to prevent evasion of tax.

2.3.7.3 Results of cross verification conducted from departments of Government of India/PSUs

Cross-verification of data obtained from departments of Government of India/PSUs with the returns filed by 64 dealers registered in CTD revealed suppression of purchase/sale turnover and consequent under-assessment of tax of ₹ 1,026.36 crore.



- We collected data from departments of Government of India/PSUs¹⁰ regarding supply/sale/purchase/central excise duty/import of goods from outside the country for dealers registered in Jharkhand and cross-

verified it with the records of their returns in CTD. Out of test checked 169

⁹ Gumla, Ranchi East, Ranchi South and Ranchi Special.

¹⁰ 1. Divisions of Indian Railways at Adra and Chakradharpur 2. O/o the Dy. Chief Engineer (Con), East Central Railway, Patna 3. Indian Bureau of Mines, Kolkata 4. Directorate of Systems, Central Excise and Customs, New Delhi 5. Central Coalfields Limited (Hqrs), Ranchi and 6. O/o the Commissioner, Central Excise, Ranchi and Jamshedpur.

cases, we noticed (November 2015 and June 2016) from the assessment records of 44 dealers of coal, iron casting, calcined alumina, iron ore, stone ballast, furniture, timber etc., registered in 11 Commercial Taxes Circles¹¹ that these dealers had shown purchase/sale of ₹ 11,438.92 crore during the period between 2010-11 and 2013-14 on which the assessments were finalised (between February 2013 and March 2016) by the AAs. However, from comparison of data received for cross-verification, we noticed that the dealers had transactions of ₹ 18,386.57 crore, resulting in suppression of turnover of ₹ 6,947.65 crore. Thus, inadequate implementation of mechanism of cross-verification of returns furnished by the dealers with data from departments of the Central Government or PSUs, resulted in under-assessment of tax of ₹ 650.50 crore including penalty under Section 40(1) of the Act (**Appendix-IV**). A few illustrated cases are shown in the **Table-2.4**.

Table-2.4

(₹ in crore)

| Sl. No. | Name of the Circle TIN | Period | Commodity | Actual turnover Turnover accounted for | Suppression | Rate of tax (%) | Tax payable Penalty leviable | Total |
|---------|--------------------------|--|------------------|--|-------------|-----------------|------------------------------|-------|
| 1 | Chaibasa 20191200625 | 2012-13 | Iron ore | <u>2,502.77</u> 1,047.61 | 1,455.16 | 5 | <u>72.76</u> 0.00 | 72.76 |
| | | We called for the data for quantity and average sale price of iron ore dispatched by the lessees of Jharkhand from IBM, Kolkata and found that the actual value of goods transferred by the dealer was ₹ 2,502.77 crore (on which royalty was paid by the lessee). However, the dealer had shown stock transfer of goods valued at ₹ 1,047.61 crore in the returns on which assessment was finalized. Thus, there was under valuation of goods stock transferred. | | | | | | |
| 2 | Tenughat 20042205379 | 2011-12 | Coal | <u>682.99</u> 245.59 | 437.40 | 5 | <u>21.87</u> 43.74 | 65.61 |
| | | Cross verification of data/information (Profit and Loss account and schedules appended therewith) collected from CCL (Hqr), Ranchi with the assessment records of the dealer revealed that the dealer had actually sold goods valued at ₹ 682.99 crore but the dealer in its VAT returns had shown sale of goods valued at ₹ 245.59 crore only on which the assessment was finalized. | | | | | | |
| 3 | Ramgarh 20021905607 | 2012-13 | Wire rod & Rebar | <u>346.53</u> 83.58 | 262.95 | 5 | <u>13.15</u> 26.30 | 39.45 |
| | | As per Central Excise return (ER4) , the manufacturing expenses was shown as ₹ 346.53 crore, whereas as per VAT records the same was shown as ₹ 83.58 crore, thereby reducing the cost of production, on which the assessment was finalized. | | | | | | |
| 4 | Adityapur 20870900521 | 2012-13 | Motor parts | <u>94.49</u> 2.85 | 91.64 | 10 | <u>9.16</u> 18.32 | 27.48 |
| | | As per data obtained from the DG of Systems, Customs & Central Excise, New Delhi , the actual value of import (including freight, insurance and custom duty) was ₹ 94.49 crore, whereas the dealer had shown it as ₹ 2.85 crore in the sales tax return on which the assessment was finalized. | | | | | | |
| 5 | Pakur 20281305723 | 2011-12 | Stone ballast | <u>9.08</u> 0.00 | 9.08 | 14 | <u>1.27</u> 2.54 | 3.81 |
| | | The dealer had not shown any inter-State sale during 2011-12, however, our cross-verification of data obtained from O/o the DRM, South Eastern Railway, Adra revealed that the dealer had actually supplied stone ballast valued at ₹ 9.08 crore during the above period. | | | | | | |

- Similarly 38 dealers registered in nine Commercial Taxes Circles¹², dealing in auto parts, beverages, biscuit, iron & steel, ferro manganese, timber

¹¹ Adityapur, Chaibasa, Dhanbad, Hazaribag, Pakur, Palamu, Ramgarh, Ranchi East, Ranchi South, Ranchi West and Tenughat.

¹² Adityapur, Dhanbad, Hazaribag, Jamshedpur Urban, Ramgarh, Ranchi East, Ranchi South, Ranchi West and Singhbhum.

etc. had shown purchase/sale of ₹ 5,631.53 crore during the period between 2013-14 and 2014-15 and had paid the taxes accordingly. However, we noticed that the dealers had actually purchased/sold goods valued at ₹ 7,145.79 crore. This resulted in suppression of turnover of ₹ 1,514.26 crore on which the dealers were liable to pay tax of ₹ 375.86 crore including interest/penalty under Section 40(2) of the Act.

Thus, implementation of mechanism of cross-verification of returns furnished by the dealers with data from departments of the Central Government or PSUs was inadequate which led to under-assessment of tax of ₹ 1,026.36 crore including penalty in respect of 64 dealers.

After we reported the matter in June 2016, the Department/Government agreed with the audit observations in the exit conference (August 2016) and stated that the concerned Commercial Taxes Circles would be instructed to procure data from the Central Excise Department for appropriate action. Further reply has not been received (October 2016).

We recommend that the Government may consider creation and periodical updation of a database of transactions made by the dealers of Jharkhand from Departments and Undertakings of Central Government for cross verification of transactions.

2.3.8 Tax deducted at source (TDS) not/short deposited

Cross-verification of TDS deposited into the Government accounts with the assessment records revealed TDS of ₹ 15.68 crore including penalty was not/short deposited by four dealers.

Section 44 of the JVAT Act and notification issued thereunder provide deduction of TDS in advance, by the person, at the rate of two *per cent* on the valuable consideration at the time of making payment for execution of works contract. Sub-section 6 of Section 44 stipulates that if any person fails to pay the whole or any part of the tax, the prescribed authority shall direct him, after giving him a reasonable opportunity of being heard, to pay by way of penalty, a sum equal to the amount of tax which he failed to pay as aforesaid.

We noticed from the assessment records of four dealers registered in Ranchi East and Ranchi West Commercial Taxes Circles that the dealers had shown deduction of TDS on works contract for ₹ 21.39 crore for the period between 2010-11 and 2011-12. We cross-verified from the database of the CTD and the assessment records of the other dealers/sub-contractors registered in the same circle/other circle(s) and found that only ₹ 13.55 crore out of ₹ 21.39 crore was deposited by the dealer. Though the information regarding dealer-wise payment of VAT/TDS was available in the Circles through computerised payment module of the Department, the AAs did not verify the same while finalising the assessment (between March 2014 and March 2015). This resulted in TDS of ₹ 7.84 crore not/short deposited by the dealers, besides the liability to pay penalty of ₹ 7.84 crore for not depositing the collected TDS.

After we pointed out the matter in June 2016, the Department/Government accepted our audit observations in the exit conference (August 2016) and stated that corrective measures would be taken in this regard after proper

verification. Subsequently, an additional demand of ₹ 23.43 lakh was raised in one case of Ranchi East Commercial Taxes Circle and the same was adjusted from the original demand (June 2016). Further, reply has not been received (October 2016).

We recommend that the Government may consider instituting a mechanism for monitoring of TDS collection and their remittances to the treasury through returns.

2.3.9 Conclusion

The implementation of mechanism for cross-verification of transactions in the Department to identify the dealers who are liable for registration was inadequate. The department did not utilise the TDS/sub-contractors details available in the assessment records to detect unregistered dealers. Further, the existing mechanism for collection of data/information of transactions made by the dealers of Jharkhand, from other departments of Government of Jharkhand and Government of India was inadequate resulting in large scale leakage of revenue.

2.3.10 Recommendations

We recommend that the Government may consider:

- Conducting periodic surveys and inter/intra departmental exchange of data to identify unregistered dealers along with proper monitoring at the apex level to bring them under tax net;
- Strengthening the system of cross-verification of transactions between the dealers registered with CTD and transactions effected with other departments of Government of Jharkhand on regular basis to prevent evasion of tax;
- Creation and periodical updation of database of transactions by the dealers of Jharkhand from Departments and Undertakings of Central Government for cross verification of transactions; and
- Instituting a mechanism for monitoring of TDS collection and their remittances to the treasury through returns.

2.4 System of collection of arrears of revenue in Commercial Taxes Department in Jharkhand

2.4.1 Introduction

Assessments are required to be initiated and completed before expiry of three years from the close of the financial year. The tax assessed shall be paid by assesseees in the manner and within the time specified in the notice of demand which shall ordinarily be not less than 30 days from the date of service of such notice. The amount of tax, penalty or any other amount that remains unpaid even after due date of payment in pursuance of the notice, shall be recoverable as arrears of Land revenue under the Bihar and Orissa Public Demands Recovery (BOPDR) Act 1914. The arrears can be recovered from bank balance and sale proceeds obtained after auctioning property. In cases, where defaulter do not own any property in the State but have property in some other State, the assessing authority concerned is required to address the revenue authority of other State. For this purpose, the Revenue Recovery Certificate is required to be forwarded to the Collector of the district of the State in which the defaulters possess property. Provided that where an appeal in respect of such amount has been entertained, the appellate authority may stay recovery of such amount or portion thereof so long as the appeal remains pending.

2.4.2 Audit objectives

We conducted the Audit with a view to ascertain compliance, adequacy and proper enforcement of the provisions of the Act, Rules and departmental instructions as well as adequacy and effectiveness of internal control mechanism in the Department with regard to realisation of dues of tax, penalty/interest or any other dues under the Act.

2.4.3 Scope of Audit and coverage

Audit of system of collection of arrears of revenue in the Commercial Taxes Department (CTD) was conducted between January and May 2016. We selected 10 Commercial Taxes Circles¹³ out of 28 circles in the State by the method of random sampling on the basis of arrears of each circle categorising them into high (₹ 100 crore and above), medium (between ₹ 20 crore and ₹ 100 crore) and low risk (below ₹ 20 crore) involving revenue arrears of ₹ 1,218.62 crore out of total revenue arrears of ₹ 1,830.84 crore as on 31 March 2015 and office of the Secretary cum Commissioner Commercial Taxes Department, Jharkhand for the period covering 2011-12 to 2015-16.

An exit conference was held on 2 August 2016 with the Principal Secretary-cum-Commissioner, Government of Jharkhand in which findings, conclusion and recommendations of the audit were discussed. The views of the Government/Department have been incorporated in the report.

¹³ Adityapur, Deoghar, Dhanbad, Dhanbad Urban, Jamshedpur, Jamshedpur Urban, Ramgarh, Ranchi East, Ranchi South and Singhbhum.

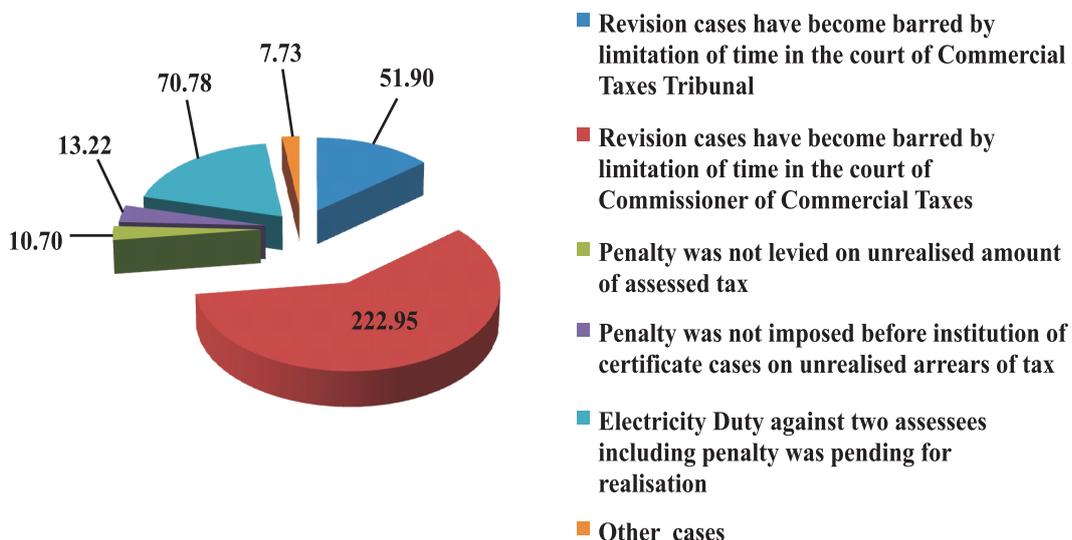
2.4.3.1 Acknowledgement

The Indian Audit and Accounts Department acknowledges the co-operation of the Commercial Taxes Department, Government of Jharkhand for providing necessary information and records to Audit.

2.4.3.2 Audit Findings

The data of arrears was collected from the office of the Commissioner of Commercial Taxes and selected circles. Case records of appeal/revisions and arrears of 1,130 defaulters were scrutinised, out of which, irregularities were noticed in case of 250 defaulters, which are mentioned in the succeeding paragraphs:

**Pictorial diagram of irregularities involving ₹ 377.28 crore
(₹ in crore)**



2.4.4 Trend of arrears of revenue

2.4.4.1 Details of arrears and recovery thereof

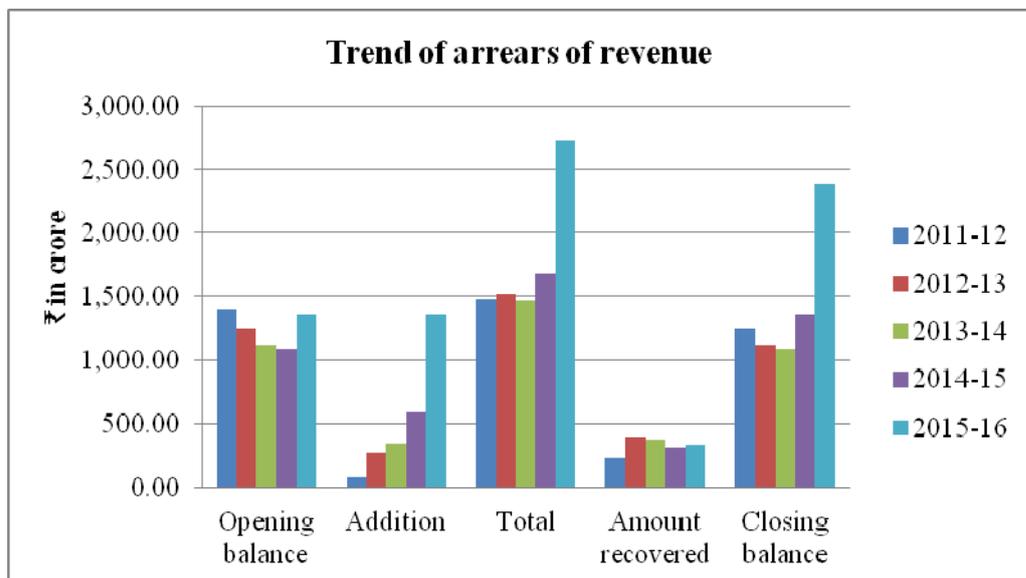
The amount of arrears increased from ₹ 1,406.35 crore as on 1 April 2011 to ₹ 2,384.39 crore as on 31 March 2016, thus registering an increase of 69.54 per cent.

The arrears of revenue pending collection during 2011-12 to 2015-16 as furnished by the Commercial Taxes Department were as under in **Table-2.5**.

Table-2.5

| (₹ in crore) | | | | | | |
|--------------|-----------------|----------|----------|------------------|------------------------|------------------------|
| Year | Opening balance | Addition | Total | Amount recovered | Closing balance | Percentage of recovery |
| 2011-12 | 1,406.35 | 74.87 | 1,481.22 | 230.50 | 1,250.72 | 15.56 |
| 2012-13 | 1,250.72 | 268.58 | 1,519.30 | 402.07 | 1,117.23 | 26.46 |
| 2013-14 | 1,117.23 | 348.41 | 1,465.64 | 376.46 | 1,089.18 | 25.69 |
| 2014-15 | 1,089.18 | 589.81 | 1,678.99 | 315.99 | 1,363.00 ¹⁴ | 18.82 |
| 2015-16 | 1,363.00 | 1,359.27 | 2,722.27 | 337.88 | 2,384.39 ¹⁵ | 12.41 |

Source: Data furnished by Commercial Taxes Department, Government of Jharkhand



It is seen from the above table that arrears increased from ₹ 1,406.35 crore as on 1 April 2011 to ₹ 2,384.39 crore as on 31 March 2016 thus registering an increase of 69.54 per cent, while the rate of recovery in each year ranged between 12.41 and 26.46 per cent with decreasing trend from 2012-13 and dipped to 12.41 per cent in 2015-16.

2.4.4.2 Total revenue raised vis a vis recovery of arrears

The details of revenue raised by the Department during 2011-12 to 2015-16 vis a vis recovery of arrears are depicted in the Table-2.6.

Table-2.6

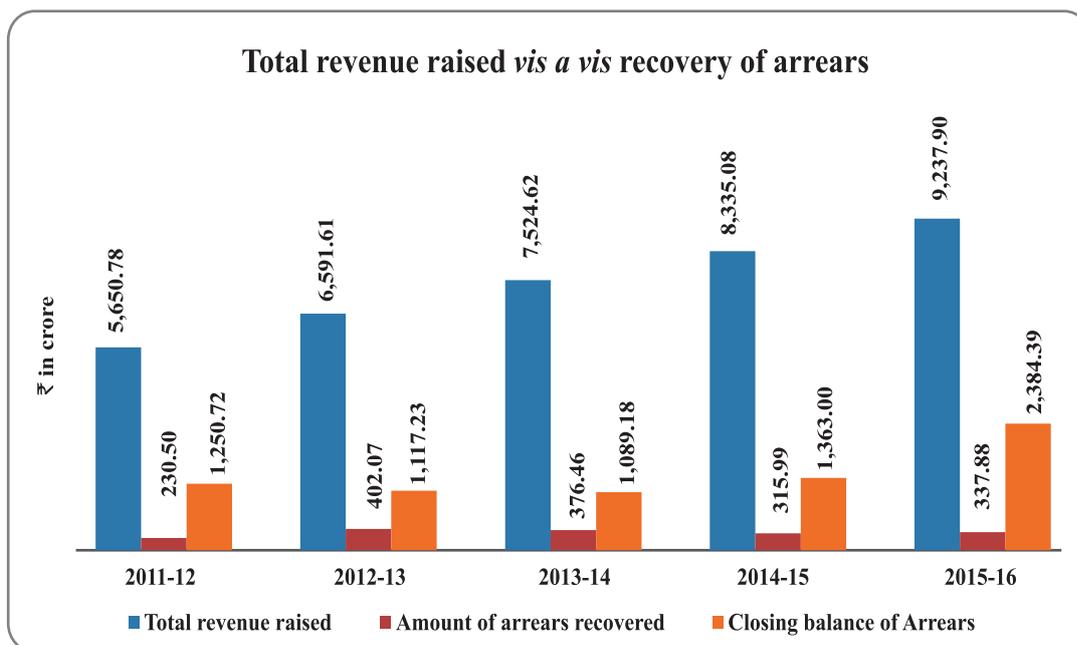
| (₹ in crore) | | | | | |
|--------------|----------------------|-----------------------------|---|----------------------------|---------------------------|
| Year | Total revenue raised | Amount of arrears recovered | Percentage ¹⁶ of Col. 3 to 2 | Closing balance of Arrears | Percentage of Col. 5 to 2 |
| 1 | 2 | 3 | 4 | 5 | 6 |
| 2011-12 | 5,650.78 | 230.50 | 4.25 | 1,250.72 | 23.07 |
| 2012-13 | 6,591.61 | 402.07 | 6.50 | 1,117.23 | 18.05 |
| 2013-14 | 7,524.62 | 376.46 | 5.27 | 1,089.18 | 15.24 |
| 2014-15 | 8,335.08 | 315.99 | 3.94 | 1,363.00 | 17.00 |
| 2015-16 | 9,237.90 | 337.88 | 3.80 | 2,384.39 | 26.79 |

Source: Total revenue raised based on Finance Account, Government of Jharkhand

¹⁴ Commercial Taxes Department has reported the figure ₹ 1,830.84 crore as on 31.03.2015.

¹⁵ Progressive total of the arrears of revenue as on 31.03.2016 has been shown ₹ 2,384.39 crore but total arrears reflected as ₹ 2,936.44 crore by Commercial Taxes Department.

¹⁶ Percentage of arrears recovered and closing balance of arrears has been calculated by excluding arrears recovered from the total revenue raised.



It would be seen from the above that the amount of recovery of arrears of revenue ranged between 3.80 and 6.50 *per cent* of the total revenue raised during the period 2011-12 to 2015-16. This indicated that the rate of recovery of arrears was low and the closing balance of arrears in comparison to total revenue raised was between 15.24 and 26.79 *per cent* which rose sharply in 2015-16.

After we reported the matter to the Department/Government in June 2016, the Department/Government accepted (August 2016) the audit observations in the exit conference and agreed to take necessary action to realise the arrears by nominating a recovery officer in each circle. Further reply has not been received (October 2016)

The Government may consider strengthening the existing mechanism for monitoring the recovery of arrears and take appropriate steps to reduce arrears by constituting a separate recovery cell on the lines of Government of Maharashtra where a separate recovery branch headed by Joint Commissioner (Recovery) is equipped with functional powers to attach bank accounts, movable and immovable properties and auction of properties of defaulters under the Maharashtra VAT Act.

2.4.5 Demand locked up in appeal, revision and courts

There was discrepancy in arrears reported by the Department with those collected from 10 circles. The Department reported ₹ 722.09 crore pending in court, other judicial authorities, Government and rectification/review in the entire State, while information furnished by 10 circles reflected the same at ₹ 1,360.21 crore.

Position of cases pending in Appeal, CCT Court, Tribunal and Court as on 31.03.2015 are as under in **Table-2.7**.

Table-2.7

(₹ in crore)

| Demand locked up in Appeal, Revision and Court as furnished by the Department | Amount involved | Demand locked in Appeal, Revision and Court as furnished by the test checked circles ¹⁷ | No of cases | Amount involved |
|---|-----------------|--|-------------|-----------------|
| High Court and other Judicial authorities | 450.81 | High Court, Supreme Court and Tribunal | 309 | 830.76 |
| Government, Rectification and Review | 271.28 | CCT Court and JCCT Appeal | 672 | 529.45 |
| Total | 722.09 | | 981 | 1,360.21 |

It would be seen from the above table that the Department has reported ₹ 722.09 crore pending in court and other judicial authorities, Government and rectification/review as on 31.03.2015 in entire State, while information furnished by 10 circles reflected ₹ 1,360.21 crore in 981 cases. Thus, the position of pending cases of 10 circles exceeded the pending position furnished by the Department for the entire State. This indicates that position of arrears as furnished by the Department requires reconciliation with the figures provided by the circles. This also points to deficient monitoring of arrears by the Government.

After we reported the matter to the Department/Government in June 2016, the Department/Government accepted (August 2016) the audit observations in the exit conference and agreed to ascertain the correct figure of arrears locked up in appeal, revision and courts and stated that there could be possibility of overlapping of same cases with different appellate authorities. Further reply has not been received (October 2016).

We, however, recommend that Government should take steps to reconcile the difference between overall Departmental figures and those maintained in circles, particularly in view of e-filing of returns and digitisation of data introduced w.e.f July 2011.

2.4.6 Disposal of cases under revision

In the courts of Commercial Taxes Tribunal (CTT) and Commissioner of Commercial Taxes (CCT), 166 revision cases involving ₹ 274.85 crore out of 418 cases filed between January 2010 and March 2014 became barred by limitation of time under the JVAT Act, as mentioned below in the paragraphs 2.4.6.1 to 2.4.6.2.

2.4.6.1 Revision cases pending for disposal in the court of Commercial Taxes Tribunal (CTT)

In the court of CTT, 62 revision cases involving ₹ 51.90 crore out of 298 cases, filed during 7 May 2011 to March 2014 were pending which required disposal within two years from the date of filing cases. These cases have become barred by limitation of time under the JVAT Act.

Under Section 80 (1) and 2 (b) of JVAT Act, 2005, an order passed on an appeal may, on application, be revised by the Tribunal. Any order passed

¹⁷ Adityapur, Deoghar, Dhanbad, Dhanbad Urban, Jamshedpur, Jamshedpur Urban, Ramgarh, Ranchi East, Ranchi South and Singhbhum.

under this Act or an order against which an appeal has been provided, on application be revised by the Tribunal. Further, sub-section (6) of Section 80 was amended from 7 May 2011 to prescribe the time limit of two years for disposal of revision cases by CTT.

Division wise position of pending cases upto May 2016 as furnished by the Tribunal is as under in **Table-2.8**.

Table-2.8

| Name of the Division | No. of cases | Amount | (₹ in crore) | |
|----------------------|--------------|---------------|--|--------------|
| | | | No. of cases pertaining to the period 07.05.11 to March 2014 under VAT Act | Amount |
| Jamshedpur | 92 | 111.49 | 27 | 8.58 |
| Ranchi | 42 | 73.86 | 2 | 1.50 |
| Dhanbad | 64 | 16.71 | 7 | 0.66 |
| Hazaribag | 74 | 116.99 | 21 | 41.03 |
| Santhal Pargana | 26 | 44.18 | 5 | 0.13 |
| Total | 298 | 363.23 | 62 | 51.90 |

From the above it could be seen that 298 cases involving ₹ 363.23 crore were pending for disposal in the court of CTT, Jharkhand up to May 2016. Of which 62 cases involving ₹ 51.90 crore were filed during the period 7 May 2011 to March 2014 related to the JVAT Act. The cases were not finalised within the stipulated period and consequently these cases have become barred by limitation of time. As such, tax of ₹ 51.90 crore could not be realised.

After we reported the matter to the Department/Government in June 2016, the Department/Government accepted (August 2016) the audit observations in the exit conference and stated that the Department was contemplating to bring about necessary amendment regarding limitation of time in the Act. Further reply has not been received (October 2016).

2.4.6.2 Revision cases pending for disposal in the court of Commissioner Commercial Taxes (CCT)

In the court of CCT, 104 revision cases involving ₹ 222.95 crore out of 120 cases filed during 2010 to 2013 required to be disposed of within a period of two years from the date of filing the cases, were pending. These cases have become barred by limitation of time under the JVAT Act.

The JVAT Act and the Rules made thereunder provide for adequate remedies by way of revision to the higher authorities in the Department or to a Tribunal against order passed by the assessing and other authorities under the various provisions in the Act.

The Commissioner of Commercial Taxes Department may on his own motion or on an application, call for and examine the records of any proceedings in which order has been passed by any authority appointed under Section 4 of the Act to satisfy himself as to legality and propriety of such order and may pass such order as he thinks fit after examination of records under sub-section 4 of Section 80 of the Act. Further, sub-section (6) of Section 80 was amended from 7 May 2011 to prescribe the time limit of two years for disposal of revision cases by CCT.

We called for the information regarding revision cases pending for disposal in CCT Court. The information furnished by them is depicted below in the **Table-2.9**.

Table-2.9

| Period | Opening Balance | Addition | Total | Clearance | Closing Balance | Disposal percentage |
|--------|-----------------|----------|-------|-----------|-----------------|---------------------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 (5 to 4) |
| 2011 | 1,277 | 1,398 | 2,675 | 800 | 1,875 | 29.91 |
| 2012 | 1,875 | 1,450 | 3,325 | 800 | 2,525 | 24.06 |
| 2013 | 2,525 | 1,435 | 3,960 | 1,250 | 2,710 | 31.57 |
| 2014 | 2,710 | 1,412 | 4,122 | 1,280 | 2,842 | 31.05 |
| 2015 | 2,842 | 1,400 | 4,242 | 1,240 | 3,002 | 29.23 |

It would be seen from the above table that the pending cases increased from 1,277 as on 1 January 2011 to 3002 as on 31 December 2015, thus registering an increase of 135.08 *per cent*, while the rate of disposal in each year ranged between 24.06 and 31.57 *per cent* with decreasing trend from the year 2013.

We selected 120 cases of revisions for test check involving disputed amount of ₹ 257.24 crore filed between the period 1 January 2010 and 31 December 2013 and noticed that 104 cases involving ₹ 222.95 crore¹⁸ were pending for disposal in the court of CCT till May 2016. These cases were required to be disposed of between December 2013 and December 2015 as per the provisions of the Act. These cases became barred by limitation of time, as such, tax of ₹ 222.95 crore was not realised.

After we reported the matter to the Department/Government in June 2016, the Department/Government accepted (August 2016) the audit observations in the exit conference and stated that the Department was contemplating to bring about necessary amendment regarding limitation of time in the Act. Further it was stated that in the cases where no action/decision was taken and the cases which became barred by limitation of time, the judgment of lower courts would stand. Audit sought clarification on the matter and also asked for the action taken by the Department in form of issuance of demand notices and realisation of amount by the lower court subsequent to cases being barred by limitation of time. The Principal Secretary stated that necessary action would be taken in this regard. Further reply has not been received (October 2016).

The Government may issue instructions for periodic review of cases under appeal/revisions for ensuring disposal of the cases within the stipulated time frame by appointing special Commissioner or delegating the power to the departmental authorities to fast track the cases.

2.4.7 Admission of case under revision

The dealer was required to deposit a sum of ₹ 1.30 crore (i.e. 20 *per cent* of assessed tax of ₹ 6.50 crore) instead ₹ 1.06 crore was deposited by the dealer for admission of the case under revision.

Under the proviso to sub-section 4 of Section 80 of the JVAT Act, 2005, no revision/application shall be admitted unless the dealer objecting to an order of

¹⁸ 13 cases of ₹ 10.80 crore pertain to the period prior to 07.05.2011 and remaining 91 cases involving ₹ 212.15 crore upto December 2013.

assessment or reassessment or appellate order has paid 20 *per cent* of the tax assessed or full amount of admitted tax, whichever is greater from July 2014.

We noticed (May 2016) in Dhanbad Urban Commercial Taxes Circle that a dealer (M/s Ashok Leyland, TIN-20111601279) was assessed to tax of ₹ 6.50 crore under the CST Act on 10 February 2015 for the period 2011-12. The dealer had deposited admitted tax of ₹ 31 lakh. Thus, a Demand Notice No. 15551 dated 10 February 2015 was communicated to the dealer for paying remaining amount of ₹ 6.19 crore. The dealer filed an application for revision (Revision Case No. CCS968/2015) in the court of Commissioner of Commercial Taxes, Jharkhand, Ranchi. The Commissioner directed the dealer to deposit ₹ 75 lakh against the disputed amount for granting stay of realisation of remaining amount till final order.

However, under the provisions of the Act *ibid*, the dealer was required to deposit a sum of ₹ 1.30 crore (i.e. 20 *per cent* of assessed tax of ₹ 6.50 crore) instead ₹ 1.06 crore (₹ 31 lakh and ₹ 75 lakh) was deposited by the dealer.

After we reported the matter to the Department/Government in June 2016, the Department/Government accepted (August 2016) the audit observations in the exit conference and agreed to look into the case. Further reply has not been received (October 2016).

2.4.8 Deficiencies in initiating follow up action for recovery of arrears

Demand notices were either not served or served after inordinate delay ranging between six months and two years one month thus tax and interest of ₹ 5.54 crore was not realised.

A notice of demand for tax, penalty or interest payable under the provisions of the Rule 17 of the JVAT Rules, 2006, is required to be issued specifying the date on or before which it is payable. The service of the notice on assesseees is obligatory before proceedings for recovery of the unpaid amount of tax, penalty or interest are initiated. There is no limit of time prescribed within which demand notice is to be served after finalisation of assessment, however it should be served as early as possible. The notice of demand could be served by fax, email service or by any other electronic means effective from July 2011.

We noticed (between March and May 2016) in seven Commercial Taxes Circles in case of 25 dealers out of 170 dealers that demand notices were either not served or served after inordinate delay for realisation of tax and interest of ₹ 554.02 lakh. Details are as under in **Table-2.10**.

Table-2.10

| (₹ in lakh) | | | | | | |
|--------------|--------------------|----------------|--------------------|--|------------------------------------|----------------|
| Sl. No. | Name of the Circle | No. of dealers | Period of tax | Date of issue of demand notices Date of service of demand notices | Delay in service of demand notices | Arrears Amount |
| 1 | Ranchi South | 3 | 2006-07 to 2008-09 | March 09 and <u>September 10</u> June 10 and March 12 | 15 to 25 months | 40.06 |
| | | 7 | 2006-07 to 2009-10 | March 09 and March 13 | not served | 98.90 |
| 2 | Ranchi East | 2 | 2008-09 to 2010-11 | March 11 and <u>March 14</u> May 12 and September 14 | 6 to 13 month | 5.39 |
| | | 7 | 2001-02 to 2009-10 | February 09 and December 15 | not served | 61.74 |
| 3 | Ramgarh | 1 | 2006-07 | July-11 | not served | 219.33 |
| 4 | Deoghar | 2 | 2011-12 | <u>March 15</u> January 16 and February 16 | 10 to 11 months | 120.20 |
| 5 | Adityapur | 1 | 2009-10 | <u>October 13</u> July 14 | 9 months | 5.23 |
| 6 | Singhbhum | 1 | 2009-10 | <u>May 12</u> February 13 | 8 months | 1.61 |
| 7 | Dhanbad Urban | 1 | 2009-10 | <u>May 15</u> November 15 | 6 months | 1.56 |
| Total | | 25 | | | | 554.02 |

From the above it could be seen that the delay in serving of demand notices ranged between six months and two years one month.

This resulted in consequential delay in collection of revenue and had an overall impact on initiation of further proceedings for realisation of arrears of tax.

In the exit conference the Principal Secretary agreed to fix time frame to issue and service of demand notice after assessment of tax by making necessary amendment in the JVAT Rules. Further reply has not been received (October 2016).

2.4.8.1 Inordinate delay in service of demand notice

The dealer was served demand of penalty of ₹ 41.52 lakh after a lapse of four years and four months of assessment.

We noticed (May 2016) in Ranchi South Commercial Taxes Circle, in case of a dealer (M/s Videocon Industries Ltd., TIN-20050100140, Period-2007-08), that the goods of the dealer were seized during an inspection by the Commercial Taxes Officer on 07 February 2008. As the dealer failed to produce evidence regarding proper accounting of goods, the prescribed authority imposed penalty of ₹ 41.52 lakh under Section 70(5) (b) of the JVAT Act, 2005, and demand notice was issued on 13 February 2008.

The dealer preferred an appeal in the court of JCCT (Appeal) on 29 May 2008. The case was remanded to the circle on 01 July 2008. An ex-parte order for imposing penalty of ₹ 41.52 lakh was made on 28 April 2009 but demand

notice was served upon the dealer after a lapse of four years and four months (August 2013) due to weak monitoring of remand cases and absence of provision of time schedule for serving of demand notice in the Rules.

The assessee preferred an appeal in the court of JCCT (Appeal) again on 21 September 2013 on the grounds of delay in serving of demand notice. The JCCT set aside the earlier order dated 28 April 2009 and remanded the case to circle for fresh order on 21 December 2013. Accordingly, a fresh order for ₹ 38.76 lakh was made and demand notice was again issued (January 2016).

Thus delay in service of demand notice for four years and four months led to loss of interest on uncollected revenue.

In the exit conference the Principal Secretary viewed it seriously and assured to take corrective/disciplinary action. Further reply has not been received (October 2016).

The Government may consider prescribing a time schedule for issue and service of demand notice in order to protect Government revenue.

2.4.9 Penalty not levied on arrears of assessed tax

Penalty of ₹ 10.70 crore was not levied on unrealised amount of assessed tax of ₹ 15.24 crore.

Under the sub section 6 of Section 43 of the JVAT Act, 2005, where a dealer fails to make payment of the tax assessed or interest levied or penalty imposed on him or any other amount due from him within 30 days from the date of service of the notice of demand, the prescribed authority shall direct the dealer to pay in addition to amount due, by way of penalty, a sum equal to two *per cent* of such amount of tax, penalty, interest or any other amount due every month for the period for which payment has been delayed after the date on which such amount was due to be paid.

We noticed (between March and May 2016) from the assessment case records of 34 out of 224 dealers in 10 Commercial Taxes Circles¹⁹ that assessments for the period 2006-07 to 2011-12 were finalised between January 2009 and May 2015 and accordingly demand notices were served upon the dealers between February 2009 and July 2015, but assessed tax of ₹ 15.24 crore remained unrealised upto March 2016. Penalty of ₹10.70 crore, though leviable on arrears of tax, was not levied (**Appendix-V**).

In the exit conference, the Principal Secretary agreed to the observation and assured to take appropriate action in this regard. Further reply has not been received (October 2016).

¹⁹ Adityapur, Deoghar, Dhanbad, Dhanbad Urban, Jamshedpur, Jamshedpur Urban, Ramgarh, Ranchi East, Ranchi South and Singhbhum.

2.4.10 Certified arrears of revenue

Certified arrears involving ₹ 44.68 crore in 229 cases were pending for disposal for more than 10 years.

The Requiring Officer (RO) and Certificate Officer (CO) are jointly responsible for timely disposal of certificate cases and are bound to bring to each other's notice and if necessary to the notice of the collector, undue delay. The RO is primarily responsible for systematic application for certificate, the prompt disposal of objections, if referred to him. The CO is responsible for seeing that no delay occurs in the certificate office and that certificates are promptly made as soon as applied for and the requisite notices are issued under Section 7 of the BOPDR Act 1914.

Further, the provisions of sub-section 7 of Section 43 of JVAT Act 2005 and sub-section 4 of Section 25 of repealed Act (BF Act) provide for recovery of tax due under the Act by treating dues as if they were arrears of land revenue, which can be collected by recourse to certificate proceedings under the BOPDR Act 1914 or Revenue Recovery Act 1890. The proceeding under the latter Act can be initiated also in respect of tax dues of another State from the defaulters residing in the State but recovery will be governed by the local law. Further, under Section 15 of the BOPDR Act, arrears can be recovered by attachment and sale of property or by arrest or by both the methods.

The total certified arrears as on March 2015 as reported by the Commercial Taxes Department was ₹ 162.15 crore. We collected data of certified arrears of revenue from 10 Commercial Taxes Circles. The detail of certified arrears as on March 2015 was as under in **Table-2.11**.

Table-2.11

(₹ in crore)

| Sl. No. | Name of the Circle | No. of cases | Total amount | Amount recovered | Balance | Recovery percentage |
|--------------|--------------------|--------------|--------------|------------------|--------------|---------------------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 (5 to 4) |
| 1 | Dhanbad Urban | 54 | 18.28 | 4.96 | 13.32 | 27.13 |
| 2 | Dhanbad | 127 | 4.28 | 0 | 4.28 | 0.00 |
| 3 | Jamshedpur | 35 | 8.95 | 2.12 | 6.83 | 23.69 |
| 4 | Jamshedpur Urban | 56 | 6.21 | 1.26 | 4.95 | 20.29 |
| 5 | Adityapur | 44 | 13.05 | 0 | 13.05 | 0.00 |
| 6 | Singhbhum | 34 | 7.83 | 0 | 7.83 | 0.00 |
| 7 | Deoghar | 59 | 7.11 | 3.53 | 3.58 | 49.65 |
| 8 | Ranchi East | 24 | 13.65 | 0.04 | 13.61 | 0.29 |
| 9 | Ranchi South | 19 | 7.35 | 0.10 | 7.25 | 1.36 |
| 10 | Ramgarh | 61 | 0.32 | 0 | 0.32 | 0.00 |
| Total | | 513 | 87.03 | 12.01 | 75.02 | 13.80 |

From the above table, it could be seen that the rate of recovery of certified arrears in four circles was nil and in other six Commercial Taxes Circles recovery ranged between 0.29 and 49.65 per cent.

Age-wise pendency of certified arrears of revenue in nine circles²⁰ out of 28 circles was as under in **Table-2.12**.

²⁰ Adityapur, Deoghar, Dhanbad Urban, Jamshedpur, Jamshedpur Urban, Ramgarh, Ranchi East, Ranchi South and Singhbhum.

Table-2.12

(₹ in crore)

| Age wise pendency | No. of cases | No. of circles involved | Amount involved |
|--------------------|--------------|-------------------------|-----------------|
| 20 Years and above | 118 | 8 | 2.36 |
| 10-20 years | 111 | 9 | 42.32 |
| 5-10 years | 52 | 7 | 13.39 |
| 0-5 years | 105 | 6 | 12.67 |
| Total | 386 | | 70.74 |

From the above it could be seen that in 229 cases of certified arrears in nine circles, ₹ 44.68 crore was pending for realisation for more than 10 years.

In the exit conference the Principal Secretary agreed to issue necessary instructions to concern circles for speedy settlement of the arrears involved in certificate cases.

The Government may issue directions for speedy settlement of the arrears cases through constant monitoring by invoking provisions of the Bihar and Orissa Public Demand Recovery Act, 1914.

Illustrative cases of certified arrears

Certified arrears of ₹ 24.35 crore against six certificate debtors remained undisposed due to lack of effective pursuance of cases even after a lapse of more than 13 years to 22 years of filing of the cases.

- We noticed (May 2016) in Adityapur Commercial Taxes Circle in case of M/s Saraikela Glass Works Ltd., Reg. No.-AP 10(R)/1(C) out of 21 dealers, that the dealer had an assessed tax dues of ₹ 974.75 lakh for the period pertaining to 1987-88 to 1992-93 and ₹ 97.91 lakh for the periods 1979-81, 1986-87 and 1993-95 (Total ₹ 1,072.66 lakh). The certificate case was filed for recovery of dues before the court of Deputy Commissioner, Saraikela vide certificate case no. 01/2000-01 and 1 (ST)/ 2002/03. A notice and copy of the certificate was required to be served on certificate debtor under Section 7 of the BOPDR Act but it was not served till 2011. Meanwhile, the company had already closed down its business. The CO also did not invoke Section 15 of BOPDR Act for realisation of the dues.

The Department came to know about liquidation of the company under an official liquidator attached with the Kolkata High Court and submitted its claim to the liquidator in December 2013, the admission of which could not be ascertained. However, there was nothing on record to indicate effective steps taken either by the RO or the CO in this regard (December 2013).

After we pointed out the case, the DCCT stated that efforts were being taken to pursue the case. The fact remains that the arrears of revenue had not been realised even after a lapse of 15 years of filing of certificate case. Further reply has not been received (October 2016).

- We noticed (May 2016) in Dhanbad Urban Commercial Taxes Circle that a certificate case was filed against a dealer M/s Howrah Motors Co. bearing registration no.-DU-111(R), vide case no. 66/ST/1999-2000 in March 2000 for realisation of arrears of revenue of ₹1.42 crore for the period 1993-94 to 1996-97. The Collector in hearing dated 02 December 2011 observed that

the immovable property of certificate debtor had been auctioned by the order of Debt Recovery Tribunal, Kolkata. The Collector directed the Department to file application as per legal procedure in respect of purchaser, M/s Krishna Construction to make him a party to the case under corresponding section of the BOPDR Act. However, no action was taken against the purchaser of the property under the BOPDR Act for realisation of the revenue.

After we pointed this out, the DCCT stated that the matter would be looked into to verify and whether any action could legally be taken against the purchaser. Further reply has not been received (October 2016).

- We noticed (May 2016) in Dhanbad Urban Commercial Taxes Circle in case of a dealer, M/s B K Jaisawal that a certificate case was filed vide case no. 65/ST/1999-2000 in March-2000 for realisation of arrears of revenue of ₹ 233.68 lakh for the period 1998-2000, of which ₹ 85.54 lakh was pending in the court of Jharkhand Commercial Taxes Tribunal since 16 December 2008. The realisable amount was ₹ 148.14 lakh. The delay in finalising the case by the Tribunal affected recovery of the arrears.

After we pointed this out, the DCCT stated that case would be pursued in the Tribunal and the latest update would be communicated. Further reply has not been received (October 2016).

- We noticed (between April and May 2016) in Ranchi East Commercial Taxes Circle that certificate cases were filed during the period 1993-94 to 2002-03 for realisation of arrears of ₹ 985.85 lakh for the period 1980-81 to 1996-97 in respect of three dealers out of 24 dealers having address outside the State (Kolkata) details of which are as under in **Table-2.13**.

Table-2.13

| Case no. and year of filing | Name of the dealer / Reg. No | Period | (₹ in lakh) |
|-----------------------------|--|--------------------|---------------|
| | | | Amount |
| 1(ST)/2002-03 | M/s Ashish Investment, Reg. No. RN(E) - 857(R), Pro- Ganesh Kr. Agrawal, S/o Bala Prasad Agrawal, 15A Everest House, 46E Chourangi Road, Kolkata. | 1987-88 to 1996-97 | 917.09 |
| 4 to 9 (ST)/1995-96 | M/s Poly Art Industries Pvt. Ltd. RN (E) - 650(R)/ 478(C) Kokar Industrial area, Prop. Arun Kr. Khomany, Dilip Khomany S/O Gobind Deo Khomany, Wood Street, Kolkata. | 1989-90 to 1994-95 | 63.68 |
| 2(ST)/1993-94 | M/s Harlalka Enterprises Pvt. Ltd., H B Road Kokar/52/1/A Colony Street, Kolkata. | 1980-81 | 5.08 |
| Total | | | 985.85 |

The RO and CO were jointly responsible for timely disposal of certificate cases and are bound to bring to each other's notice and if necessary, to the notice of the collector, undue delay.

Audit noticed that the RO and the CO did not take any action for realisation of the certified arrears even after a lapse of more than 13 years to 22 years of filing of the cases.

After we pointed out the case, the DCCT stated (July 2016) that the defaulters were not residing on the registered address. The DCCT further stated that efforts were being made to locate the defaulters to realise the arrears.

In the exit conference with the Principal Secretary, the cases related to Adityapur, Dhanbad Urban and Ranchi East circles were discussed in detail and it was assured by the Government to take necessary steps for disposal of the cases. Further reply has not been received (October 2016).

2.4.10.1 Discrepancies in reporting of the certificate cases

Discrepancy between Register-IX and X of ₹ 1.99 crore.

Under the provisions of BOPDR Act, 1914 read with instruction 46 of the Board of Revenue, certificate proceedings initiated for realisation of arrears are entered in register IX maintained in the circle and are required to be sent to the certificate office which enters details in register-X. Further, the CO is responsible for ensuring that no delay occurs in the certificate office. The Board's instruction further stipulated that register-IX and X must be compared every month.

We crossed verified (May 2016) register IX of Dhanbad Commercial Taxes Circle with register X of certificate office concerned and noticed that case no. 22/99-00 filed in March 2000 against a dealer, M/s DATA Cable Pvt. Ltd., Dhanbad, for realisation of arrears for the period 1991-92 to 1993-94 of ₹ 1.99 crore was missing from register IX. The RO did not compare register IX and register X. As such, the certified case was not pursued to realise the arrears.

After we pointed this out, the DCCT stated that register IX would be reconciled with register X in the District Certificate Office. Further reply has not been received (October 2016).

2.4.10.2 Penalty not imposed before institution of certificate case

Penalty of ₹ 13.22 crore was not imposed before institution of certificate cases on unrealised arrears of ₹ 7.31 crore.

The Board of Revenue instruction no. 9 under the BOPDR Act, 1914, provides that interest, if any, at whatever rate allowed by the concerning Act from the date when the demand became due to the date of making certificate, will be included in the demand by the Requiring Officer (RO). As such the RO was required to include the amount of interest/penalty in demand (arrears of tax) under the JVAT Act or the concerning section of the repealed Act before filing of the certificate case.

We noticed (May 2016) from the records of certificate cases in three Commercial Taxes Circles²¹ that out of 54 dealers certificate proceeding against six dealers for realisation of arrears of revenue of ₹ 7.31 crore for the period 1992-93 to 2009-10 were instituted between January 2010 and February 2015. The RO while sending the cases to the CO did not impose penalty of ₹ 13.22 crore for delay in payment of tax, without assigning any reason (Appendix-VI).

In the exit conference the Principal Secretary agreed to take appropriate action. Further reply has not been received (October 2016).

²¹ Dhanbad Urban, Jamshedpur and Singhbhum.

2.4.11 Certificate case not initiated

2.4.11.1 Certificate case not initiated against the closedown business

Certificate proceeding was not initiated even after a lapse of two to three years after service of demand notices.

We noticed (May 2016) in Ramgarh and Ranchi East Commercial Taxes Circles that two dealers had closed down their business without paying tax dues amounting to ₹ 2.42 crore pertaining to the period 2009-10 and 2010-11, assessed in February 2013 and May 2014 respectively. Demand notices were issued between February 2013 and May 2014. However, no certificate proceeding was initiated even after a lapse of two to three years after service of demand notices. Further penalty of ₹ 1.34 crore calculated at the rate of two *per cent* per month from the date on which it became due (between May 2013 and July 2014) till date (March 2016) was also leviable on arrears of assessed tax under Section 43(6) of the JVAT Act 2005 but not levied (October 2016).

In the exit conference the Principal Secretary agreed to take appropriate action. Further reply has not been received (October 2016).

2.4.11.2 Certificate case not initiated for realisation of Electricity Duty (ED)

Electricity Duty (ED) of ₹ 116.98 crore including penalty of ₹ 70.78 crore for the period 2002-03 to 2009-10 was pending for realisation against two assesseees.

Under Section 7 of the BED Act, 1948, any duty or penalty imposed under the Act which remains unpaid is recoverable as if it were an arrear of land revenue. Further, under Section 5-A (2) of BED Act, 1948, if any licensee fails to make payment of duty within due date, the prescribed authority shall impose a penalty which may not be less than two and half *per cent* for first three month following the due date and five *per cent* for each subsequent month.

We noticed (May 2016) in Ranchi South Commercial Taxes Circle in case of two assesseees that assessment for the period 2002-03 to 2009-10 was finalised between March 2008 and October 2013. Accordingly, demand notices were issued between March 2011 and October 2013 for arrears of assessed electricity duty (ED) of ₹ 46.20 crore. Demand notices were served between October 2011 and November 2013 but the same remained unrealised till date (October 2016). The prescribed authority did not invoke provisions of the Act to realise amount of duty without assigning any reason. Besides, penalty of ₹ 70.78 crore for the period November 2011 to March 2016 was also leviable on arrears of assessed amount of electricity duty, but was not levied (**Appendix-VII**).

In the exit conference the Principal Secretary agreed to take appropriate action for realisation of arrears of electricity duty from JSEB. Further reply has not been received (October 2016).

2.4.12 Deferred amount of tax and interest thereon not realised

Amount of ₹ 98.74 lakh including interest of ₹ 22.02 lakh was not realised from the defaulters.

Section 95(3) (ii) of the JVAT Act read with Rule 64 provides that a registered dealer enjoying the facility of exemption for payment of tax under the repealed Act may be allowed to convert the facility of exemption into facility of deferment of payment of tax for the unexpired period or the un-availed percentage of gross value of fixed assets, provided that assessee has been issued fresh eligibility certificate in form in JVAT 408. Further, after end of the deferred period the dealer has to pay deferred tax in ten equal six monthly instalments, failing which, interest is leviable at the rate of two and half *per cent* per month. However, Hon'ble Supreme Court had ordered to pay interest at the rate of one *per cent* in default of payment of deferred tax in case of M/s TATA Steel Co. *vrs.* State of Jharkhand (12.02.2016).

We noticed (May 2016) in Dhanbad Commercial Taxes Circle that six dealers had availed facility of deferment of tax of ₹ 1.29 crore for unexpired period between April 2006 to March 2012, of which two dealers had made payment of total amount of deferred tax of ₹ 10.63 lakh and other two dealers had made part payment of ₹ 41.21 lakh (total ₹ 51.84 lakh). The remaining amount of ₹ 76.72 lakh was not realised from four dealers till May 2016. Interest of ₹ 22.02 lakh, calculated at the rate of one *per cent* per month on arrears of deferred tax though leviable was not levied. Thus, ₹ 98.74 lakh including interest of ₹ 22.02 lakh was not realised from the defaulters.



In the exit conference the Principal Secretary agreed to take appropriate action to realise the arrears. Further reply has not been received (October 2016).

Internal Control Mechanism

Internal controls are intended to provide reasonable assurance of proper enforcement of law, rules and departmental instructions. These also help in the prevention and detection of frauds and other irregularities. The internal controls also help in creation of reliable financial as well as management information systems for prompt and efficient services and for adequate safeguards against evasion of taxes and duties. It is, therefore, the responsibility of the Department to ensure that a proper internal control structure is instituted, reviewed and updated from time to time to keep it effective.

2.4.13 Monitoring of arrears of revenue

The Department neither prescribed any Dues and Collection Register nor did it install an in-built system in the software to monitor realisation of arrears under the JVAT Act.

Under the provisions of the repealed Act (BF Act) the Department had prescribed dues and collection register (Register-VI) to be maintained by each Commercial Taxes Circle to facilitate the monitoring of receipt of returns, deposit of admitted/assessed tax and completion of assessment, balance tax due after deducting the tax deposited etc.

After introduction of the JVAT Act, the Department neither prescribed any such register for depicting details of arrears of tax nor did it monitor the realisation of arrears through a software application. However, we noticed that some of the test checked circles continued maintenance of Register VI for their own convenience. This indicated the failure of internal control system of the Department with regard to monitoring and collection of arrears of revenue.

After we pointed out the matter, the Department accepted the fact that requisite software for monitoring the arrears did not exist and stated that TCS was being instructed to install the software for this purpose.

2.4.14 Human resource management

There was significant shortage of officer (35 per cent) and support staff (67 per cent) in the test checked circles as on March 2016 which affected the working of the collection of revenue arrears.

Availability of manpower is a key factor for smooth and efficient working of a Department. It was noticed that although there was an increase in the arrears during the coverage period but there was severe shortage of manpower. We collected (between April and July 2016) the circle-wise position of sanctioned strength and men- in- position of officers and other support staff from the test checked circles. Sanctioned strength and persons-in-position as on March 2016 was as under in **Table-2.14**.

Table-2.14

| Sl. No. | Name of the circle | Sanctioned strength | | Persons-in-position | | Shortage | |
|--------------|--------------------|---------------------|------------|---------------------|------------|-----------|------------|
| | | Officers | Others | Officers | Others | Officers | Others |
| 1 | Adityapur | 8 | 39 | 6 | 10 | 2 | 29 |
| 2 | Deoghar | 8 | 25 | 4 | 7 | 4 | 18 |
| 3 | Dhanbad | 8 | 36 | 5 | 13 | 3 | 23 |
| 4 | Dhanbad Urban | 12 | 45 | 8 | 11 | 4 | 34 |
| 5 | Jamshedpur | 11 | 36 | 9 | 12 | 2 | 24 |
| 6 | Jamshedpur Urban | 10 | 36 | 6 | 13 | 4 | 23 |
| 7 | Ramgarh | 8 | 23 | 7 | 13 | 1 | 10 |
| 8 | Ranchi East | 8 | 29 | 5 | 9 | 3 | 20 |
| 9 | Ranchi South | 11 | 35 | 5 | 9 | 6 | 26 |
| 10 | Singhbhum | 7 | 22 | 4 | 9 | 3 | 13 |
| Total | | 91 | 326 | 59 | 106 | 32 | 220 |

From the above, it could be seen that there was significant shortage of officer (35 per cent) and support staff (67 per cent) in the test checked circles which affected the collection of arrears of revenue as illustrated in earlier paragraphs.

We recommend that the Government may consider deployment of manpower in accordance with sanctioned strength for effective administration of the Act.

2.4.15 Internal Audit

Internal Audit is vital component of the Internal Control Mechanism and is generally defined as the control of all controls to enable an organisation to assure itself of proper enforcement of laws, rules and departmental instructions. For the purpose of selective audit assessment, VAT Audit Wing exists in the Department but not for the purpose to review the cases of arrears of revenue. The Commercial Taxes Department stated in April 2016 that a team of officers had been authorised to monitor recovery of dues at headquarter level. However, the Department did not furnish the results of monitoring of arrears though called for (July 2016).

2.4.16 Conclusion

The Department has not prescribed any register or established requisite inbuilt system in the application software for monitoring of arrears of revenue. As such, the department could not ascertain the correct position of arrears. Further, the Department had not prescribed time schedule for serving of the demand notice for prompt realisation of revenue and it did not have an effective system and procedure for speedy settlement of arrears by constant monitoring and reviewing of cases pending in Appeal and Revision.

2.4.17 Summary of Recommendations

The Government may consider:

- Strengthening the existing mechanism for monitoring the recovery of arrears and taking appropriate steps to reduce arrears by constituting a separate recovery cell on the lines of Government of Maharashtra where a separate recovery branch headed by Joint Commissioner (Recovery) is functional with powers for attachment of bank account, movable and immovable properties and auction of properties of defaulters on account of arrears as per revenue recovery manual under Maharashtra VAT Act;
- Issuing instructions for periodic review of cases under appeal/revisions for ensuring disposal of the cases within the stipulated time frame by appointing special Commissioner or delegating the power to the departmental authorities to fast track the cases;
- Prescribing a time schedule for issue and service of demand notice in order to protect Government revenue;
- Issuing directions for speedy settlement of the arrears cases by constant monitoring by invoking provisions of the Bihar and Orissa Public Demand Recovery Act, 1914; and
- Deploying manpower in accordance with sanctioned strength for effective administration of the Act.

2.5 Irregularities in determination of actual turnover

Correct determination of turnover is essential for proper assessment and levy of taxes due. This paragraph highlights the suppression of sales/purchase turnover and incorrect determination of turnover involving tax and penalty of ₹294.32 crore as mentioned in the paragraphs 2.5.1 to 2.5.3.

2.5.1 Suppression of sales/purchase turnover under JVAT Act

The Assessing Authorities while finalising the assessments did not verify the returns with the additional information available in other records of the dealer. This led to suppression of actual turnover and consequential under-assessment of tax and penalty of ₹ 284.10 crore.

Under the provisions of Section 40(1) read with Section 37 (6) of the JVAT Act and the Section 9 of the CST 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.

We test checked the assessment records (between June 2015 and March 2016) of 1,677 dealers out of 39,741 dealers registered in 11 Commercial Taxes Circles²². Audit scrutiny revealed that 18 dealers had disclosed purchase/sales turnover of ₹ 1,447.06 crore during the period 2010-11 to 2012-13 through periodical returns and VAT audit report in Form JVAT 409, on which the assessments were finalised (between September 2013 and August 2015). However, our scrutiny of usage and requisition of Forms C and F, annual return, trading account, annual audited accounts in JVAT 409, profit and loss account and details of road permits submitted by these assesseees indicated that they had actually purchased/received/sold goods²³ worth ₹ 2,230.56 crore. Thus, the assesseees had concealed turnover of ₹ 783.50 crore on account of purchase or sale of commodities. This indicated that the assessing authorities (AAs) did not cross verify the returns with the relevant information available in records submitted by these 18 dealers. This resulted in under assessment of tax of ₹ 284.10 crore including penalty of ₹ 189.40 crore.

We mention specific cases in respect of five dealers in five Commercial Taxes Circles based on highest financial implications in **Table-2.15**.

²² Adityapur, Deoghar, Dhanbad, Dhanbad Urban, Giridih, Godda, Jamshedpur, Katras, Ranchi East, Ranchi West and Singhbhum.

²³ Bus bodies, cement, commercial vehicles & spare parts, computer and computer parts, de-sulphurising powder, electrical goods, explosives, firebricks, insulator fittings, iron-ores, MS bars, MS flats, Ms Ingot, railway bogies, rubber products, sponge iron, steel tubes and goods involved in works contract.

Table-2.15

| Sl. No. | Name of the circle No. of dealer | Period Month of assessment | Nature of observations | (₹ in crore) | |
|---------|-------------------------------------|---|---|--|------------------------------|
| | | | | Suppressed turnover Rate of tax (%) | Short levy of VAT Penalty |
| 1 | Adityapur One | 2011-12 February 2015 | The dealer had paid excise duty including cess of ₹ 49.01 crore on manufactured and sold goods. Thus, the actual sale of goods was ₹ 475.86 crore on the basis of excise duty paid but sale turnover was accounted for ₹ 76.43 crore. | 399.43 14 | 55.92 111.84 |
| 2 | Ranchi West One | 2010-11 March 2014 | The dealer issued declarations in Form 'C' for ₹ 464.96 crore for the period 2010-11 but accounted for inter-State purchase for ₹ 316.98 crore. | 147.98 12.5 | 18.50 37.00 |
| 3 | Singhbhum One | 2011-12 November 2014 | The dealer did not include the excise duty of ₹ 85.76 crore paid on purchase of raw materials. | 85.76 14 | 12.00 24.00 |
| 4 | Giridih One | 2011-12 & 2012-13 March & August 2015 | The dealer had shown sales of ₹ 311.98 crore as per audited annual accounts but the assessment was finalised on ₹ 194.02 crore. Thus, the dealer had suppressed sales turnover of ₹ 117.96 crore. | 117.96 5 | 5.90 11.80 |
| 5 | Jamshedpur One | 2010-11 March 2014 | The actual purchase was ₹ 46 crore but the dealer accounted for ₹ 41.85 crore on which assessment was finalised. | 4.15 12.5 | 0.52 1.04 |

We reported the matter to the Government in May 2016; the Government/Department in the exit conference agreed with the observations and stated that appropriate action would be taken (August 2016). Subsequently, the Department raised additional demand of ₹ 2.52 crore in four cases of Giridih Commercial Taxes Circle. Further reply has not been received (October 2016).

2.5.2 Incorrect determination of gross turnover under JVAT Act

Gross turnover was incorrectly determined as ₹ 4,633.45 crore instead of ₹ 4,732.25 crore resulting in under-assessment of tax of ₹ 5.63 crore.

Under the provisions of the Section 2 (xxv) of the JVAT Act, gross turnover (GTO) is the aggregate of all amounts received and receivable by a dealer, including the gross amount received or receivable for execution of works contract or sale of goods made outside the State, in the course of inter-State trade or commerce or export during any given period.

We test checked (between October 2015 and March 2016) the assessment records of 818 dealers out of 14,716 dealers (i.e. 5.5 per cent of the dealers) registered in six Commercial Taxes Circles²⁴ and noticed that in case of eight dealers, the GTO for the period 2009-10 to 2011-12 was determined as ₹ 4,633.45 crore on the basis of annual returns. However, our scrutiny of the monthly returns furnished by the dealers revealed that the actual GTO was ₹ 4,732.25 crore. The AAs while finalising the assessments (between February 2013 and August 2015) did not consider the figures mentioned in the monthly

²⁴ Adityapur, Chaibasa, Hazaribag, Jamshedpur Urban, Katras and Lohardaga.

returns and determined a less GTO without assigning any reason resulting in incorrect determination of GTO by ₹ 98.80 crore. The consequence of this was under-assessment of tax of ₹ 5.63 crore.

We reported the matter to the Government in May 2016; the Government/ Department in the exit conference agreed with the observations and stated that appropriate action would be taken (August 2016). Further reply has not been received (October 2016).

2.5.3 Incorrect determination of taxable turnover under JVAT Act

Grant of excess exemption on labour and other charges under JVAT Rules resulted in short determination of taxable turnover by ₹ 32.98 crore and consequential under-assessment of tax of ₹ 4.59 crore.

Rule 22 of the JVAT Rules provides for determination of taxable turnover for the purpose of works contract after deducting labour cost and other like charges. It further provides that the value of goods used in execution of works contract declared by the contractor shall not be less than the purchase value and if the contractor or VAT dealer has not maintained the accounts to determine the correct value of goods, he shall pay tax at the rate of 14 *per cent* (from 7 May 2011) on the total consideration received or receivable, subject to deductions specified.

We test checked (between July 2015 and March 2016) the assessment records of 989 dealers out of 19,210 dealers (i.e. 5.14 *per cent* of the dealers) registered in five Commercial Taxes Circles²⁵ and noticed in case of 10 contractors, that the taxable turnover (TTO) was incorrectly determined as ₹ 141.15 crore instead of ₹ 174.13 crore on account of grant of excess exemption on labour cost and other such charges for the period 2010-11 and 2011-12. The AAs while finalising the assessments (between May 2012 and March 2015) did not work out the taxable turnover as per Rule *ibid*, resulting in short determination of taxable turnover by ₹ 32.98 crore. This resulted in under-assessment of tax amounting to ₹ 4.59 crore.

We reported the matter to the Government in May 2016; the Government/ Department in the exit conference agreed with the audit observations and stated that appropriate action would be taken (August 2016). Subsequently, the Department raised an additional demand of ₹ 4.63 crore in one case of Jamshedpur Urban Commercial Taxes Circle. Further reply has not been received (October 2016).

2.6 Interest not levied

Interest of ₹ 173.06 crore, though leviable under the provisions of JVAT Act on account of disallowance of claim of stock transfer outside/within the State, inter-State sale on concessional rate of tax, self-consumption of materials/goods, input tax credit and GTO enhanced by the AAs, was not levied. The cases are described in the succeeding paragraphs:

²⁵ Dhanbad Urban, Godda, Jamshedpur, Jamshedpur Urban and Singhbhum.

2.6.1 Interest was not levied on disallowed exemptions and concessions

The assessing authorities levied tax at the prescribed rates on turnover on account of disallowance of exemptions, concessions and input tax credit. However, interest of ₹ 119.92 crore, though leviable, was not levied.

Under the provisions of Section 35 (6) of the JVAT Act read with Section 9(2) of the CST Act and rules framed thereunder, if the self-assessment has not been filed within the prescribed time, the prescribed authority shall assess the amount of tax and interest due from the dealer on the basis of filed returns which have come on records and after making such adjustment as may be necessary including disallowance of exemptions and any other concessions not supported by requisite evidence as required under the Act. Further, Section 30 (1) of the Act provides for levy of interest at the rate of one *per cent* per month from the date of tax payable to the date of payment or to the date of order of assessment, whichever is earlier.

We test checked (between July 2015 and February 2016) the assessment records of 1,398 dealers out of 36,700 dealers registered in nine Commercial Taxes Circles²⁶ and noticed that 19 dealers had claimed exemptions through the periodical returns/JVAT 409 on stock transfer outside/within the State and transit sales, concessions on inter-State sale and input tax credit (ITC) of ₹ 32,525.69 crore during 2010-11 and 2011-12. The AAs while finalising the assessments of these dealers (between February 2014 and March 2015), after making such adjustment as may be necessary, allowed exemptions and levied concessional rate of tax on turnover valued at ₹ 28,048.24 crore. Tax of ₹ 345.77 crore at prescribed rates was levied on the balance turnover of ₹ 4,477.45 crore. However, interest amounting to ₹ 119.92 crore, though leviable under the provisions of the Act *ibid*, was not levied.

We mention specific cases in respect of five dealers in five Commercial Taxes Circles based on highest financial implications as mentioned in the **Table-2.16**.

Table-2.16

| (₹ in crore) | | | | | |
|--------------|-------------------------------------|-------------------------------|---|-------------------------|-------------------|
| Sl. No. | Name of the circle No. of dealer | Period Month of assessment | Nature of observations | Assessed additional tax | Interest leviable |
| 1 | Ranchi West One | 2011-12 March 2015 | The dealer had claimed exemption/ ITC of ₹ 2,340.37 crore on account of non-taxable charges, transit sale and ITC. However, claim of ₹ 619.35 crore was allowed by the AAs and tax of ₹ 188.82 crore was levied on disallowed turnover. Interest, though leviable at the rate of one <i>per cent</i> , was not levied on assessed additional tax. | 188.82 | 66.09 |

²⁶ Adityapur, Chirkunda, Dhanbad Urban, Giridih, Jamshedpur, Jamshedpur Urban, Jharia, Ranchi Special and Ranchi West.

Table-2.16

| (₹ in crore) | | | | | |
|--------------|-------------------------------------|-------------------------------|--|-------------------------|-------------------|
| Sl. No. | Name of the circle No. of dealer | Period Month of assessment | Nature of observations | Assessed additional tax | Interest leviable |
| 2 | Jamshedpur Urban One | 2011-12 February 2015 | The dealer had claimed inter-State stock transfer, inter-State sale at concessional rate and sale to SEZ units of ₹ 28,205.90 crore but furnished declaration in Form 'F','C' and 'T' for ₹ 26,523.75 crore. The AA levied tax of ₹ 83.15 crore but interest leviable at the rate of one <i>per cent</i> was not levied on assessed additional tax. | 83.15 | 28.27 |
| 3 | Jamshedpur One | 2011-12 March 2015 | The dealer had claimed stock transfer, inter-State sale at concessional rate, transit sale and ITC of ₹ 717.98 crore but furnished declaration in Form 'F' 'C',E-I and JVAT 404 for ₹ 36.84 crore. The AA levied tax of ₹ 54.59 crore on disallowed turnover but interest leviable at the rate of one <i>per cent</i> was not levied on assessed additional tax. | 54.59 | 19.11 |
| 4 | Adityapur One | 2011-12 February 2015 | The dealer claimed stock transfer, export sale, inter-State sale at concessional rate and ITC of ₹ 209.29 crore but did not furnish declarations in form 'F', 'C', 'H' and JVAT 404. The AA levied tax of ₹ 8.31 crore on disallowed turnover but interest leviable at the rate of one <i>per cent</i> was not levied on assessed additional tax. | 8.31 | 2.83 |
| 5 | Giridih One | 2011-12 February 2014 | The dealer claimed ITC of ₹ 36.81 lakh but ITC claim was disallowed. However interest, leviable at the rate of one <i>per cent</i> was not levied on assessed additional tax. | 0.37 | 0.13 |

We reported the matter to the Government in May 2016; the Government/ Department in the exit conference agreed with the audit observations and stated that appropriate action would be taken (August 2016). The Department raised additional demand of ₹ 68.32 crore in three cases of three Commercial Taxes Circles²⁷. Further reply has not been received (October 2016).

2.6.2 Interest not levied on enhanced turnover

Interest of ₹ 53.14 crore was not levied while assessing the turnover and tax thereon by AAs under the provisions of section 40(2) of JVAT Act for concealment/suppression of turnover by 15 dealers.

According to the provisions of Section 40 (2) of the JVAT Act, if the prescribed authority upon any information, which has come into his possession before assessment or otherwise, that the registered dealer has concealed any sale or purchase or any particular thereof, with a view to reduce the amount of tax payable by him or has furnished incorrect statement of his turnover or incorrect particulars of his sales or purchase in the return furnished by him,

²⁷ Giridih, Ranchi Special and Ranchi West.

after giving him reasonable opportunity of being heard, he shall direct the assessee, in addition to additional tax assessed on suppressed or concealed turnover, to pay by way of interest a sum at the rate of five *per cent* for each month.

We test checked (between July 2015 and March 2016) assessment records of five *per cent* of the dealers or 1,538 dealers out of 33,298 dealers registered in nine Commercial Taxes Circles²⁸ and found that 15 dealers had filed their returns declaring GTO of ₹ 3,955.14 crore for the period between 2011-12 and 2012-13. The AAs while finalising the assessments of these dealers (between January 2015 and January 2016) re-determined the GTO at ₹ 4,571.31 crore, enhancing it by an additional amount of ₹ 616.17 crore, on account of non/short accounting of goods, suppression of turnover and furnishing of incorrect, incomplete and unreliable books of accounts. However, interest of ₹ 53.14 crore, though leviable under the provisions of Section 40(2) of JVAT Act was not levied.

We reported the matter to the Government in May 2016; the Government/Department in the exit conference agreed with the audit observations and stated that appropriate action would be taken (August 2016). Further reply has not been received (October 2016).

2.7 Irregularities in compliance to the Central Sales Tax Act

Under the provisions of the CST Act 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 ₹ 45.80 crore. The cases are described in the succeeding paragraphs:

2.7.1 Incorrect allowance of concessional rate of tax under CST

Concessional rate of tax was incorrectly levied on disallowed transit sales of ₹ 377.32 crore though they were effected within the State and consequential short levy of tax of ₹ 45.28 crore.

According to Section 6(2) of CST Act, 1956 read with Rule 12(1) and 12(4) made thereunder, sale of any goods in the course of inter-State trade or commerce shall be exempt from tax under this Act, provided the dealer effecting the sale furnishes to the prescribed authority a certificate in Form EI or EII duly signed by the registered dealer from whom the goods were purchased and a declaration in Form 'C' from the party to whom the goods were subsequently sold. Further, Section 3 of the Act provides that a sale or purchase of goods shall be deemed to take place in the course of inter-State trade or commerce if the sale or purchase occasions the movement of goods from one State to another or is effected by the transfer of documents of title to the goods during their movement from one State to another.

²⁸ Adityapur, Chirkunda, Dhanbad, Dhanbad Urban, Hazaribag, Jamshedpur, Jamshedpur Urban, Jharia and Tenughat.

We test checked (November 2015), the assessment record of 110 dealers out of 5,740 dealers (i.e. two *per cent* of the dealers) in Ranchi West Commercial Taxes Circle and noticed that in case of a dealer, during the assessment (March 2015) for the period 2011-12 the AA disallowed the transit sale of ₹ 377.32 crore and treating it as inter-State sale on furnishing of Form 'C' only issued by the purchasing dealers of Jharkhand and levied concessional rate of tax. As the sale and purchase of goods originated and terminated in the same State, tax was to be levied at the appropriate rate applicable in the State instead of concessional rate of tax applicable under CST Act. This resulted in incorrect allowance of concessional rate and consequent short levy of tax of ₹ 45.28 crore.

We reported the matter to the Government in May 2016; the Government/ Department in the exit conference agreed with the audit observation and stated that appropriate action would be taken (August 2016). Further reply has not been received (October 2016).

2.7.2 Under-assessment under CST Act

Grant of excess allowance of concessional rate of tax or application of incorrect rate resulted in short levy of tax of ₹ 52.16 lakh under CST Act.

Under the provisions of Section 8 of CST Act, every registered dealer, who in course of inter-State trade or commerce sells to a 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 two *per cent* provided such sale is supported by declaration in Form 'C' issued by the purchasing dealer and where sale is not supported by declaration in Form 'C', tax is leviable at the rate applicable on sale of such goods in the State.

We test checked (between July 2015 and March 2016) the assessment records of 379 dealers out of 7,968 dealers (i.e. 4.8 *per cent* of the dealers) registered in three Commercial Taxes Circles²⁹ and noticed that in case of three dealers of Dhanbad and Tenughat Commercial Taxes Circles, the AAs while finalising the assessments (between October 2014 and September 2015), levied concessional rate of tax on ₹ 680.25 crore against furnishing of 156 declarations in Form 'C'. However, our scrutiny of records revealed that the aforesaid turnover was inclusive of tax element of ₹ 12.21 crore which was incorrectly treated as taxable turnover. Further, in Adityapur Commercial Taxes Circle we noticed that the AA while finalising the assessment (February 2015) of a dealer levied concessional rate of tax on the turnover of ₹ 15.58 crore on furnishing of 33 declarations in Form 'C' for ₹ 21.33 crore. The AA stated that excess value of Form 'C' of ₹ 6 crore related to another unit of the dealer. We verified the aforesaid form with the records of another unit of the dealer registered in the same circle and noticed that concessional rate of tax was not levied on the aforesaid Form 'C'. In the case of another dealer registered in Adityapur Circle, the dealer did not furnish the declarations in Form 'C' but tax was incorrectly levied at the rate of four *per cent* instead of

²⁹ Adityapur, Dhanbad and Tenughat.

five *per cent* on the turnover of ₹ 3.52 crore. This resulted in short levy of CST of ₹ 52.16 lakh in case of five dealers.

We reported the matter to the Government in May 2016; the Government/ Department in the exit conference agreed with the fact and stated that appropriate action would be taken (August 2016). The Department raised an additional demand of ₹ 26.96 lakh in one case of Tenughat Commercial Taxes Circle. Further reply has not been received (October 2016).

2.8 Application of incorrect rate of tax under JVAT Act

Application of incorrect rate of VAT on bus/truck bodies, cosmetics, generator set, turnover of deemed sale in works contract etc resulted in short levy of tax of ₹ 15.44 crore.

Under the provisions of the Section 9 and 13 of the JVAT Act 2005 and schedules appended thereunder bus/truck bodies, cosmetics, paints, bath showers, generator set, diesel engine spares etc. are taxable at the rate of 14 *per cent* from 7 May 2011. Motor parts are taxable at the rate of 10 *per cent* from 7 May 2011. Further, as per Rule 22(2) of JVAT Rules 2006, disallowed turnover of labour and other like charges of works contractors were to be taxed at the rate of 12.5 *per cent* up to 6 May 2011, thereafter at the rate of 14 *per cent*. It has been judicially held³⁰ that the body of a bus forms an integral part of a motor vehicle and does not come under spare parts or accessories.

We test checked (between July 2015 and March 2016) the assessment records of 968 dealers out of 34,299 dealers (i.e. three *per cent* of the dealers) registered in eight Commercial Taxes Circles³¹ and noticed that 22 dealers dealing in bus/truck bodies, cosmetics, steel chairs, generator set, motor parts diesel engine spares etc. or engaged in works contract had filed their returns for the period between 2011-12 and 2012-13 admitting the rates of tax as one, four, five and 10 *per cent*. However, our scrutiny of assessment records revealed that AA, Adityapur Circle levied tax of ₹ 17.80 crore in case of six dealers on sale of bus/truck bodies at the rate of 10 *per cent* treating it as spare parts instead of ₹ 24.92 crore leviable at the rate of 14 *per cent*. Remaining AAs of seven Circles while finalising the assessments of 16 dealers (between May 2014 and March 2016) levied tax of ₹ 5.86 crore on sale of cosmetics, steel chairs, generator set, motor parts diesel engine spares etc. or engaged in works contract at the rate of one, four and five *per cent* instead of correct rate of 14 *per cent* that would have realized tax of ₹ 14.18 crore. The AAs did not verify the figures mentioned in the returns/records *vis-à-vis* aforesaid provisions and schedules of rates. This resulted in under-assessment of tax of ₹ 15.44 crore on account of application of incorrect rate by the AAs.

We reported the matter to the Government in May 2016; the Government/ Department in the exit conference agreed with the audit observations and stated that appropriate action will be taken (August 2016). The Department

³⁰ Annpurna Carbon Industries Co. vs. State of Andhra Pradesh [1976] 37 STC 378(SC) & Ambala Coach Builders vs State of Haryana & others [1977] 39 STC 44 PH.

³¹ Adityapur, Dhanbad, Giridih, Hazaribag, Jamshedpur, Katras, Ranchi Special and Ranchi West.

raised an additional demand of ₹ 12.94 lakh in one case of Giridih Commercial Taxes Circle. Further reply has not been received (October 2016).

2.9 Incorrect exemptions

Determination of correct exemptions to be allowed is essential for assessment of actual turnover for levy of taxes due. This paragraph contains allowance of incorrect exemptions resulting in under-assessment of tax of ₹11.57 crore.

2.9.1 Incorrect allowance of exemption under JVAT Act

Dealers were allowed incorrect tax exemptions of ₹ 6.08 crore on account of price difference and subsidy, incentive, trade discount, rebate, service charge, petty contract expenses, excise duty etc.

Under the provisions of Section 2(xlii) of JVAT Act, excise duty forms an integral part of purchase price and as per Section 9(5), amended³² from April 2010, where a registered dealer allows any trade discount or incentive, whether in terms of quantity in goods or otherwise, in relation to any sale effected by him, the quantity so allowed as trade discount or incentive, shall be deemed to be a sale by the dealer. Further, exemption on account of petty contract expenses made to unregistered contractors and TDS is not admissible under Rule 22 of JVAT Rules.

We test checked (between July 2015 and March 2016) assessment records of 1,375 dealers out of 37,606 dealers (i.e. 3.6 per cent of the dealers) registered in nine Commercial Taxes Circles³³ and noticed that 13 assesseees had claimed exemption on account of price difference and subsidy, incentive, trade discount, rebate, service charge, petty contract expenses, excise duty and TDS of ₹ 56.56 crore during 2011-12 and 2012-13. The AAs while finalising the assessments (between April 2014 and March 2015) incorrectly granted exemption from tax on the aforesaid turnover in contravention of the provisions *ibid* resulting under-assessment of tax of ₹ 6.08 crore.

We reported the matter to the Government in May 2016; the Government/ Department in the exit conference agreed with the audit observations and stated that appropriate action would be taken (August 2016). Further reply has not been received (October 2016).

2.9.2 Incorrect allowance of exemption

Tax of ₹ 5.49 crore was under-assessed due to allowance of incorrect exemption of ₹ 109.74 crore by the AA.

Under Section 6A of the CST Act and Rule 12(5) made thereunder, submission of declaration in Form 'F' is mandatory for availing exemption from tax on stock transfer of goods made outside the State. In case of transactions not supported by Form 'F', tax is leviable at the appropriate rate applicable in the State. Further, Rule 44 of the JVAT Rules, where any dealer claims exemption from levy of tax on stock transfer of goods within the State

³² SO 1 of 7 May 2011.

³³ Adityapur, Dhanbad, Giridih, Jamshedpur Urban, Palamu, Ranchi East, Ranchi Special, Ranchi West and Singhbhum.

to its branches, the dealer for this purpose shall furnish Form JVAT 506 duly issued by the transferee branch.

We test checked (March 2016) the assessment records of 179 dealers out of 1,470 dealers (i.e. 12.17 *per cent* of the dealers) in Katras Commercial Taxes Circle and noticed that in case of a dealer the AA while finalising the assessment for the period 2011-12 in February 2015, disallowed the claim of ₹ 16.42 crore and ₹ 93.32 crore on account of intra-State and inter-State stock transfers, not supported by declarations in Form 'JVAT 506' and Form 'F' respectively. However, the aforesaid turnover of ₹ 109.74 crore had escaped from levy of tax at the time of finalisation of assessment. This resulted in allowance of incorrect exemption of ₹ 109.74 crore and consequent short levy of tax of ₹ 5.49 crore.

We reported the matter to the Government in May 2016; the Government/ Department in the exit conference agreed with the audit observations and stated that appropriate action would be taken (August 2016). Further reply has not been received (October 2016).

2.10 Irregularities in grant of Input Tax Credit

Extra ITC of ₹ 4.47 crore was allowed due to incorrect application of Rules and adjustment of ITC on sales to unregistered dealers outside the State.

Under the provisions of Section 18 of the JVAT Act, ITC to which the registered dealer is entitled, shall be the amount of tax paid by the registered dealer on purchases made within the State during any tax period and shall substantiate such claim by producing declaration in JVAT 404 issued by the preceding VAT selling dealer, provided the selling dealer shall issue one declaration in respect of one purchasing dealer for the sales made during a year. ITC shall be allowed proportionately in case of stock transfer of goods outside the State; however, no ITC was admissible on inter-State sale to unregistered dealers. Further, Rule 22 of the JVAT Rules 2006 provides where a contractor VAT dealer has not maintained the accounts to determine the correct value of goods, he shall not be eligible to claim ITC.

We test checked (between October 2015 and March 2016) the assessment records of 808 dealers out of 23,454 dealers (i.e. 3.4 *per cent* of the dealers) registered in seven Commercial Taxes Circles³⁴ and noticed that 11 dealers had adjusted ITC of ₹ 199.71 crore from payment of tax for the period between 2011-12 and 2012-13 which included the claim of inter-State sales to unregistered dealers, incorrect apportionment of inter-State stock transfer and incorrect application of Rules. The AAs also while finalising the assessments (between June 2014 and February 2016) allowed ITC of ₹ 199.71 crore. Our scrutiny of declarations in JVAT 404 and details of taxable turnover, however, revealed that there were cases of intra-State stock transfers, inter-State sales to unregistered dealers, incorrect apportionment of inter-State stock transfer, ITC claim for not maintaining the accounts etc. Thus, these dealers were actually entitled for ITC amounting to ₹ 195.24 crore only. This resulted in allowance

³⁴ Adityapur, Chaibasa, Giridih, Hazaribag, Jamshedpur, Katras and Singhbhum.

of excess ITC of ₹ 4.47 crore by the AAs, besides the dealers were also liable to pay interest of ₹ 1.29 crore for availing incorrect ITC.

We reported the matter to the Government in May 2016; the Government/ Department in the exit conference agreed with the audit observations and stated that appropriate action would be taken (August 2016). The Department raised additional demand of ₹ 32.77 lakh in two cases of Giridih and Hazaribag Commercial Taxes Circles. Further reply has not been received (October 2016).

2.11 Purchase tax was not levied

The AAs did not levy purchase tax of ₹ 44.15 lakh on purchase of goods that were capitalised or disposed off otherwise than by way of sale after manufacture.

Under the provisions of Section 10 of the JVAT Act 2005, every dealer liable to pay tax who purchases any goods from a dealer in the circumstances where no tax has been paid under this Act shall be liable to pay tax on the purchase price of such goods, if after such purchase, the goods are used or consumed in the manufacture of goods and such manufactured goods are disposed of otherwise than by way of sale in the State or in the course of inter-State trade and commerce. Further, every dealer, who purchases goods from unregistered dealer and disposed of otherwise, is also liable to pay purchase tax. Such tax shall be levied at the same rate at which tax would have been levied on the sale of such goods within the State on the date of such purchase.

We test checked (between September and December 2015) the assessment records of 236 dealers out of 5,324 dealers (i.e. 4.4 per cent of the dealers) registered in Adityapur and Jharia Commercial Taxes Circles and noticed that in case of two dealers the AAs while finalising the assessments (March 2015) for the period 2011-12 did not levy purchase tax. In one case, a dealer purchased goods of ₹ 2.53 crore from unregistered dealers and capitalised the goods for his business. In case of another dealer, we noticed that out of total manufactured goods of ₹ 184.12 crore, goods of ₹ 28.94 crore were stock transferred outside the State. Our scrutiny further revealed that the dealer had purchased goods of ₹ 5.55 crore from unregistered dealers and consumed it in aforesaid manufacturing process. Thus, dealers were liable to pay purchase tax of ₹ 44.15 lakh on capitalised/apportioned value of stock transfer.

We reported the matter to the Government in May 2016; the Government/ Department in the exit conference agreed with the audit observations and stated that appropriate action would be taken (August 2016). Further reply has not been received (October 2016).

2.12 Penalty not imposed

Penalty of ₹ 26.77 lakh was not imposed for not submitting the VAT audit report prescribed in Form JVAT 409.

Under the provision of Section 63 (3) of the JVAT Act 2005, a dealer with GTO exceeding ₹ 40 lakh in a particular year is required to furnish VAT audit report in Form JVAT 409 within nine months from the end of that year, failing which the AA shall impose penalty equal to 0.1 *per cent* of the turnover as he may determine.

We test checked (November 2015) the assessment records of 101 dealers out of 961 dealers (i.e. 10.5 *per cent* of the dealers) in Lohardaga Commercial Taxes Circle and noticed that a registered dealer had not submitted the VAT audit report in Form JVAT 409 for the period 2009-10 to 2010-11 though the turnover exceeded ₹ 40 lakh in the year. The AA, while finalising the assessments (between March 2013 and March 2014), did not impose penalty of ₹ 26.77 lakh, though leviable as per provisions of the Act, for not submitting the VAT audit report on the determined GTO of ₹ 267.68 crore.

We reported the matter to the Government in May 2016; the Government/ Department in the exit conference agreed with the audit observations and raised an additional demand of ₹ 26.77 lakh (October 2016).