

CHAPTER-3: Taxes on Sales, Trade etc.

3.01 Results of Audit

Test check of the records relating to assessments and refunds of Sales Tax in various Commercial Taxes Circles, conducted in audit during the year 2000-2001 revealed under assessment of tax of Rs.133.93 crore in 488 cases which broadly fall under the following categories: -

(Rupees in crore)

Sl. No.	Category	No. of cases	Amount
1	Incorrect allowance of exemption from tax	225	10.12
2	Non-levy of penalty	34	3.56
3	Incorrect allowance of concessional rate of tax	3	0.13
4	Non-levy or short-levy of additional tax & surcharge.	59	15.39
5	Application of incorrect rates of tax	40	0.73
6	Short-levy due to incorrect determination of turnover	59	5.33
7	Non-levy of penalty for excess collection of tax / mistake in computation	19	3.65
8	Other irregularities	49	95.02
	Total	488	133.93

During the year 2000-2001, the concerned department accepted under assessment etc. of Rs. 0.34 crore involved in 21 cases of which 6 cases involving Rs. 0.10 crore had been pointed out in audit during 2000-01 and rest in earlier years. A few illustrative cases and a review on "Exemption and concession in Sales Tax against declaration forms/certificates" involving Rs. 119.95 crore are given in the following paragraphs: -

3.02 Exemption and concession in Sales Tax against declaration forms/certificates

3.02.01 Introduction

Under the provisions of the Bihar Finance (BF) Act, 1981 and the Rules framed thereunder (also applicable to the State of Jharkhand) read with the Central Sales Tax (CST) Act, 1956 registered dealers are entitled to purchase goods without payment of tax or at concessional rate of tax, if the goods so purchased are for re-sale or for use in mining, manufacturing or processing of goods for sale provided the purchasing dealer furnishes declarations in the prescribed form to the selling dealer. Further, goods purchased for re-sale by paying tax at first point of sale in the State are also exempt from tax at subsequent stages of sale on the strength of declarations issued by the selling dealers. If the goods are utilised by the purchaser for purposes other than those specified, the purchaser is liable to pay tax at full rate/differential rate of tax, as the case may be.

3.02.02 Organisational set-up

At the apex level, the Commissioner of Commercial Taxes is responsible for the administration of the Acts and Rules in the Commercial Taxes department including printing, receipt and distribution of declaration forms to the circles in the State of Bihar (now the State of Bihar and the State of Jharkhand). He is assisted by Senior Joint Commissioner, Deputy Commissioner and Assistant Commissioner of the Commercial Taxes and by Joint Commissioner of Commercial Taxes, Investigation Bureau, Deputy Commissioner of Commercial Taxes, Vigilance and Monitoring at the Headquarters (Secretariat level). The erstwhile State of Bihar was divided into 11 Commercial Taxes Divisions each under the charge of a Joint Commissioner. These divisions are further divided into 75 circles, each under the charge of a Deputy Commissioner/Assistant Commissioner of Commercial Taxes assisted by Assistant Commissioner and Commercial Taxes Officers.

3.02.03 Scope of Audit

A review was conducted between December 2000 and May 2001 to assess the effectiveness of system of granting exemptions and concessions against various declaration forms¹ prescribed under the BF Act, 1981 and the CST

¹ **Form 'IX'** – Submitted by a manufacturing unit for purchase of raw materials at concessional rate of tax to the dealer from whom the materials are purchased. **Form 'IX C'** – Submitted in support of purchase of goods on which tax had been levied at first point of sales in the State. **Form 'GAA (C)' and 'D'** – Form of declaration by owners of industries for purpose of purchase of raw materials free of sales/purchase tax.

Act, 1956. Cross verification of information/data collected from the assessment records of 50 manufacturing /trading dealers of 11 Circles² was done with the records of 845 manufacturing/selling/purchasing dealers of 30 Circles³ relating to the period from 1992-93 to 1999-2000 (assessed between September 1993 and March 2001). The review also includes points noticed in regular audit of other offices conducted during previous years.

3.02.04 Highlights

1. Suppression of receipt of goods by 50 manufacturing dealers in 12 Commercial Taxes Circles resulted in non/short accounting of goods valued at Rs.58.84 crore and evasion of tax amounting to Rs.11.93 crore.

[Paragraph 3.02.05 (i) and (ii)]

2. Non-accounting of tax paid goods valued at Rs.22.97 crore by 10 dealers of 9 Commercial Taxes Circles resulted in loss of revenue of Rs.0.94 crore.

[Paragraph 3.02.05(iii)(a)]

3. Cross verification of sales by a dealer with the records of 7 dealers of 7 Commercial Taxes Circles revealed suppression of sale valued at Rs.12.56 crore and evasion of tax amounting to Rs.5.71 crore.

[Paragraph 3.02.05(iii)(b)]

4. In 10 cases of 6 Circles on transfer/sale of goods valued at Rs. 417.91 crore not supported by prescribed declaration forms under Central Sales Tax Act, tax amounting to Rs.32.37 crore was short levied.

[Paragraph 3.02.06(i) and (ii)]

5. In 32 cases of 14 Circles, incorrect allowance of exemption on turnover valued at Rs.40.02 crore against invalid/obsolete declarations resulted in short levy of tax amounting to Rs. 3.40 crore.

[Paragraph 3.02.08 (a) and b(i) (ii)]

6. In a Circle, an unregistered dealer unauthorisedly collected tax amounting to Rs. 3.79 crore for which he was liable to pay penalty of Rs. 7.58 crore but was not levied.

[Paragraph 3.02.10 (a)]

² Bokaro, Chaibasa, Central Circle Kolkata, Deoghar, Dhanbad, Dhanbad (Urban), Hazaribagh, Patna (Special), Patliputra, Palamau and Singhbhum.

³ Adityapur, Bokaro, Bhabhua, Bhagalpur, Chakradharpur, Central Circle Kolkata, Chaibasa, Chirkunda, Deoghar, Dhanbad, Dhanbad (Urban), Farbesganj, Giridih, Hazaribagh, Jharia, Jamsheedpur, Jamsheedpur (Urban), Katras, Koderma, Munger, Patliputra, Palamau, Patna (North), Purnea, Ranchi (South), Ranchi (West), Ranchi (Special), Singhbhum, Sindri and Tenughat.

3.02.05 *Suppression of turnover*

Under the provisions of BF Act, 1981, if the prescribed authority is satisfied that reasonable grounds exist to believe that any turnover of a dealer has escaped assessment he may within eight years from the date of order of the assessment or re-assessment, assess or re-assess the amount of tax due from the dealer in respect of such turnover. The dealer shall also be liable to pay by way of penalty, a sum not exceeding three times but not less than an amount equivalent to the amount of tax assessed on the turnover, which escaped taxation.

(i) Cross verification of details of purchases at concessional rate of tax by 26 manufacturing dealers of 12 Commercial Taxes Circles⁴ for the period from 1993-94 to 1997-98 (assessed between June 1995 and August 2000) as furnished by them (to sales tax authorities) in their utilisation certificates of form 'IX' with the declarations issued by them to the selling dealers against such purchases revealed non/short accounting of goods valued at Rs.21.21 crore. This resulted in short levy of tax of Rs.5.89 crore including penalty of Rs.4.31 crore. Of this, one dealer⁵ alone accounted for Rs. 1.85 crore.

(ii) Cross verification of details of purchases, exempted from levy of tax, made by 24 manufacturing dealers of 4 Commercial Taxes Circles⁶ for the period from 1992-93 to 1997-98 (assessed between September 1993 and February 2001) as furnished by them in their utilisation certificate of Form 'GAA' to the sales tax authority with the certificate issued by them to the selling dealers against such purchases revealed that 3 dealers were not authorised to purchase goods (Rs.6.91 crore) on form 'GAA', 2 dealers had not accounted for the purchase (Rs. 10.65 crore) and 19 dealers had short accounted the goods (Rs.20.07 crore). This resulted in short levy of tax of Rs.6.04 crore including penalty of Rs.4.54 crore.

(iii)(a) Cross verification of details of sales made by a dealer of *Singhbhum* Circle with the assessment records of 10 dealers of 9 Commercial Taxes Circles⁷ revealed that the dealers did not account for the goods valued at Rs.22.97 crore purchased during the period 1997-98 and 1998-99 (assessed between October 1998 and June 2001). This resulted in non- levy of tax amounting to Rs 94.18 lakh including penalty of Rs 68.91 lakh.

(b) Verification of utilisation certificate of Form 'IXC' furnished by the above selling dealer⁸ with the records of 7 dealers of 7 Circles⁹ revealed that the dealer had issued 9 number of declaration forms 'IXC' for Rs. 445.78 lakh against the actual sale of soap and detergents valued at Rs. 17.02 crore made

⁴ Bhagalpur, Bokaro, Chirkunda, Deoghar, Dhanbad, Dhanbad (Urban), Giridih, Hazaribagh, Koderma, Katras, Munger and Tenughat.

⁵ M/s. B.C.C.L. Area II, Mahuda, Katras.

⁶ Dhanbad, Hazaribagh, Tenughat and Bokaro.

⁷ Bokaro, Chaibasa, Dhanbad (Urban), Giridih, Jharia, Palamau, Patliputra, Ranchi (Special) and Tenughat.

⁸ M/s. Hindustan Lever Ltd., Karandih.

⁹ Chirkunda, Jharia, Munger, Palamau, Ranchi (Special), Sindri and Singhbhum.

during the year 1997-98 and 1998-99. Thus, the dealer suppressed sale of Rs.12.56 crore. This resulted in short levy of tax of Rs.571.49 lakh including penalty of Rs.418.16 lakh.

3.02.06 Under assessment under Central Sales Tax

(i) Under the CST Act, 1956, a dealer, who claims exemption from levy of tax on account of branch transfer of goods to his agent, principal or any other place of his business in other State, is required to produce the details of such transfer of goods in Form 'F' duly authenticated under signature by the recipient. Non-compliance of the provisions of Act/Rules may invalidate the claim for exemption and tax will be leviable at double the rate prescribed, in case of declared goods and at the rate of 10 per cent or at the rate leviable under the Sales Tax Act of the State, whichever is higher, in the case of goods other than declared goods.

In 3 Commercial Taxes Circles (*Jamshedpur, Jamshedpur (Urban) and Patliputra*), 7 dealers were exempted from payment of tax on transfer of goods (steel wire, tinsplate, safety razor and refrigerators) valued at Rs.382.85 crore between 1993-94 and 1998-99 (assessed between March 1998 and February 2000) without production of declarations/valid declarations. This resulted in non/short levy of tax amounting to Rs.30.89 crore. Of this, in case of 2 dealers¹⁰ the tax effect was more than Rs. 1 crore each involving total tax effect of Rs. 30.29 crore.

(ii) Under the CST Act, 1956, on the inter-State sale of goods not supported by prescribed declarations/ certificates in form 'C' or 'D', tax is leviable at the rate of 8 per cent on declared goods and at the rate of 10 per cent or at the rate leviable under the Sales Tax Act of the State, whichever is higher in case of other goods.

In 3 Circles (*Ranchi West, Jharia and Tenughat*), sale of goods (fire bricks, steel and coal) valued at Rs.35.06 crore made by 3 dealers was not supported by prescribed declarations for the years 1995-96 and 1996-97 (assessed between October 1998 and January 1999) but tax was levied at lower rate. This resulted in under assessment of tax amounting to Rs.147.84 lakh. Of this, one dealer¹¹ alone accounted for Rs. 1.32 crore.

(iii) Under the CST Act, 1956 and the Rules framed thereunder, any subsequent sale during the movement of goods from one State to another is exempted from tax provided prescribed declarations in forms 'C' and 'E' are furnished by the dealers at the time of assessment in support of their claim for such exemption. For granting such exemption, goods must be covered by the registration certificate of the purchasing dealer.

¹⁰ 1. M/s. The Tinsplate Company of India Ltd., Jamshedpur.

2. M/s. The Tata Iron & Steel Co. Ltd., Jamshedpur.

¹¹ M/s. Swang Washery, Swang, Tenughat.

In the case of 6 dealers of 5 Circles¹² exemption was allowed on the sale of electrical equipment and machinery and tools valued at Rs. 83.43 lakh by 3 dealers during the years 1994-95 to 1996-97 (assessed between November 1998 and February 1999) not supported by prescribed declarations and on purchase of goods (paper) valued at Rs. 702.77 lakh during the years 1995-96 to 1996-97 (assessed between May 1998 and January 2000) by 3 dealers of 2 Circles (Patna North and *Ranchi Special*) although paper was not covered by their registration certificate. Deduction of Rs.786.20 lakh was incorrectly allowed resulting in short levy of tax amounting to Rs.101.61 lakh.

3.02.07 Inadmissible allowance of concessional rate of tax

Under the provisions of the BF Act, 1981, registered dealers are allowed to purchase at concessional rate of tax, by furnishing prescribed declarations, goods required by them directly for use in manufacture or processing or for use in mining of any goods for sale. It has been judicially held¹³ that goods, which are not directly consumed/ used in the process of manufacture of other goods, cannot be treated as raw material. The State Government, by notifications issued on 26 December 1977 and 28 January 1985, excluded LDO (Light Diesel Oil) and paper (of all kinds) including card board, cartons, etc. from the purview of concessional rate. Further, by notification issued in February 1990, the contractors were excluded from the purview of making sale/ purchase at concessional rate of tax.

(i) On verification of utilisation certificate of declaration forms 'IX' furnished by 14 dealers of 6 Circles¹⁴ engaged in mining of coal, copper, uranium, etc. it was revealed that the dealers had purchased lime, timber, fire bricks, bamboo, cement and LDO valued at Rs.690.48 lakh at concessional rate of tax during the years between 1993-94 and 1999-2000 which were not admissible as the goods were not raw materials meant for direct use in course of manufacturing, processing or mining and thus were leviable to tax at full rate. This resulted in loss of revenue of Rs.69.52 lakh including additional tax and surcharge.

(ii) In 4 circles¹⁵, in case of 5 dealers concessional rate of tax was allowed on turnover valued at Rs. 572.53 lakh on production of declaration form 'IX' by the assesseees during the years 1994-95 to 1996-97 (assessed between May and December 1998). On scrutiny of declaration forms it was revealed that concessional rate of tax was incorrectly allowed to 3 contractors on sale of paper and railway parts. This resulted in under assessment of tax amounting to Rs. 44.64 lakh.

¹² Central Circle, Kolkata, *Jamshedpur*, Patna (North), *Ranchi (South)* and *Ranchi (Special)*.

¹³ *The decision of Hon'ble Supreme Court in case of Commissioner of Sales Tax, M.P Vrs Rewa Coal Field Ltd. and others (1999)*.

¹⁴ *Chirkunda, Dhanbad, Jharia, Hazaribagh, Singhbhum and Tenughat*.

¹⁵ *Adityapur, Chakradharpur, Farbesganj and Jamshedpur*.

On this being pointed out the Assessing Authority (*Adityapur*) stated that the dealer was entitled to purchase goods at concessional rate of tax for manufacturing of any goods. The reply is not tenable as the dealer was a contractor and thus not eligible for making purchases at concessional rate.

3.02.08 *Incorrect exemption on declaration*

Where by a notification published under the provisions of the BF Act, 1981, the State Government specifies in respect of any goods, class or description of goods that sales tax shall be levied at the first point of sale in the State, subsequent sale of the same goods shall not be levied to tax, if the dealer making the subsequent sale produces before the assessing officer the original copy of cash memo, bill or invoices and files true and complete declaration in Form 'IXC' in original in the manner prescribed. Further, declarations being incomplete, duplicate and not setting out all the details are liable to be rejected.

(a) In 6 Circles¹⁶, in case of 9 dealers exemption on tax paid sale of goods valued at Rs.566.89 lakh was allowed during the period from 1992-93 to 1998-99 (assessed between October 1996 and November 2000). On verification of declaration forms it was revealed that in one case the amount mentioned in the declaration form was manipulated, in another case the goods were leviable to tax at last point of sale and in remaining 7 cases either the duplicate copy of forms were furnished or the same were not filled in properly. Allowance of incorrect exemption on these declaration forms resulted in short levy of tax amounting to Rs. 44.16 lakh.

(b) (i) By a notification issued in January 1998 (effective from 1 February 1998), the Government declared the declaration form ('IX' and 'IX C') printed by Government Press, Gaya, obsolete and invalid.

On verification of 781 declaration forms, it was revealed that in 11 Circles¹⁷ in case of 21 dealers (assessed between August 1998 and January 2001) exemption from levy of tax was allowed during the period between 1994-95 and 1997-98 against 246 such invalid declaration Form 'IXC' involving Rs 26.77 crore. This resulted in short levy of tax of Rs.253.68 lakh. Of this, one dealer¹⁸ alone accounted for Rs. 1.48 crore.

On this being pointed out the Assessing Authority (*Palamau*) in 3 cases revised the assessments (between March and November 2000) and raised additional demand of Rs. 2.82 lakh.

¹⁶ Bhabhua, Bhagalpur, Deoghar, Giridih, Ranchi (*Special*) and Ranchi (*West*).

¹⁷ Bhagalpur, Bokaro, Deoghar, Jharia, Patliputra, Palamau, Purnea, Ranchi (*South*), Ranchi (*Special*), Singhbhum and Tenughat.

¹⁸ M/s. J.P. Status Pvt., Ltd., Patna.

(ii) On verification of 95 declaration forms, it was revealed that in 2 Circles (*Ranchi West* and *Singhbhum*) in case of 2 contractor dealers (assessed between January 1999 and January 2000) tax was levied at concessional rate of tax, on sale of non-ferrous metal, heavy vehicles and spares valued at Rs. 757.77 lakh during the years 1994-95 and 1997-98 on the strength of 39 invalid declarations (Form 'IX'). This resulted in short levy of tax amounting to Rs. 42.34 lakh.

3.02.09 *Non-levy of purchase tax*

Under the provisions of the BF Act, 1981, every dealer liable to pay tax, who purchases goods in circumstances in which no sales tax is payable or has been paid on the sale price of such goods and either consumes such goods in the manufacture of other goods for sale or otherwise disposes by way of sale in the State or sale in course of inter-State trade or commerce, shall be liable to pay tax on the purchase price of such goods at the rate at which it would have been leviable on the sale price of such goods.

A manufacturing dealer of *Deoghar* Circle purchased glass ware (raw material) valued at Rs.32.96 crore without payment of sales tax on certificate 'GAA' during the period from 1993-94 to 1996-97 (assessed between March 1998 and March 2001) from another manufacturing dealer of the same Circle and transferred the finished goods valued at Rs. 18.92 crore out of the finished goods produced from such raw material otherwise than by way of sale. Purchase tax though leviable on the purchase price of raw material valued at Rs. 997.96 lakh was not levied. This resulted in non-levy of purchase tax amounting to Rs. 99.68 lakh (including additional tax and surcharge).

3.02.10 *Other points of interest*

(a) *Non-levy of penalty due to unauthorised collection of tax*

Under the provisions of the BF Act, 1981 no person who is not a registered dealer shall collect from any person any amount, by whatever name or description it may be called, towards or purporting to be tax on sale of goods. In the event of any contravention of the provision of the Act, the prescribed authority shall direct the dealer to pay, by way of penalty, a sum equal to twice the amount of tax so collected.

In course of audit of assessment records of a manufacturer and seller of country liquor in *Hazaribagh* Circle it was noticed that deduction of Rs. 419.82 lakh and Rs. 10.01 crore from gross turnover was allowed by the Assessing Authority during the years 1997-98 and 1998-99 respectively on the ground that turnover would be subjected to tax in *Dhanbad* district.

On verification of deduction allowed by the Assessing Authority of *Hazaribagh* Circle with the case records of the dealer¹⁹ in *Dhanbad Urban* Circle *Dhanbad*, it was revealed that the dealer was not registered in the Circle. While assessing tax (January and June 1999) as unregistered dealer the Assessing Authority failed to levy penalty for unauthorised collection of tax amounting to Rs. 379.04 lakh from different purchasers of the State. The omission resulted in non-levy of penalty amounting to Rs. 758.07 lakh.

On this being pointed out (July 2001), the DCCT stated (August 2001) that the dealer was registered at *Hazaribagh* Circle hence penalty was not leviable. The reply is not tenable in view of the existing provisions of BF Act, 1981. As the dealer had performed his business at *Dhanbad* he was liable for separate registration at *Dhanbad* Circle also.

(b) *Incorrect utilisation of declaration form*

A dealer of *Singhbhum* Circle, *Jamshedpur* declared that he had issued one form 'IXC' against sale of goods (soap) for Rs. 4.74 lakh during the year 1997-98 to a dealer of Patna as per his utilisation certificate of declaration form 'IXC'.

On verification of declaration form 'IXC' it was noticed that the above form was actually issued in favour of a dealer of *Palamau* Circle, *Daltonganj* against the purchase made during the year for Rs. 62.16 lakh. Thus, the selling dealer short accounted sale of goods valued at Rs. 57.42 lakh. This resulted in short levy of tax amounting to Rs. 26.13 lakh (including additional tax, surcharge and maximum leviable penalty).

The above cases were brought to the notice of assessing authorities /department between December 2000 and May 2001. Report on action taken has not been received (March 2003).

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

3.03 Suppression of sales turnover

Under the BF Act, 1981, read with the CST Act, 1956, 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 figure 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

¹⁹ M/s. B. K. Jaiswal (HUF), Hirapur, Dhanbad.

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.

In 3 Commercial Taxes Circles (Circles), it was noticed (between August 1999 and September 2000) from the assessment records (assessed between December 1998 and March 2000) and utilisation certificate of declaration forms ('IX C') that 3 dealers suppressed sales turnover of Rs.852.75 lakh bought/sold on declaration forms during the years between 1995-96 and 1997-98, remained undetected by the department. The failure of the department to check the suppression of purchases/sales resulted in short-levy of tax amounting to Rs.94.32 lakh (including additional tax, surcharge and minimum leviable penalty) as detailed below: -

(Rupees in lakh)							
Sl. No.	Name of Circle/ No. of Dealers	Period of assessment Month /Year of assessment	Commodity	Actual purchase/ sale	Amount concealed	Amount of tax/ Penalty	Total
				Purchase / Sale accounted for	Rate applicable (per cent)		
1.	Patna City (East) 1	1996-97 12/98	Chassis	4383.11 3852.96	530.15 4 +SC	23.33 21.20	44.53
2.	Patna South 1	1995-96 12/99	Medicines	675.11 406.62	268.49 7 +SC	20.67 18.80	39.47
3.	Hajipur 1	1997-98 3/2000	Ice Cream	190.23 136.12	54.11 8 +1+SC	5.41 4.91	10.32
	Total			5248.45 4395.70	852.75	49.41 44.91	94.32

On this being pointed out (between August 1999 and September 2000), in the case of Patna City (East) Circle, the department raised (June 2000) an additional demand of Rs. 44.53 lakh while in other cases the department stated (September 2000) that the cases would be reviewed. Report on realisation / further reply has not been received (March 2003).

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

3.04 Incorrect grant of exemption from levy of tax

In 3 Commercial Taxes Circles, in case of 3 dealers incorrect allowance of exemptions (assessed between January 1998 and March 2000) on goods valued at Rs. 383.52 crore resulted in non-levy of tax amounting to Rs. 42.54 crore as detailed below: -

(Rupees in crore)

Sl. No.	Name of the circle Name of dealer	Period of assessment Month/Year of assessment	Commodity	Value of goods	Rate of tax leviable (per cent)	Non-levy of tax	Reasons
1	Central Circle, <u>Kolkata</u> M/s. Indian Oil Corporation Ltd.	<u>1993-94</u> January 1998	Petroleum Product	138.22	9,14 + SC	20.16	Goods were stated to have been transferred to other dealers but cross verification of the records of the transferee dealers revealed that no such goods were transferred to them.
2	Central Circle, <u>Kolkata</u> M/s. Indian Oil Corporation Ltd.	<u>1993-94</u> January 1998	Petroleum Product	188.61	9+SC	18.67	Exemption allowed on export of goods to Nepal without obtaining copies of Custom Certificate / Bill of Export.
3	<u>Hajipur</u> M/s. Sukhmani Bhagwati Alloys Pvt. Ltd.	<u>1997-98 & 1998-99</u> May 1999 & March 2000	Iron and Steel	32.67	4	1.31	Exemption allowed without manufacturing new commercial commodity.
4	Central Circle, <u>Kolkata</u> M/s. Indian Oil Corporation Ltd.	<u>1993-94</u> January 1998	Petroleum Product	22.96	9 + SC	2.27	Exemption allowed on stock transfer of goods not supported by Form 'F' or any other evidence.
5	<u>Patna City (East)</u> M/s. Phooltas Auto Ltd.	<u>1996-97</u> December 1998	Motor Parts	1.06	10+1+SC	0.13	Exemption allowed on goods not supported by Form 'IX C'
Total				383.52		42.54	

On this being pointed out (between February 1999 and September 2000), in case of Central Circle, Kolkata, the department raised an additional demand (November 2000) for Rs 41.10 crore and in case of Patna City East Circle, Patna, the department reassessed (June 2000) the tax at Rs 13 lakh, while in case of Hajipur Circle the department stated (September 2000) that the cases would be reviewed. Further reply has not been received (March 2003).

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

3.05 Under assessment of Central Sales Tax

Under the CST Act, 1956, on the inter-State sale of goods (other than declared goods) which are not supported by prescribed declaration forms, tax is leviable at the rate of ten per cent or at the rate applicable in the State, whichever is higher. In case of sales of declared goods not supported by declarations in prescribed form, tax is leviable at twice the rate applicable on sale or purchase of such goods in the concerned State. It has been judicially held²⁰ that

²⁰ DCST Vrs Ayasha Hosiery Factory (1992) 85 STC 196 SC.

additional tax and other taxes leviable under the State Act are also leviable on such inter-State sales under the CST Act.

In Central Circle Kolkata, though the sale/transfer of goods²¹ valued at Rs. 391.02 crore made by 3 dealers during the assessment years (between 1994-95 and 1996-97) was not supported by prescribed declaration forms, tax was either not levied or levied (assessed between December 1998 and August 2000) at lower rates. This resulted in under assessment of Central Sales Tax amounting to Rs. 811.13 lakh (including additional tax and surcharge). Of this, one dealer²² alone accounted for Rs. 7.76 crore.

On this being pointed out (March and December 2000), in 2 cases the department revised the assessment (September and October 2000) and issued (November 2000) additional demand notice for Rs. 35.41 lakh, while in the third case the department stated (January 2001) that the case would be reviewed. Further reply has not been received (March 2003).

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

3.06 Short levy of tax

Under the provisions of the CST Act, 1956, 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 (a) occasions the movement of goods from one State to another or (b) is effected by transfer of documents of title to the goods during their movement from one State to another.

In Gopalganj Circle, a dealer²³ sold during 1993-94 IMFL products worth Rs. 615.06 lakh to M/s Herbertsons Ltd. at Gopalganj and tax was levied (March 1998) at the rate of 4 per cent considering the transaction as inter-State sale. Since the transaction was completed within Bihar, the tax at the rate of 25 per cent was leviable. This resulted in short levy of tax amounting to Rs. 161.45 lakh (including additional tax and surcharge).

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

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

²¹ **HSD**- High Speed Diesel Oil, **LDO**- Light Diesel Oil, **MTO**- Motor Transport Oil, **MS**- Motor Spirit, **SKO**- Superior Kerosene Oil, **ATF**- Air Turbine Fuel.

²² M/s. Indian Oil Corporation Ltd., Kolkata.

²³ M/s. U.B. Distilleries Ltd., Mirganj.

3.07 Mistake in computation of tax

Mistake in computation of tax payable by 6 dealers in 5 Circles²⁴ for the period between 1994-95 and 1997-98 (assessed between June 1997 and July 1999) resulted in short levy of tax amounting to Rs. 29.67 lakh.

On this being pointed out (between December 1999 and December 2000), in the cases of Patna Special, Khagaria and Katihar Circles, the assessing authorities raised (between December 1999 and May 2001) additional demands. In another case of Danapur Circle, the department stated (August 2000) that notice was being issued, while in the case of Central Circle, Kolkata the concerned authority stated (January 2001) that the cases would be reviewed. Further reply and report on realisation have not been received (March 2003).

The cases were reported to the Government (December 1999 and May 2001); their reply has not been received (March 2003).

3.08 Non/short levy of additional tax

Under the BF Act, 1981 every dealer is required to pay additional tax at the rate of 1 per cent (except liquor on which 2 per cent is applicable) from 1 November 1981 on his gross turnover unless specifically exempted from levy of additional tax.

In Central Circle, Kolkata, in case of 2 dealers engaged in the business of Petroleum Products, Tea, Ghee, etc. (assessed between July 1999 and October 2000) additional tax (including surcharge) aggregating Rs. 24.45 lakh was either not levied or short levied during 1991-92 and 1996-97 on the assessed tax of Rs. 22.23 crore.

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

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

3.09 Short levy of tax due to misclassification of goods

Under the provision of the BF Act, 1981 sales tax on goods shall be levied as per rates prescribed in the Annexure to the Act. The goods not specified in the Annexure are leviable to tax at the rate of 8 per cent as unspecified item.

²⁴ Central Circle, Kolkata, Danapur, Katihar, Khagaria, and Patna (Special).

In 2 Circles, due to misclassification of goods, tax amounting to 16.40 lakh (including additional tax and surcharge) was short levied as shown in the table below: -

Sl. No	Name of Circle	Assessment Period	Classified as	Correct classification	Amount of turn over	Rate of tax		Amount of short levy
		Assessment month & year				Leviable (%)	levied (%)	
1.	Patliputra	1996-97 6/98	Iron & Steel	Forged steel ball (unspecified)	43.91	8	4	2.63
2.	Muzaffarpur	1997-98 12/99	-do-	Galvanised sub-station structure, Railway electrification structure (unspecified)	248.41	8	4	13.77
Total					292.32			16.40

On these being pointed out (between January and May 2000), the department in one case (Muzaffarpur) stated (May 2000) that concerned items fall under clause (IV)(V) of Section 14 of CST Act. The reply is not tenable as the item does not fall under “Iron and Steel” as defined in Section 14 of CST Act. In other cases the department stated (January 2000) that the cases would be reviewed. Further reply has not been received (March 2003).

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

3.10 Loss of revenue due to assessment being barred by limitation

Under the provisions of the BF Act, 1981 no proceeding for assessment of tax payable by a dealer in respect of any period shall be initiated and completed after the expiry of four years with effect from 1993-94.

In Patna City East Circle, Patna, a dealer sold goods valued at Rs.100.79 lakh and Rs.371.24 lakh during the years 1993-94 and 1994-95 respectively, but assessment was not completed within the stipulated time limit, though the dealer was liable to pay tax. This resulted in loss of revenue amounting to Rs.18.90 lakh.

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

3.11 Non-levy of penalty for excess collection of tax

Under the BF Act, 1981 no registered dealer shall collect from any person any tax on sale of goods in excess of tax liability under the said Act. In the event of any contravention of the provision of the Act, the prescribed authority shall

direct the dealer to pay, by way of penalty, a sum equal to twice the amount of tax so collected.

In Patna City East Circle, Patna a dealer engaged in business of IMFL collected tax in excess of his tax liability by Rs. 2.85 lakh during the year 1998-99. However, the assessing authorities while finalising (November 1999) the assessment did not levy any penalty. This resulted in non-levy of penalty of Rs. 5.71 lakh.

On these being pointed out (July 2000), the department stated (August 2000) that the cases would be reviewed. Further reply has not been received (March 2003).

The case was reported to the Government (May 2001); their reply has not been received (March 2003).

3.12 Application of incorrect rate of taxes

In 3 Circles, in case of 3 dealers tax was levied at incorrect rates on sales of goods valued at Rs. 40.13 crore resulting in short levy of tax amounting to Rs. 43.27 lakh (including additional tax and surcharge) as detailed below: -

(Rupees in lakh)

Sl. No.	Circle	Commodity	Assessment Year	Month/Year of Assessment	Total value of sales	Rate of tax		Amount of short levy of tax
						Levi able (%)	Levied (%)	
1	Central Circle, Kolkata	Petroleum Products	1996-97	July 1999 and October 2000	3931.87	9	8	41.57
2	Patna (West)	Xerox machine	1995-96	December 1998	14.36	14	8	0.96
3	Hajipur	HDPE bags	1993-94 to 1996-97	March 1998	66.81	3	2	0.74
Total					4013.04			43.27

On these being pointed out (between December 1999 and December 2000), in case of Hajipur Circle the department raised (August 2000) additional demands and in other cases the department stated (January 2000 and January 2001) that the cases would be reviewed. Further reply has not been received (March 2003).

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