

CHAPTER- 2: Topics of Special Importance

2.01 Suppression of turnover due to non/short disclosure of Central Excise Duty

Under the provisions of 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 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 recovered by the seller alongwith the sale price or at a later date.

Further, if the prescribed authority has reason to believe that the dealer has concealed, omitted or failed to disclose wilfully the particulars of turnover or has furnished incorrect particulars of such turnover and thereby returned figures below the real amount, the said authority shall assess or re-assess 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, penalty not exceeding three times but not less than an amount equivalent to the amount of tax on the escaped turnover.

(i) Cross verification of assessment records of 41 manufacturing dealers of Cement, C.I. Castings, Auto parts, Industrial gases, Machineries, Tin plate etc. registered with 8 Commercial Taxes Circles¹ with the records maintained in Central Excise Department revealed that the assesseees had disclosed payment of Central Excise Duty amounting to Rs.200.01crore only in their sales tax returns against the actual payment of Rs.325.16 crore as shown in the records relating to payment of Central Excise Duty during the period 1994-95 to 1999-2000 (assessed between November 1996 and April 2000). This resulted in suppression of taxable turnover of Rs. 125.15 crore and consequent short levy of tax of Rs. 27.50 crore including penalty of Rs. 20.40 crore. Of this, in case of 4 dealers² the tax effect was more than Rs. 1 crore each involving total tax effect of Rs. 23.31 crore.

(ii) Cross verification of records of 3 dealers of 2 Commercial Taxes Circles engaged in business of bus, truck body building and cement with returns furnished by them to the Central Excise Department revealed that the dealers had suppressed taxable turnover of Rs. 11.08 crore by short accounting of goods sold between the period 1996-97 and 1998-99 (assessed between November1998 and November 1999). This resulted in short levy of tax of Rs. 5.25 crore including penalty of Rs 3.84 crore as shown in table given below:-

¹ Adityapur, Bokaro, Hazaribagh, Jamshedpur, Koderma, Patliputra, Ranchi (West) and Singhbhum.

² 1. M/s The Tinsplate Co. of India Ltd., Jamshedpur. 2. M/s TRF Ltd., Jamshedpur 3. M/s Tata Cummins Ltd., Jamshedpur 4. M/s Bihar Foundry and Casting Ltd., Ranchi.

(Rupees in crore)

Sl. No	Name of circle Name of the dealer	Period Date of assessment	Commodity Rate (Per cent)	Turnover as per Central Excise return Turnover as per sales tax return	Turnover suppressed	Tax Penalty (leviable)	Total
1	Adityapur Circle, Jamshedpur M/s Tramco Coaches (P) Ltd. Adityapur	1997-98 7/99	Bus Truck Body 10	3.82 1.94	1.88	0.23 0.62	0.85
		1998-99 10/99	-do-	3.59 2.91	0.68	0.08 0.23	0.31
2	Adityapur Circle, Jamshedpur M/s Bhalotia Engineering Works (P) Ltd. Gamaharia	1998-99 11/99	-do-	6.96 3.58	3.38	0.41 1.13	1.54
3	Ranchi West Circle, Ranchi M/s Lemos Cements Ltd. Khelari, Ranchi.	1996-97 11/98	Cement 11	8.67 4.04	4.63	0.62 1.68	2.30
		1997-98 9/99	-do-	3.54 3.03	0.51	0.07 0.18	0.25
Total				26.58 15.50	11.08	1.41 3.84	5.25

On these being pointed out (between October 2000 and June 2001) the department stated (between December 2000 and June 2001) that the cases would be reviewed. Further reply has not been received (March 2003).

The cases were reported to the Government (June 2001); their reply has not been received (March 2003).

2.02 Taxation under Bihar Tax on Entry of Goods Act, 1993

(a) Registration

Every dealer/person dealing in scheduled goods, who is either registered under the BF Act, 1981 or imports goods above specified quantum, is required to be in possession of valid registration certificate under the Bihar Tax on Entry of Goods into Local Areas for Consumption, Use or Sale therein (BTEG) Act, 1993. Failure to apply for registration within seven days of liability may render him liable for penalty, in addition to levy of tax, at the rate of Rs. 50 for each day of default or an amount equivalent to the amount of tax assessed, whichever is less.

Cross verification of records of dealers of scheduled goods of 44 Commercial Taxes Circles³ with the sale statement of scheduled goods supplied by 21 manufacturers (obtained through Sales Tax/Central Excise department) of outside States and 5 manufacturers of Bihar revealed that: -

(i) In 41 Commercial Taxes Circles⁴, 1276 dealers of scheduled goods liable for registration were neither registered under the BTEG Act nor had they paid entry tax on entry of goods valued at Rs. 281.69 crore during the period 1993-94 to 1999-2000 resulting in non-levy of tax amounting to Rs. 24.16 crore including penalty of Rs. 3.03 crore and fine of Rs. 8.50 crore, as detailed below: -

(Rupees in lakh)

Sl No	Name of the Commodity	No. of circles involved	No. of un-registered dealers	Value of goods imported	Leviable Amount			
					Tax	Penalty	Fine	Total
1	Tobacco Product	39	1056	7228.66	216.86	183.86	740.75	1141.47
2	Vanaspati	26	168	9689.69	484.48	81.44	53.53	619.45
3	IMFL	23	35	9898.32	494.47	24.63	33.71	552.81
4	Cement	5	17	1351.95	67.57	12.69	22.13	102.39
Total			1276	28168.62	1263.38	302.62	850.12	2416.12

On this being pointed out (June 2000), the department stated (May 2001) that demand for Rs. 0.06 crore had been raised in 4 cases (Jamshedpur Circle). Action taken by other circles has not been intimated (March 2003).

(ii) In case of 9 dealers of 4 Circles⁵ dealing in scheduled goods and registered under the BF Act having liability on or after 25 February 1993 were however registered under the BTEG Act, with liability from later dates i.e. from the dates of registration. Failure of the department in application of provisions of the Act in time resulted in an import value of Rs. 81.56 crore escaping assessment during 1993-94 to 1995-96 and consequent under charge of entry tax amounting to Rs. 4.13 crore including penalty of Rs. 0.10 crore and fine of Rs. 0.20 crore.

³ *Adityapur, Arrah, Aurangabad, Bhagalpur, Begusarai, Bokaro, Chaibasa, Chirkunda, Chakradharpur, Danapur, Darbhanga, Deoghar, Dumka, Dhanbad (Urban), Farbesganj, Gaya, Godda, Giridih, Hazaribagh, Jamshedpur, Jamshedpur (Urban), Jhanjharpur, Jharia, Katihar, Lakhisarai, Madhubani, Motihari, Munger, Patna City (West), Patna City (East), Palamau, Purnea, Patna (West), Patna (North), Ranchi (East), Ranchi (Special), Ranchi (West), Saharsa, Sasaram, Sahebganj, Siwan, Samastipur, Singhbhum and Toghra.*

⁴ *Aurangabad, Arrah, Bhagalpur, Begusarai, Bokaro, Chaibasa, Chirkunda, Chakradharpur, Deoghar, Dumka, Dhanbad (Urban), Danapur, Darbhanga, Farbesganj, Gaya, Giridih, Hazaribagh, Jhanjharpur, Jamshedpur, Jamshedpur (Urban), Jharia, Katihar, Lakhisarai, Munger, Madhubani, Motihari, Patna City (West), Patna City (East), Purnea, Palamau, Patna (West), Ranchi (East), Ranchi (Special), Ranchi (West), Saharsa, Sasaram, Sahebganj, Siwan, Samastipur, Singhbhum and Toghra.*

⁵ *Giridih, Hazaribagh, Patna (North) and Sasaram.*

(b) *Suppression of import value*

Under the provisions of the BF Act, 1981 read with the BTEG Act, 1993, every registered dealer shall furnish a true and complete return in respect of all his transactions failing which the prescribed authority may, within eight years from the date of order of the assessment, assess the amount of tax due from the dealer in respect of such turnover besides penalty and fine at prescribed rates.

(i) Cross verification of assessment records of 6 dealers in 5 Commercial Taxes Circles⁶ of Bihar with the records of manufacturers in Uttar Pradesh, Delhi, Andhra Pradesh and other local areas of Bihar revealed short accounting of imported goods amounting to Rs. 2.13 crore relating to the period 1993-94 to 1998-99 (assessed in 1996-97 to 1999-2000). This resulted in under assessment of tax amounting to Rs. 0.28 crore including penalty of Rs. 0.21 crore.

On this being pointed out (June 2000) the department stated (June 2000) that the case would be examined. Further reply has not been received (March 2003).

(ii) In *Jharia* Circle, 8 unregistered dealers were assessed on 2 July 1999 under the Act for the period between 1993-94 and 1995-96 on the basis of information received from a manufacturer of *Zarda* of other local areas, but not registered due to affidavit furnished by them regarding discontinuance of business in subsequent period. On cross verification of information received from manufacturers of *Zarda* of outside the State and within the State revealed that the dealers had still been continuing the business and had imported goods valued at Rs. 1.24 crore during 1996-97 to 1998-99. Failure of the department in detecting the suppression resulted in under assessment of tax amounting to Rs. 0.20 crore including penalty of Rs. 0.11 crore and fine of Rs. 0.05 crore.

(c) *Non-levy of penalty*

Under the BF Act, 1981, read with the BTEG Act, if a registered dealer fails to make payment of the tax due according to the prescribed statement/return, the assessing authority shall impose a penalty of not less than 2 and a half per cent but not exceeding 5 per cent of the amount of tax for each of the first 3 months or part thereof following the due date and thereafter not less than 5 per cent but not exceeding 10 per cent for each subsequent month or part thereof.

In 6 Commercial Taxes Circles, 8 dealers (assessed between June 1997 and May 2000) failed to deposit the admitted tax amounting to Rs. 7.84 crore by due dates. The delay ranged between 1 month 21 days and 36 months 15 days

⁶ Gaya, Jamshedpur (Urban), Ranchi (West), Ranchi (East) and Sasaram.

and thus, the dealers were liable to pay minimum penalty of Rs. 4.47 crore as detailed below:-

(Rupees in lakh)

Sl. No.	Name of Circles	No. of cases involved	Period	Tax payable as per return	Period of Delay	Leviable Penalty
1	2	3	4	5	6	7
1	Adityapur	1 ⁷	1996-97 & 1997-98	264.26	21 Months 15 days to 33 months 15 days	346.25
2	Jharia	3	1996-97	33.63	17 Months 24 days to 25 Months 7 days	30.50
3	Begusarai	1	1996-97	434.63	1 Month 25 days	19.92
4	Darbhanga	1	1996-97 to 1998-99	15.83	12 Months 15 days to 36 Months 15 days	19.09
5	Jamshedpur (Urban)	1	1996-97	18.08	18 Months 28 days	15.76
6	Sasaram	1	1996-97	18.03	14 Months 15 days to 23 Months 15 days	15.40
	Total	8		784.46		446.92

On this being pointed out (June 2000), the department stated (June 2000) that the cases would be examined and in respect of a dealer of Begusarai, that penalty was not leviable as admitted tax was paid in time. The reply is not tenable, as non-levy of penalty was pointed out for the period of 1996-97 wherein the admitted tax was paid after due date. Reply in respect of other cases have not been furnished (March 2003).

The cases were reported to the Government (June 2001); their reply has not been received (March 2003).

2.03 Non-realisation of revenue due to non-renewal of lease

Under the provisions of the Bihar Government Estates (*Khas Mahal*) Manual, 1953 and the rules framed thereunder for grant of lease, the State Government is to issue notices to the lessees, six months prior to the expiry of the lease, to apply for renewal of such lease, whereas a lessee is required to apply three months prior to the expiry of his lease for renewal thereof. A lessee continuing on the leasehold property without payment of rent and renewal is to be treated as trespasser and has no claim for renewal on past terms and conditions.

On fresh leases *salami*⁸ at the current market value of land is leviable. Besides, annual rental in respect of residential lease at the rate of one fiftieth of such *salami* is payable. In case of arrears, double the rental from the date of non-

⁷ M/s Pebco Motors Ltd., Adityapur.

⁸ *Salami* is the Government share in the increased value of the land.

payment of annual rental at the rate prescribed in the original lease with interest thereon is recoverable.

Based on the above provisions a mention was made in the Report of the Comptroller and Auditor General of India (Revenue Receipts) pertaining to the year 1996-97 regarding loss of revenue due to non-renewal of leases of Government land.

However, as per circular issued by Revenue and Land Reforms Department, Government of Bihar in April 1999, the lessees are liable to pay arrears of double the rental at the rate proposed in fresh leases from the date of expiry earlier lease as penal rent together with interest at the rate of 10 per cent on the difference of arrear rentals between the proposed rent in the new deeds and the rent already paid by the lessees.

In Sadar Anchal, *Ranchi*, 1381 leases in respect of 204.379 acres of town *Khas Mahal* land expired between 1943-44 and 1996-97. In these cases neither the department issued notices to the lessees nor the lessees applied for renewal of their leases before its expiry. The lessees were not paying the annual rent also. Since the leases have not been renewed so far and renewal, if any, will be done later the recoveries will have to be made at the rates prevailing on the date of renewal of these leases. The amount recoverable as worked out on the rates applicable for 2000-01 comes to Rs.367.65 crore (*salami*: Rs.123.12 crore, penal rent: Rs. 131.34 crore and interest: Rs. 113.20 crore) in these cases.

On this being pointed out (May 2001), the Additional Collector, *Ranchi* stated (May 2001) that physical survey of *Khas Mahal* land is being carried out and action will be taken after survey. Further reply has not been received from Government (March 2003).

The cases were reported to the Government (June 2001); their reply has not been received (March 2003).

2.04 Non-collection of differential stamp duty in respect of referred cases

Under Section 47-A (I) of the Indian Stamp Act, 1899, the registering officer, while registering any instrument of conveyance, exchange, gift, partition or settlement has reason to believe that the market value of the property, which is the subject matter of such instrument has not been rightly set forth in the instrument, he may refer the same to the Collector for determination of the market value of such property and proper duty payable thereon.

Test check of records of 6 districts relating to the period upto 1995-96 and from 1996-97 to 1999-2000 revealed (between December 1999 and May

2001) that a total number of 6362 cases were referred by different Registering Authorities (District Sub-Registrars/ Sub-Registrars) to the respective Collectors for determination of the market value of land/ property as indicated in these documents and accordingly the differential stamp duty leviable was worked out by the Collectors.

The differential stamp duty leviable worked out to Rs 5.60 crore in 6362 cases. Of this a sum of Rs 1.74 crore involved in 2567 cases had been recovered (1997-98 to 2000-01) and a sum of Rs. 3.87 crore involved in 3795 cases was still outstanding as detailed below: -

(Rupees in lakh)

Sl No	Name of the office of the D.C. (Stamp)	Total		Collection		Non collection of differential stamp duty	
		No of cases	Differential stamp duty involved	No of cases	Differential stamp duty collected	No of cases	Amount
1	Begusarai	3894	250.73	1390	48.24	2504	202.49
2	Aurangabad	154	20.86	50	1.54	104	19.32
3	<i>Ranchi</i>	231	13.07	59	5.18	172	7.89
4	Patna	715	95.52	180	12.15	535	83.37
5	<i>Hazaribagh</i>	796	132.08	671	96.20	125	35.88
6	Arrah (Bhojpur)	572	47.83	217	10.25	355	37.58
	Total	6362	560.09	2567	173.56	3795	386.53

On this being pointed out (between December 1999 and May 2001) Deputy Collectors (Stamp) stated (between December 1999 and May 2001) that due to various reasons such as incorrect/ change of address of the executants and non-availability of document holders, notices for realising differential stamp duty could not be served. The reply is not tenable as action to realise the dues as arrears of Land Revenue should have been initiated.

The cases were reported to the Government (June 2001); their reply has not been received (March 2003).