

## CHAPTER II: TAXES ON SALES, TRADE ETC.

### 2.1 Results of audit

Test check of the records relating to assessments and refund of sales tax in various commercial taxes circles, conducted during the year 2006-07, revealed underassessment of tax and other deficiencies involving Rs. 62.82 crore in 365 cases which broadly fall under the following categories:

**(Rupees in crore)**

Sl. No.	Categories	No. of cases	Amount
1.	Non/short levy of tax	98	32.86
2.	Irregular allowance of exemption from tax	56	14.25
3.	Short levy due to incorrect determination of turnover	100	10.86
4.	Non-levy of penalty	18	1.26
5.	Application of incorrect rates of tax	11	0.88
6.	Non-levy of penalty for excess collection of tax/mistake in computation	3	0.37
7.	Irregular allowance of concessional rate of tax	17	0.25
8.	Non/short levy of additional tax and surcharge	14	0.13
9.	Other cases	48	1.96
<b>Total</b>		<b>365</b>	<b>62.82</b>

During the year 2006-07, the department concerned accepted underassessment and other deficiencies of Rs. 2.12 crore in 76 cases of which 10 cases involving Rs. 65 lakh were pointed out during 2006-07 and the rest during the earlier years.

A few illustrative cases involving Rs. 44.80 crore highlighting important observations are discussed in the following paragraphs.

## **2.2 Incorrect determination of turnover**

**2.2.1** Under the Bihar Finance (BF) Act, 1981, sale price means the amount payable to a dealer as valuable consideration in respect of sale or supply of goods. It has been judicially held<sup>1</sup> that duties or taxes paid under the customs, central excise or state excise laws form an integral part of the sale price, whether they are separately charged or not, and whether they are recoverable by the seller alongwith the sale price or at a later date.

**2.2.1.1** In Special circle, Patna, it was noticed in November 2006 that a dealer of petroleum products claimed exemption on account of export sale to Nepal worth Rs. 448.73 crore during 2001-02. The assessing authority (AA) while finalising the assessment in March 2006, disallowed the claim of export sale in the absence of the bill of export and levied tax at the rate applicable in the State treating it as sales made within the State. Excise duty of Rs. 125 crore on disallowed claim was, however, not included in the turnover which resulted in short levy of tax of Rs. 21.87 crore including additional tax and surcharge.

**2.2.1.2** In Special circle, Patna, it was noticed in November 2006 that in the case of a dealer, the AA determined the taxable turnover after adding excise duty of Rs. 161.87 crore and finalised the assessment in March 2006 for the period 2001-02. The actual amount of excise duty by applying the correct rates leviable on the sale of petroleum products was however calculated as Rs. 193.84 crore. Thus, less determination of taxable turnover by Rs. 31.97 crore resulted in the underassessment of tax of Rs. 90.85 lakh including additional tax and surcharge.

After the cases were pointed out, the AAs stated in November 2006 that the case would be examined. Further reply has not been received (November 2007).

**2.2.2** Under the BF Act, gross turnover of a dealer shall be the aggregate of sale prices received including the gross amount received or receivable for the execution of works contract or for the transfer of right to use any goods for any purpose during any given period.

In commercial taxes circle, Sasaram, it was noticed in June 2006 that in case of a dealer engaged in construction of roads, the AA while finalising the assessments in June 2005 for the years 2002-03 and 2003-04 did not include the value of raw materials amounting to Rs. 1.78 crore in the gross turnover. This resulted in short levy of tax of Rs. 17.80 lakh.

After the case was pointed out, the AA stated in June 2006 that the case would be examined. Further reply has not been received (November 2007).

The cases were reported to the Government between January and June 2007; their reply has not been received (November 2007).

## **2.3 Underassessment of the central sales tax**

The Government of Bihar issued a notification in June 1986, under section 8(5) of the Central Sales Tax (CST) Act, 1956, reducing the rate of sales tax

<sup>1</sup> Hindustan Sugar Mills Vrs. State of Rajasthan (1978) 43 STC 13 SC; K.L. Johar & Co. Vrs. State of Kerala (1972) 30 STC 394 ker.

on interstate sale of jute from four to three *per cent*. By another notification issued under the same section of the CST Act in May 1996, industrial units were exempted from the levy of sales tax on interstate sale of manufactured iron and steel. Further, under the CST Act as amended in May 2002, production of form 'C' is mandatory while granting exemption/allowing tax at the reduced rates on the interstate sales. In case of failure to produce declarations in form 'C', tax is leviable at twice the rate applicable in the State in case of declared goods<sup>2</sup> and in case of goods other than declared goods, at the rate of 10 *per cent* or at the rate applicable in the State whichever is higher.

**2.3.1** During test check of the records of Special circle, Patna in November 2006 it was noticed that a dealer claimed concessional rate of tax on account of interstate sales of petroleum products worth Rs. 1,483.63 crore during the assessment years 2000-01 and 2001-02. The AA while finalising the assessments between March 2005 and March 2006, levied tax at the concessional rate, though sales of Rs. 72.33 crore were not supported by the prescribed declarations in form 'C'. This resulted in underassessment of tax of Rs. 9.64 crore including additional tax and surcharge.

After the case was pointed out, the AA stated in November 2006, that the case would be examined. Further reply has not been received (November 2007).

**2.3.2** In two commercial taxes circles<sup>3</sup> it was noticed between June and August 2006 that two dealers claimed exemption/payment of tax at the reduced rate on the interstate sales of iron and steel and jute worth Rs. 18.37 crore during the assessment years 2002-03 and 2003-04. The AA while finalising the assessments between February 2004 and May 2005 allowed the exemption/payment of tax at the reduced rate, though the sales were not supported by declaration in form 'C'. This resulted in underassessment of tax of Rs. 1.30 crore.

After the cases were pointed out, the AAs stated between July and September 2006 that these would be examined. Further reply has not been received (November 2007).

**2.3.3** Under the CST Act read with the BF Act and the rules framed thereunder, no tax shall be payable on the sale or purchase of goods, which take place in the course of export out of the territory of India provided the sale is substantiated by documentary evidence. According to the orders issued by the State Government in March 1986 and August 1991 for exemption from levy of tax on sale in the course of export to Nepal, the transactions must be supported, apart from other evidence, by bills of export granted by the Customs Department of India.

During test check of the records of commercial taxes circle, Danapur in August 2006, it was noticed that though export sale of goods valued as Rs. 49.83 lakh of a dealer during the years 2003-04 and 2004-05 was not supported by the prescribed documentary evidence like bill of export granted by the Customs Department of India, yet the AA while finalising the assessments between May 2005 and January 2006 incorrectly allowed

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<sup>2</sup> Goods of special importance in interstate trade and commerce as described in section 14 of the CST Act.

<sup>3</sup> Danapur and Forbesganj.

exemption on the aforesaid sales treating it as export sales. This resulted in underassessment of tax of Rs. 4.98 lakh including additional tax and surcharge.

After the case was pointed out, the AA stated in September 2006 that the matter would be reviewed. Further reply has not been received (November 2007).

The cases were reported to the Government between April and June 2007; their reply has not been received (November 2007).

## 2.4 Suppression of purchase/sales turnover

Under the BF Act read with the CST Act, if the prescribed authority has reasons to believe that a dealer has concealed, omitted or willfully failed to disclose particulars of turnover or has furnished incorrect particulars of such turnover, the said authority shall 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 the escaped turnover, penalty not exceeding three times but not less than an amount equivalent to the amount of tax on the escaped turnover.

In 10 commercial taxes circles<sup>4</sup>, it was noticed between November 2004 and November 2006, that 35 dealers had purchased/sold goods of Rs. 871.49 crore during the assessment years 2001-02 to 2004-05, as shown in their purchase/sale statements, road permit utilisation statements, utilisation statements of declaration forms<sup>5</sup> and figures furnished by Commissioner of Commercial Taxes (CCT), Bihar but had accounted for only Rs. 823.80 crore in their trading account and returns etc. The dealers thus suppressed purchase/sales of goods of Rs. 47.69 crore. The AAs while finalising the assessments between May 2003 and May 2006, however, failed to detect the suppression of purchase/sales. This resulted in short levy of tax of Rs. 8.04 crore including additional tax, surcharge and minimum penalty as mentioned below:

(Rupees in lakh)

Sl. no.	Name of circle No. of dealers	Period of assessment Month/ Year of assessment	Commodity	Rate applicable (per cent)	Actual purchase Purchase accounted for	Actual sale Sale accounted for	Turnover concealed	Amount of tax, additional tax and surcharge Penalty	Total
1.	Patliputra circle, Patna 6	2001-02 to 2004-05 between 11/03 and 3/06	Motor cycle	12	5,068.93 4,179.67	-	2,327.60	244.26 222.43	466.69
			Fertilizer	6	-	51,784.24 50,345.90			
			Tyre and tube	9					
			Wheat product	10					

<sup>4</sup> Ara, Aurangabad, Bhagalpur, Buxar, Danapur, Hajipur, Jehanabad, Patliputra circle Patna, Sasaram and Special circle Patna.

<sup>5</sup> C, F, IX and CHA.

2.	<u>Danapur</u> 4	2002-03 and <u>2003-04</u> between 1/05 and 5/05	PVC pipe	8	<u>918.56</u>	-	532.83	<u>85.06</u>	162.85
			Foam	10	602.18			<u>77.79</u>	
			India made foreign liquor <sup>6</sup>	25	<u>173.24</u> 85.69	<u>955.05</u> 889.63			
			Iron rod and bar	4	-	<u>265.63</u> 202.14			
3.	Special circle, <u>Patna</u> 5	2003-04 and <u>2004-05</u> between 5/05 and 1/06	Shoe polish	8	<u>21,947.18</u>	-	340.66	<u>36.60</u>	70.02
			Cement	11	21,606.52			<u>33.42</u>	
			Medicine	8					
			Iron & steel	4					
4.	<u>Sasaram</u> 7	2001-02 to <u>2004-05</u> between 5/03 and 5/06	Iron & steel	4	<u>1,781.73</u>	-	575.48	<u>14.88</u>	28.48
			Cement	11	1,206.26			<u>13.60</u>	
			Tractor and its spare parts	1 (AT) <sup>7</sup>					
			Fertilizer	1 (AT)					
5.	<u>Hajipur</u> 4	2001-02 to <u>2003-04</u> between 11/04 and 3/06	G.I. Pipe	4	<u>2,116.38</u>	-	574.47	<u>13.44</u>	26.33
			Fertilizer	1 (AT)	1,553.12			<u>12.89</u>	
			Aluminium utensils	12					
			Bread	4	-	<u>277.13</u> 265.92			
6.	<u>Aurangabad</u> 3	2002-03 and <u>2003-04</u> between 9/04 and 9/05	Fertilizer	6	<u>732.89</u>	--	141.91	<u>12.40</u>	23.82
			Coal	4	590.97			<u>11.42</u>	
			Tractor	4					
			Motor vehicle	12					
			Motor parts	10					
7.	<u>Buxar</u> 3	2001-02 to <u>2003-04</u> 9/04 and 11/04	Coal	4	<u>178.16</u> Nil	--	178.16	<u>7.13</u> 7.12	14.25
8.	<u>Ara</u> 1	<u>2002-03</u> 9/04	Soap and detergent	12	--	<u>859.98</u> 830.00	29.99	<u>4.33</u> 3.93	8.26
9.	<u>Bhagalpur</u> 1	<u>2001-02</u> 9/05	Milk product	8	<u>26.10</u> 16.47	--	9.62	<u>0.96</u> 0.87	1.83
10.	<u>Jehanabad</u> 1	<u>2001-02</u> 1/06	-do-	1(AT)	<u>64.37</u> 5.70	--	58.67	<u>0.64</u> 0.59	1.23
<b>Total</b>					<b><u>33,007.53</u></b>	<b><u>54,142.04</u></b>	<b>4,769.39</b>	<b><u>419.70</u></b>	<b>803.76</b>
					<b>29,846.58</b>	<b>52,533.60</b>		<b>384.06</b>	

<sup>6</sup> The dealer had suppressed both purchase and sales.

<sup>7</sup> Additional tax.

After the cases were pointed out, the AA Patliputra circle, Patna in one case raised a demand in September 2005 for Rs. 1.07 crore and in the remaining cases, the AAs concerned stated between April and November 2006 that the cases would be reviewed/examined. Further replies and report on recovery have not been received (November 2007).

The cases were reported to the Government in March 2005 and June 2007; their reply has not been received (November 2007).

## **2.5 Incorrect allowance of exemption**

**2.5.1** Under the BF Act, the State Government may, by an order published in the gazette, permit any class or description of registered dealers to pay a fixed amount or a fixed percentage of the gross turnover in lieu of the amount of tax payable under the Act, in respect of the sales of any goods or class or description of goods for a specified period on the specified transaction of goods. The State Government in 1993 issued a notification stipulating the payment of compounding tax by the works contractors at the rate of two *per cent* of the gross turnover in lieu of the tax payable under the BF Act.

During test check of the records of Patliputra commercial taxes circle, Patna, in October 2006, it was noticed that two sub-contractors engaged in road construction work were allowed exemption of Rs. 157.83 crore by the AAs while finalising the assessments in October 2004 and September 2005 for the years 2003-04 and 2004-05 on the ground that the main contractor had paid compounding tax of two *per cent* on the entire amount of the turnover. Since the sub-contractors were also registered under the BF Act and did not opt for compounding benefit, liability to pay tax on the goods<sup>8</sup> of Rs. 46.01 crore consumed in execution of works contract rested with them and not on the main contractor. Further, there was no provision for granting the exemption to the sub-contractors either under the BF Act or the aforesaid notification of 1993.

Thus, incorrect exemption allowed to sub-contractors resulted in short levy of tax of Rs. 1.79 crore including additional tax and surcharge, after adjusting the amount of tax deducted at source at the rate of two *per cent* deducted by the main contractor.

After the case was pointed out, the AA stated in October 2006 that the matter would be examined. Further reply has not been received (November 2007).

**2.5.2** Under the BF Act, the State Government by issuing a notification in December 1995 granted exemption to the industrial units for eight or 10 years as the case may be or upto a tax limit of 150 *per cent* of the capital investment whichever was earlier.

In commercial taxes circle, Hajipur, it was noticed in June 2006 that a dealer with capital investment of Rs. 1.44 crore was assessed in September 2005 for the year 2003-04 and was allowed tax exemption upto Rs. 2.21 crore till the month of June 2003, though the prescribed tax limit of 150 *per cent* of the capital investment was Rs. 2.16 crore which was exhausted in April 2003. Therefore, sales made during May and June 2003 to the extent of

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<sup>8</sup> Bitumin, boulder, brick, cement, iron & steel, Reinforced concrete cement, pipe, PVC items, sand etc.

Rs. 1.28 crore were incorrectly exempted which resulted in underassessment of tax of Rs. 5.13 lakh.

After the case was pointed out, the AA stated in June 2006 that the matter would be examined. Further reply has not been received (November 2007).

The cases were reported to the Government in April 2007; their reply has not been received (November 2007).

## **2.6 Non-levy of purchase tax**

Under the BF Act, every dealer who purchases goods on which no sales tax is payable or has been paid and either consumes such goods in the manufacture of other goods for sale or otherwise or disposes such goods in any manner other than by way of sale in the State or sale in the course of interstate trade, shall be liable to pay tax on the purchase price.

In Patliputra commercial taxes circle, Patna, it was noticed in October 2006 that a dealer purchased taxable goods<sup>9</sup> valuing Rs. 7.21 crore from unregistered dealers within the State during the assessment year 2002-03 and consumed these in the manufacture of cattle feed, a tax free commodity in Bihar. The AA, however, while finalising the assessment did not levy tax on the purchase value of the aforesaid raw material. This resulted in non-levy of purchase tax of Rs. 60.62 lakh including additional tax and surcharge.

After the case was pointed out, the AA stated in October 2006 that the case would be examined. Further reply has not been received (November 2007).

The case was reported to the Government in May 2007; their reply has not been received (November 2007).

## **2.7 Short levy of tax**

Under the BF Act read with the Bihar Sales Tax Rules, 1983, the State Government by issuing notifications in June 1985 and July 2002 specified certain goods, class or description of goods on which sales tax was leviable at more than one point or on all the points of sale and the amount of sales tax paid at each preceding stage of sale, was to be adjusted against the amount of sales tax payable at each subsequent stage of sale in the prescribed manner.

During test check of the records of four commercial taxes circles<sup>10</sup> between April and October 2006, it was noticed that during the years 2001-02 to 2004-05 six dealers sold goods<sup>11</sup> valued as Rs. 22.44 crore on which tax was leviable at all the points of sale. The AAs while finalising the assessments between May 2004 and March 2006 incorrectly levied tax of Rs. 64.90 lakh instead of Rs. 84.80 lakh resulting in short levy of tax of Rs. 19.90 lakh as mentioned below:

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<sup>9</sup> Jowar, maize, mustard cake, rice bran and wheat bran.

<sup>10</sup> Aurangabad, Biharsarif, Gaya and Patliputra circle, Patna.

<sup>11</sup> India made foreign liquor, soaps and detergents and vacuum cleaners.

(Rupees in lakh)

<u>Name of circle</u> <u>No. of dealers</u>	<u>Commodity</u> <u>Turnover</u>	<u>Tax</u> <u>leviable</u>	<u>Tax</u> <u>levied</u>	<u>Short</u> <u>levy of</u> <u>tax</u>	<u>Remarks</u>
Biharsharif and <u>Gaya</u> 3	Soap and <u>detergent</u> 431.18	7.21	4.74	2.47	The AA levied additional tax and surcharge instead of multipoint tax.
Aurangabad and <u>Patliputra</u> 2	<u>IMFL</u> 1365.78	49.36	36.23	13.13	The amount of tax paid at the preceding stage was incorrectly calculated.
<u>Patliputra</u> 1	Vacuum <u>cleaner</u> 447.01	28.23	23.93	4.30	- do -
<b>Total</b>		<b>84.81</b>	<b>64.90</b>	<b>19.90</b>	

After the cases were pointed out, the AAs concerned stated between April and October 2006 that the cases would be examined. Further replies have not been received (November 2007).

The cases were reported to the Government between February and May 2007; their reply has not been received (November 2007).

## **2.8 Non-realisation of tax due to incorrect adjustment**

Under the Bihar Tax on entry of goods into local area (BTEG) Act, 1993 and the Rules framed thereunder, an importer of scheduled goods becomes liable to pay tax under the BF Act by virtue of sale of such scheduled goods. The liability to pay tax under the BF Act shall stand reduced to the extent of tax paid under the BTEG Act. Further, under the BF Act, if any registered dealer fails to make payment of the admitted tax within the due date or the extended date, the prescribed authority shall impose a penalty as well as interest at the prescribed rates.

During scrutiny of the records of Patliputra commercial taxes circle, Patna, in October 2006, it was noticed that a dealer sold lubricants valued as Rs. 18.19 lakh during the year 2004-05 on which tax of Rs. 4.54 lakh was payable. The dealer, however, instead of paying admitted tax on sale of lubricants, claimed adjustment of entry tax which was paid on the purchase of tractors. This escaped the notice of the AA while finalising the assessments in September 2005. Thus, incorrect adjustment of entry tax paid on the purchase of tractors against tax payable on sale of lubricants resulted in non-realisation of tax of Rs. 11.06 lakh including penalty and interest.

After the case was pointed out, the AA stated in October 2006 that the case would be examined. Further reply has not been received (November 2007).

The case was reported to the Government in May 2007; their reply has not been received (November 2007).

## **2.9 Mistake in calculation of tax**

In two commercial taxes circles<sup>12</sup>, it was noticed in June and October 2006 that two dealers were assessed in March and May 2006 for the periods

<sup>12</sup> Hajipur and Patliputra circle, Patna.



2001-02 and 2003-04 respectively and levied tax of Rs. 22.25 lakh instead of Rs. 27.60 lakh due to mistake in computation of tax. This resulted in short levy of tax of Rs. 5.35 lakh.

After the cases were pointed out, the AAs concerned stated between June and October 2006 that the matter would be examined. Further replies have not been received (November 2007).

The cases were reported to the Government in April and May 2007; their reply has not been received (November 2007).