

CHAPTER-II: Taxes on Sales, Trade etc.

2.1 Results of Audit

Test check of records relating to assessments and refund of sales tax in various commercial taxes circles, conducted in audit during the year 2002-2003, revealed under assessment of tax of Rs 131.84 crore in 345 cases which broadly fall under the following categories:

(Rupees in crore)			
Sl. No.	Category	No. of cases	Amount
1.	Irregular allowance of exemption from tax	124	61.92
2.	Incorrect allowance of concessional rates of tax	12	0.42
3.	Short levy of tax due to incorrect determination of gross turnover	61	14.77
4.	Non-levy of penalty	46	8.44
5.	Non-levy/short levy of additional tax and surcharge	28	1.12
6.	Application of incorrect rate of tax	22	27.46
7.	Review: Accountal and Utilisation of declaration forms/certificates	1	15.54
8.	Other cases	51	2.17
Total		345	131.84

During the year 2002-2003, the concerned department accepted under assessment etc, of Rs 0.37 crore involved in 23 cases pointed out in audit prior to 2002-2003.

A few illustrative cases including a review, **Accountal and utilisation of declaration forms/certificates** involving Rs 28.40 crore are given in the following paragraphs:

2.2 Review : Accountal and utilisation of declaration forms/ certificates

Highlights

There was discrepancy in maintenance of stock registers of various declaration forms.

(Paragraph 2.2.4)

Use of defective declaration forms by dealers resulted in under assessment of tax of Rs 2.97 crore.

(Paragraph 2.2.10)

Suppression of purchase/sales turnover resulted in under assessment of tax of Rs 9.81 crore.

(Paragraph 2.2.14)

Incorrect utilisation of declaration forms resulted in under assessment of tax of Rs 26.78 lakh.

(Paragraph 2.2.17)

Introduction

2.2.1 Under the provisions of Bihar Finance Act, 1981 (BF Act), the Central Sales Tax (CST) Act 1956, rules made and notification issued thereunder, the State Government grants various incentives to dealers for furtherance of trade and commerce and to industrial units for speedy growth of industries in the state. These incentives are allowed on production of specified declaration forms/ certificates as prescribed by the Government. It is the responsibility of the Department to ensure proper accountal of declaration forms and to take adequate safeguards against misutilisation of declaration forms/ certificates on which tax relief is allowed involving large amount of revenue to the state exchequer.

Exemption from sales tax/tax at concessional rate or at special rate are allowed on the claim of a registered dealer if the claim has been substantiated with the declaration forms/certificates as prescribed under the Acts, Rules and notification issued from time to time. As exemption/concession means foregoing of state revenue, it is absolutely essential to have well designed internal control mechanism to ensure proper accountal of declaration forms/certificates, and proper utilisation of declaration forms for granting exemption/concessions thereon.

Organisational set up

2.2.2 At the apex level, the Commissioner of Commercial Taxes (CCT) is responsible for the administration of Acts & Rules in the Commercial Taxes Department. He is assisted by an Additional Commissioner or a Joint Commissioner, Deputy Commissioner and Assistant Commissioner of Commercial taxes. The Investigation Bureau (IB) Vigilance and Monitoring wing also function under him. The state is divided into seven Commercial Taxes Divisions, each under the charge of a Joint Commissioner (Admn), (JCCT (Admn)) and a Joint Commissioner (Appeal). These divisions are further divided into circles under the charge of Deputy Commissioner (DCCT)/ Assistant Commissioner of Commercial taxes (ACCT) for administration of the tax laws.

Audit objectives

2.2.3 Scrutiny of records maintained in the office of CCT, four out of seven divisions and 19 out of 46 circles was made for the period 1996-1997 to 2002-2003 during the period January to June 2003 in order to:

- seek assurance whether the records of receipt/issue of declaration forms were maintained properly.
- to examine whether exemption from tax or concessional rate of tax was allowed in accordance with the provisions of Act and Rules.
- to ascertain whether the internal control system in position was adequate to ensure compliance with the relevant provisions.

Maintenance of accounts of receipts and use of declaration forms

2.2.4 Under the provisions of the BF Act and Rules, made thereunder prescribed declarations in form IX, IX C and XXVIII B are supplied by the CCT to the divisions for further supply to the circles under their jurisdiction. After assessing total requirement for the year, on the basis of requisition furnished by the divisions/circles, the declaration forms are got printed by the Headquarters Office from press confidentially and issued to the field offices. Similarly, declaration forms as prescribed under the provisions of CST Act, are obtained by the CCT from the Government of India Press, Nasik and supplied to the divisions for distribution amongst the circle offices under their jurisdiction.

Declaration forms are issued to registered dealers by circle offices to enable them to issue it to another registered dealer for purposes specified in their registration certificate in order to avail of exemption from levy of tax or to pay tax at concessional rate under the provisions of Act and Rules. Dealers have to submit periodical utilisation certificate to the circle office concerned for the declaration forms received and utilised by them, and the same is to be properly recorded by the Assessing Officer. No declaration form is to be issued by the

circle office to the dealers till accounts of the utilisation of forms issued earlier to the dealer is submitted by him.

The irregularities in receipt, issue and use of declaration forms as noticed in audit, are discussed in the succeeding paragraphs.

Receipt and issue

The receipt and issue of aforesaid declaration forms are accounted for in separate stock registers by the division and circle offices indicating receipt and issue of various declaration forms. When the forms are issued to the dealer, the signature of the dealer as token of receipt is to be obtained in the register.

2.2.5 Test check of records of the office of the Commissioner of Commercial Taxes, as well as of seven out of 19 circle offices revealed the following discrepancies in maintenance of accounts of declaration forms.

Sl. No	Name of the circle/office	Name of stock register	Discrepancies/irregularities
1.	Commissioner of Commercial Taxes, Bihar, Patna	Stock register of form C ¹ (Central)	The stock register was opened on 10 November 1995 with nil balance. During the period from 1 April 1996 to 16 October 2000, the receipt, issue and closing balance of the declaration forms was not worked out and the balance shown on 17 October 2000 was not authenticated by competent authority.
2.	Commissioner of Commercial Taxes, Bihar, Patna.	Stock Register of form F ²	The opening balance in the stock register started on 14 January 1994 was not shown. The entries in the register were not signed by any officer.
3.	-do-	Form IXC ³ , IX ⁴ and XXVIII B ⁵	Stock and issue register of form IX, IXC and XXVIII B for the period 1 April 1996 to 22 December 1997 was not produced to audit. No opening balance was shown at the start of the new register started from 23 December 1997.
4.	Muzaffarpur Circle	Stock and issue register of form IXC	Ten forms were issued to the dealers without obtaining acknowledgement from them in the register.
5.	Patna City, East	Stock register of form IX	The closing balance of 2,750 forms on 29 January 1999 was not carried forward as opening balance on 30 January 1999.
6.	- do -	Stock and issue register of form C	115 numbers of forms were reduced from the stock register during the period between 9 March 1999 and 17 May 1999 but these were not shown as issued in the daily issue register.

¹ Utilised for making purchases in the course of interstate trade or commerce at concessional rate of tax by registered dealer

² Utilised for availing exemption of tax on account of branch transfer/consignment sale outside the State

³ Utilised for subsequent sales i.e. for sales after the first sales of goods which are only taxable at the first point of sales.

⁴ Utilised for purchase from one registered dealer to another such dealer for re-sale of goods in the state.

⁵ Utilised in movement of goods from one place to another.

Sl. No	Name of the circle/office	Name of stock register	Discrepancies/irregularities
7.	Patna City, East	Stock register of form IXC	25 form IXC were cancelled without assigning any reasons.
8.	Bhagalpur circle	Stock register of XXVIII B (Pink)	50 forms were reduced from the issue register during the period from 24 March 1998 to 27 July 1999 and the same was again taken into stock on 5 May 2000 i.e. after delay ranging between 10 months to 14 months.
9.	-do-	Stock register of form IX & IXC	Closing balance was not carried forward as opening balance on 7 February 1998 (Form IX), 18 February 1998 (Form IX C) resulting in shortage of forms.
10.	Patna West Circle	Stock register of form IXC	7 books were issued to dealers on 18 January 1999 without acknowledgement from them.
11.	Hajipur Circle	Stock register of form IXC	On 27 April 1998 opening balance was shown as 2,000 forms received on 25 April 1998 without taking into account previous balance of 1,831 forms as on 4 March 1998.
12.	-do-	Stock register of form IX	Closing balance on 5 June 1998 was shown as form 375 only, without taking into account previous balance of 1,761 forms.
13.	Sasaram Circle	Stock register of form XXVIII B	On 11 March 1998, 1,000 forms were received and accounted for. However, the previous balance of 105 forms was not accounted for.

2.2.6 Under the provisions of the Bihar Sales Tax (BST) Rules, 1983, the CCT on receipt of intimation from circle offices regarding theft, destruction or loss of any forms may declare such forms invalid or obsolete, from such date as may be specified in the notification, to avoid misuse of such declaration forms.

As per records of the CCT, Bihar there was delay in sending notifications regarding stolen or lost forms for publication in Official Gazette ranging between one year two months to six years two months from the date of occurrence of theft or loss as detailed below:

Sl No.	Name of Circle	Form number	No. of forms	Date of theft/loss	Date of publication of notification	Extent of delay
1.	Patliputra	Form F D-499480 to D-499484	5	21 January 1994	15 March 2000	6 Years 2 months
2.	Buxar	Form XXVIII B 511047 to 511049	3	20 August 1995	27 January 2000	4 year 5 months
3.	Barh	Form IXC B-681099-682099 682175-682263 683554	5	02 December 1996	03 July 2000	3 years 7 months
4.	Patna South	Form XXVIII B BC 390075	1	09 May 1998	08 July 1999	1 year 2 months
5.	Sitamarhi	Form XXVIII B BC 017771	1	17 March 1998	11 April 2000	2 year 1 month

Sl No.	Name of Circle	Form number	No. of forms	Date of theft/loss	Date of publication of notification	Extent of delay
6.	Raxaul	Form XXVIII B BC 018600	1	29 May 1998	18 November 1999	1 year 6 month
7.	Raxaul	Form XXVIII B BC 809502	1	03 April 1998	15 December 1999	1 year 8 months
8.	Patna North	Form XXVIII B D 310488	1	04 March 1998	25 February 2000	2 years
9.	Patna South	Form IX C A-826173 to 826175 B-149182 to 149187 B-149193 to 149194	11	26 July 1998 26 December 1998	11 April 2000	1 year 9 months

It would be seen that the CCT issued notifications declaring the above forms invalid and obsolete very late. Hence, the possibility of the utilisation of such forms during the intervening period cannot be ruled out.

2.2.7 In the office of DCCT Muzaffarpur circle, a review of stock register of form F revealed that five forms were shown as lost and 167 forms as damaged but the intimation to this effect was not sent to the CCT for declaring these forms as invalid and obsolete.

Utilisation

Incorrect issue of declaration forms

The Government, by a notification issued in January 1998, prescribed new declaration forms IX, IXC, XXVIII B and declared the earlier forms (printed at Gaya Press) as obsolete and invalid with effect from 01 February 1998.

2.2.8 Test check of the records in five circles, revealed that 1,908 declaration forms IX, IXC and XXVIII B were issued by the ACCTs to the dealers after being declared obsolete and invalid by the Government. This resulted in utilisation of obsolete/invalid declaration forms and allowing exemption/concession to the dealers on the basis of such invalid forms.

Sl. No.	Name of ACCT	Nature of forms	No. of forms	Date of issue
1.	Motihari circle	IXC	125 leaves	12 February 1998 to 27 March 1998
	-do-	IXC	36 leaves	19 March 1998 to 30 April 1998
2.	Bettiah circle	IX	265 leaves	03 February 1998 to 27 February 1998
	-do-	IX	30 leaves	10 February 1998
3.	Katihar circle	IX	200 leaves	04 February 1998 to 10 February 1998
	-do-	IXC	545 leaves	02 February 1998 to 20 February 1998

4.	Begusarai circle	XXVIII B	500 leaves	03 February 1998 to 24 February 1998
	-do-	IX	32 leaves	03 February 1998 to 24 February 1998
5.	Hajipur circle	IXC	150 leaves	19 February 1998
	-do-	IX	25 leaves	05 February 1998
Total			1,908 leaves	

On this being pointed out ACCT Bettiah, Katihar and Hajipur stated that notification was received late in the circle offices whereas ACCTs Motihari and Begusarai stated that matter would be examined. Further, the Department did not take any action to prevent misuse of such forms issued to the dealers. Failure of the Department in sending the notification to the circles in time resulted in misuse of invalid forms and consequent incorrect grant of exemption/concession.

Incorrect utilisation of declaration forms

As per the notification issued in January 1998, the unused forms were required to be surrendered by the registered dealers to issuing authority within 15 days.

2.2.9 Test check of the assessment records of 24 dealers of eight circle offices⁶ revealed that 235 IXC forms already declared obsolete and invalid were issued by the selling dealers during period 20 June 1998 to 08 July 2001 for availing exemption/concessional rate of tax. This resulted in incorrect allowance of exemptions/concession of tax of Rs 24.53 lakhs.

Under the provisions of B.F. Act and rules framed thereunder, to avail exemption/concession of tax a selling/purchasing dealer is required to furnish, the prescribed declaration form in "original" duly filled in and signed by the first/previous dealer. No exemption/concession of tax can be allowed on the basis of duplicate declaration forms furnished by the dealer.

2.2.10 Test check of records of 10 circle offices⁷ revealed that in 20 cases exemption/concession of tax was allowed on duplicate declaration forms between the period March 1998 to December 2002. This resulted in incorrect allowance of tax of Rs 2.97 crore.

Exemption/concession from tax cannot be allowed on the basis of declaration forms which pertain to the period not relating to the concerned assessment year, and on the declaration forms which are not properly filled in i.e. without the name of purchasing dealers, their registration certificate number etc.

2.2.11 Audit scrutiny revealed that in the case of 18 dealers of eight circle offices⁸, exemption/concession from tax was allowed during March 1998 to July 2001 by the Assessing Officers on the strength of declaration forms having bill numbers and dates not pertaining to relevant period. The irregular

⁶ Begusarai, Bettiah, Darbhanga, Katihar, Motihari, Patna North, Patna City West and Purnea

⁷ Begusarai, Bettiah, Darbhanga, Motihari, Nawada, Patna City West, Patliputra, Patna West, Purnea and Sasaram

⁸ Begusarai, Bettiah, Bhagalpur, Gaya, Motihari, Patna City West, Purnea and Sasaram

grant of exemption/concession of tax on the basis of defective forms resulted in short levy of tax amounting to Rs 30.87 lakh.

2.2.12 In four cases, in two circle offices (Bhagalpur and Patna Special) it was noticed that concession/exemption of tax was allowed during the period 1997-1998 to 1999-2000 on the basis of declaration forms in which bill/invoice numbers and date and registration numbers of purchasing dealers were not quoted. This resulted in short levy of tax to the tune of Rs 54.96 lakh.

Non/late submission of utilisation certificate

Under the provisions of BST Rules and notifications issued thereunder, every registered dealer to whom any declaration form is issued by the appropriate authority shall maintain complete account of every such form. The dealer has to furnish utilisation certificate to the competent authority showing the name of dealer to whom the form is issued, bill number and date and description of goods with value.

2.2.13 It was noticed that in the case of six dealers, either utilisation certificate was not furnished or furnished after a long period (ranging from 34 months to 60 months) from the date of issue of forms.

Name of circle	Name of forms/ (Number)	Name of dealer and Reg. No.	Date of issue of forms	Remarks
Patna Special circle	Form 'C' (19 Nos.)	M/s Jagdamba Plywood S.L.-653(R)	20 July 1999	Utilisation certificate was not submitted till May 2003
-Do-	Form 'C' (2 Nos.)	M/s Orient General Industries SL-699 (R)	19 March 1999	- Do -
Patna North Circle	Form- C (5 Nos.)	M/s Plastic works PTN – 293 (R)	24 June 1998	- Do -
-Do-	XXVIII B (25 Nos.) (Pink)	M/s Sound & Music PTN-10(R)	23 March 1996	The utilisation certificate was submitted on 2nd February 1999 with delay of 34 months.
-Do-	XXVIII B (15 Nos.)	Do	2 February 1999	The utilisation certificate was submitted on 12 March 2003 after 48 months.
-Do-	Do (Green) (2 Nos.)	Do	20 February 1999	The utilisation certificate was submitted on 7 June 2002 after 39 months.
-Do-	IX-C (25 Nos.)	M/s Indo National company PTN- 2 (R)	17 March 1998	The utilisation certificate was submitted on 12 March 2003 after 60 months.
-Do-	Do (125 Nos.)	M/s Abbott Lab PTN-104(R)	10 April 2001	Not submitted till May 2003
-Do-	Do (100 Nos.)	Do	29 June 2001	Do
-Do-	Do (75 Nos.)	Do	28 June 2002	Do

Non-detection of suppression of purchase/sales turnover

Under the BF Act read with CST Act, if the prescribed authority has reason to believe that a dealer has concealed, omitted or failed to disclose willfully 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 direct him 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.

2.2.14 In 16 commercial taxes circle, in 94 cases, it was noticed on cross verification of the assessment records with the utilisation certificates of declaration forms C and F furnished by the dealers and information collected in audit from outside the state, that the dealers had suppressed purchase/sale turnover of Rs 28.47 crore on account of goods bought, sold or transferred on declaration forms during the assessment period between 1995-1996 to 2001-2002, assessed during June 1996 to January 2003 which remained undetected by the Department. The failure of the Department to detect concealment of purchases/sales resulted in under assessment of tax amounting to Rs 9.81 crore including additional tax and surcharge and penalty of Rs 7.20 crore.

2.2.15 On cross verification of records of two dealers of DCCTs Muzaffarpur and Patna West, it was noticed that the selling dealer had shown sale of fertilizer and pesticide valued at Rs 31.61 lakh supported by form IXC to a dealer of another circle whereas according to the statement of the purchasing dealer, he had purchased the goods valued at Rs 2.25 crore on the same form during 1998-1999. This resulted in short accountal of sales turnover of Rs 1.93 crore on which the selling dealer was liable to pay tax amounting to Rs 47.56 lakh including penalty of Rs 34.80 lakh.

2.2.16 In another case of DCCT Muzaffarpur, a selling dealer issued form IXC during 1999-2000 to a purchasing dealer of another circle for Rs 1.46 crore on account of sale of synthetic adhesive but had shown sales turnover of Rs 46.36 lakh only in the utilisation certificate furnished to the circle. This resulted in short accountal of sales turnover of Rs one crore by the selling dealer on which he was liable to pay tax of Rs 37.23 lakh including penalty of Rs 27.24 lakh.

Incorrect grant of exemption

Under the provision of BF Act, a registered dealer can purchase goods from another registered dealer if the goods are taxable at the last point of sale in the state, and in such cases, each preceding sale by a registered dealer to another registered dealer is not assessed to tax, if the selling dealer produces a declaration in form IX obtained from the purchasing dealer duly filled and signed by him.

2.2.17 In the course of test check of assessment records it was seen that in nine circles offices⁹ in the case of 14 dealers, exemption from levy of tax on sale of goods valued at Rs 2.89 crore was allowed during the years 1995-1996 to 2000-2001 on production of declaration form IX treating the goods as leviable to tax at the last point of sale whereas the goods were leviable to tax at first point of sale being a specified item, and certain goods leviable to tax at last point of sale were allowed as first point of sale on form IX C. Failure of the Department to prevent misutilisation of declaration form and allowing incorrect exemption resulted in short levy of tax of Rs 26.78 lakh.

2.2.18 Test check of record of DCCT, Muzaffarpur, revealed that in the case of two dealers, exemption from levy of tax on sale of goods viz. fevicol/synthetic adhesive valued at Rs 52.95 lakh during the period 1996-1997, 1998-1999 & 1999-2000 for resale was incorrectly allowed on production of declaration form IX obtained from the purchasing dealers. On cross verification with the registration certificate of the purchasing dealers it was noticed that the dealers were not authorised to purchase these goods. Failure of the Department to verify the correctness of the use of declaration form IX resulted in incorrect allowance of exemption of tax of Rs 5.21 lakh.

Under the provisions of BF Act, as amended by the Bihar Finance (Amendment) Act 1989 effective from 3rd May 1989, where any dealer claims that no tax is payable by him on any part of his gross turnover in respect of any goods by reason of transfer of goods by him to another dealer or his branches within the state for sale, the burden of proving the claim shall be on the dealer and for this purpose, he shall furnish a declaration in the form and manner prescribed by the Department. The Department prescribed a declaration in form IXD in February 2000 for this purpose.

2.2.19 In case of a dealer, it was noticed, that exemption from tax on account of stock transfer within the state valued at Rs 64.35 lakh made during 19 February 2000 to 31 March 2000 was allowed without production of form IXD which resulted in grant of irregular exemption of Rs 7.14 lakh.

Irregular use of declaration form (non-statutory)/certificates for exemption from levy of tax

By a notification issued in September 1987, Government of Bihar allowed exemption from levy of sales tax or purchase tax, for a specified period, on sale/purchase of raw materials to/by a newly set up industrial units in large medium, small and tiny sector or any existing industrial unit registered by the Industries Department of the Government of Bihar or by Government of India, on submission of declaration in form 'C' (State)¹⁰ or 'Cha'¹¹ duly authenticated by the officer-in-charge of the concerned circle bearing printed book and serial numbers.

⁹ Begusarai, Bhagalpur, Gaya, Motihari, Muzaffarpur, Patna City West, Patna North, Patna South and Patna West

¹⁰ Form of declaration given by owners of industries for purpose of purchase of raw materials free of sales tax or purchase tax.

¹¹ Use for exemption from levy of sales tax on sale of finished goods by a newly set up industrial unit

2.2.20 In eight circle offices¹², it was noticed that 12 dealers were allowed exemption from sales tax on sale of goods amounting to Rs 3.40 crore during 1995-1996 to 2000-2001 on the strength of defective form C (State) and Cha, as either printed book numbers and serial numbers were not given on the body of the forms of the dealer had furnished duplicate/counter-foil copies thereof. Thus, the declaration forms furnished by the dealers were invalid. This resulted in incorrect grant of exemption of tax of Rs 33.63 lakh.

Dealers not traceable

Under the provisions of B.F. Act, if upon information, the prescribed authority is satisfied that there exists reasonable ground to believe the any dealer liable to pay tax has willfully failed to apply for registration, such dealer shall be assessed to tax to the best of judgement, after being given reasonable opportunity of being heard.

2.2.21 In Muzaffarpur circle, it was noticed that four dealers purchased goods viz. turmeric/fireworks from outside the state valued at Rs 56.24 lakh during the period 1996-1997 and 1999-2000 on the basis of declaration forms issued to another dealer of same circle and on invoices. The purchasing dealers had neither furnished returns nor were these traceable. Tax and penalty due from such dealers worked out to Rs 8.22 lakh.

Internal control and monitoring

2.2.22 As per provisions of the BF Act, CST Act, 1956 and the rules framed thereunder, a registered dealer should submit an account of receipt and issue of declarations. However, Act/Rules do not provide for furnishing of utilisation certificate by the dealers alongwith the return (monthly/quarterly/annually) to the effect that the declarations used and issued by them were for the purposes for which they were entitled as per their registration certificates.

A copy of the declaration form is to be placed in the record of the dealers who furnishes the declaration with a copy of the same being sent to the other concerned dealer of other circle to be placed on his assessment record to facilitate cross verification of such transactions. A system for cross verification of such accounts with circles situated in the same place or other places in the state or with concerned offices outside the state was not prevalent.

It was noticed in the course of audit that dealers did not furnish declaration forms alongwith returns. Utilisation certificate of forms were also not furnished periodically. As a result, the sales and purchases statements furnished by the dealers at the time of assessment were not cross verified. This resulted in leakage of revenue due to suppression of sales/purchase turnover.

¹² *Motihari, Purnea, Darbhanga, Katihar, Patna City West, Patna City East, Patna South and Begusarai.*

Recommendations

2.2.23 The audit findings reveal that the authorities concerned were not enforcing the statutory provisions regarding allowances of exemption on the strength of various forms. Exemptions were allowed against unsigned, invalid, and incomplete forms without proper scrutiny and cross-verification.

Government may consider evolving a sound mechanism:

- to ensure prompt dissemination of information in respect of invalid declaration forms with a view to curb their misuse;
- for scrutiny and cross verification of forms before allowance of exemptions or concessional rate of tax.

The matter was reported to the Department and the Government in September 2003; their reply was awaited (August 2004).

2.3 Suppression of turnover due to excess disclosure of export sale

Under the provision of the CST Act, no tax shall be payable on sale or purchase of goods which have taken place in the course of export sale. Further, if the prescribed authority has reason to believe that the dealer has concealed, omitted or failed to disclose willfully the particulars of turnover or has furnished incorrect particulars of such turnover and thereby returned figures below the correct 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 of the escaped turnover.

Cross verification of assessment records of 47 dealers of medicine, pesticides, coir mattress, soap, toothpaste and brush, motor parts, milk products, paints, cookers and stationery materials, etc. registered with five commercial taxes circles¹³ with the records maintained in Customs Department revealed that the assessee had disclosed turnover account of export sale of goods to Nepal amounting to Rs 117.06 crore in their return during the period 1998-1999 to 2000-2001, assessed between September 1999 and April 2003, and were allowed the exemption accordingly against the actual export value of goods of Rs 95.38 crore as shown in the records of Customs Department. Failure of the Assessing Authorities to cross verify the records with the Customs Department resulted in availing irregular exemption on excess taxable turnover of Rs 21.68 crore and consequent short levy of tax of Rs 6.82 crore including additional tax, surcharge and penalty.

On this being pointed out, the Department stated between May and June 2003 that the cases would be reviewed. Further reply has not been received (August 2004).

¹³ Patna Special, Patliputra, Patna South, Patna North and Patna City West.

The cases were reported to the Government in September 2003; their reply has not been received (August 2004).

2.4 Suppression of sales/ purchase turnover

Under the BF Act, read with the CST Act, if the prescribed authority has reason to believe that the dealer has concealed, omitted or failed to disclose willfully the particulars of turnover or has furnished incorrect particulars of such turnover, 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.

In nine commercial taxes Circles, it was noticed from the assessment records, assessed between November 2000 and November 2002 and utilisation certificates of declaration forms 'IX C', 'F', road permits, trading account, etc., that 13 dealers had suppressed sales/ purchase turnover of Rs 11.76 crore bought/sold on declaration forms during the years 1998-1999 to 2000-2001 which remained undetected by the Department. Thus, failure of the Department to check the suppression of purchases/sales resulted in short-levy of tax amounting to Rs 3.24 crore including additional tax, surcharge and 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 turnover Accounted for	Amount concealed Rate applicable (per cent)	Amount of tax/penalty	Total
1.	Bettiah 1	1999-2000 September 2000	Molasses	<u>185.25</u> Nil	<u>185.25</u> 25 +1+SC	<u>53.49</u> 48.63	102.12
2.	Lakhisarai 1	1999-2000 November 2002	Packing material	<u>13.42</u> 3.27	<u>10.15</u> 8+1+SC	<u>1.01</u> 0.92	1.93
3.	Muzaffarpur 1	1998-1999 September 2000	Cement	<u>730.00</u> 700.03	<u>29.97</u> 11+1+SC	<u>3.99</u> 3.63	7.62
4.	Patliputra 1	1999-2000 August 2001	Medicine	<u>808.82</u> 699.43	<u>109.39</u> 7+SC	<u>8.42</u> 7.66	16.08
5.	Patna City West 2	1998-1999 & 2000-2001 November 2000 & December 2001	Toilet soap and detergent	<u>4,759.45</u> 4,455.77	<u>303.68</u> 10, 12 +1+SC	<u>43.44</u> 39.49	82.93
6.	Patna North 2	1999-2000 & 2000-2001 November 2001 & February 2002	Tyre, cement	<u>3,377.97</u> 3,234.83	<u>143.14</u> 9,11+1+SC	<u>16.79</u> 15.26	32.05
7.	Patna South 3	1998-1999 & 1999-2000 January 2001 and March 2002	Medicine, horlicks	<u>10,731.40</u> 10,411.70	<u>319.70</u> 7, 10+1+SC	<u>35.66</u> 32.41	68.07
8.	Patna West 1	1998-1999 December 2001	Pesticides	<u>283.71</u> 241.13	<u>42.58</u> 4+1+SC	<u>2.36</u> 2.15	4.51

Sl. No.	Name of circle No. of dealers	Period of assessment Month /Year of assessment	Commodity	Actual purchase / sale turnover Accounted for	Amount concealed Rate applicable (per cent)	Amount of tax/penalty	Total
9.	Siwan 1	1999-2000 November 2000	Soap & detergent	326.26 293.67	32.59 12+1+SC	4.70 4.28	8.98
	13			21,216.28 20,039.83	1,176.45	169.86 154.43	324.29

On these cases being pointed out, the Department stated, between November 2001 and January 2003 that the cases would be examined. Further reply has not been received (August 2004).

The cases were reported to the Government in September 2003; their reply has not been received (August 2004).

2.5 Under assessment of Central Sales Tax

2.5.1 Under the provision of the CST Act, 1956, the Government of Bihar by issuing a notification in May 1996, granted exemption to industrial units from levy of sales tax on inter-state sale of manufactured goods, provided these are covered by 'C' forms. In case of inter-state sale of goods which are not supported by prescribed declaration forms, the tax is leviable at the rate of ten per cent or at the rate applicable in the state whichever is higher. In case of declared goods, the tax is leviable at twice the rate applicable in the state if sale is not supported by prescribed form.

In Patna South Circle in the case of a manufacturing dealer, who was granted certificate for availing the benefit of tax exemption on inter-state sale of manufactured goods, exemption from levy of tax was incorrectly allowed on inter-state sale of ingots, runner, etc valued at Rs 19.20 crore made during the period 1996-1997 to 1998-1999, and assessed between September 1999 and December 2000, though the sale was not supported by declaration forms 'C'. This incorrect allowance of exemption resulted in under assessment of tax amounting to Rs 1.54 crore.

On this being pointed out in audit the Department stated in June 2001 that the case would be reviewed. Further reply was not received (August 2004).

The case was reported to the Government in September 2003; their reply was not received (August 2004).

2.5.2 Under the provisions of CST Act, 1956, the BF Act, 1981 and Rules framed thereunder, no tax shall be payable on sale or purchase of goods, which have taken place in the course of export out of territory of India provided the sale is substantiated by documentary evidence. According to orders issued by State Government in March 1986 and August 1991, for exemption from levy of tax on sale in the course of export to Nepal, the transaction must be supported, apart from other evidence, by bills of export granted by the custom officials of India.

In four commercial taxes circles¹⁴ it was noticed that export sale of goods viz. coir mattresses, pesticides, spirit, IMFL and wagons valued at Rs 2.27 crore during the years between 1994-1995 and 1998-1999 and assessed between September 2000 and November 2002 were not supported by the prescribed documentary evidence like bill of export granted by a custom official of India, but the exemption from levy of tax was allowed. This resulted in under assessment of tax amounting to Rs 29.20 lakh including additional tax and surcharge.

On this being pointed out, the Department stated in November 2002 in case of a dealer of Muzaffarpur that production of bill of export was not mandatory. The reply is not tenable in view of above orders of the Government that the transactions must be supported by bill of export granted by custom officials of India. In respect of the other cases, the Department stated between September 2000 and April 2002 that the cases would be reviewed. Further reply has not been received (August 2004).

The matter was reported to the Government in September 2003; their reply has not been received (August 2004).

2.6 Misclassification of goods

Under provisions of the BF Act, 1981, *zarda* has been exempted from levy of tax, but *quiwam* is not covered by the term *zarda*. Both are commercially different commodities and sales of *quiwam* as such are taxable at the rate of eight per cent being an unspecified item.

In Muzaffarpur Commercial Taxes Circle, it was noticed in case of a dealer that on sale of *quiwam* valued at Rs 4.89 crore made during the years 1996-1997 and 1998-1999 and assessed between August 2000 and January 2001, tax was not levied treating the same as *zarda*, a tax free item. *Quiwam* being different from *zarda*, tax was leviable at general rate. Misclassification of goods resulted in short levy of tax amounting to Rs 48.89 lakh.

On this being pointed out, the Department stated in March 2002 that the case would be reviewed. Further reply has not been received (August 2004).

The case was reported to the Government (September 2003); their reply has not been received (August 2004).

2.7 Incorrect grant of exemption

By a notification issued under the BF Act, 1981, the State Government specifies in respect of every goods, that if sales tax is levied at the first point of sale in the State then subsequent sale of the same goods shall not be levied to tax, provided the subsequent sale is supported by prescribed declaration in Form IX C.

¹⁴ Bagha, Hajipur, Muzaffarpur and Patna West.

In Patliputra circle, Patna, it was noticed that the dealer had sold taxable electronic goods valued at Rs 46.62 lakh during 1994-1995 and assessed in December 1998, but he had accounted for the same as sale of tax-paid goods in the trading account to avail of the exemption from levy of tax without supporting the same by requisite declarations. Thus, the incorrect grant of exemption resulted in short levy of tax worth Rs 5.18 lakh.

On this being pointed out in audit, the Department stated in January 2000 that the case would be reviewed. Further reply has not been received (August 2004).

The matter was reported to the Government (September 2003); their reply has not been received (August 2004).

2.8 Application of incorrect rates of tax

Under the B.F. Act, 1981, the State Government may from time to time, by notification, specify the rate of tax on any class or description of goods.

In three Commercial Taxes Circles, it was noticed in the case of four dealers that on sale of goods valued at Rs 3.47 crore made during the years between 1995-1996 and 1999-2000 and assessed between December 1998 and October 2001, tax was levied at incorrect rate. This resulted in short levy of tax amounting to Rs 21.49 lakh including additional tax and surcharge as detailed below:

Sl. No.	Name of Circle Number of dealers	Name of commodity	Assessment Year Date of Assessment	Sales turnover	Rate of tax (Per cent)		Short levy of tax
					Leviable	Levied	
1.	Patna South 1	Hair dryer	1998-1999 October 2001	107.20	12+1+SC	8	4.76
2.	Patna North 1	Polyurethane	1995-1996 to 1998-1999 Between December 1998 & October 2000	22.02	7+1+SC	4	1.07
3	Central Circle, Kolkata 1	Boiler	1997-1998 to 1999-2000 Between April 2000 & November 2000	69.00	8+1+SC	4	4.13
4	Patna South 1	Purity barley	1995-1996 January 1999	148.49	10+1+SC	4	11.53
	4	Total		346.71			21.49

On these cases being pointed out the Department stated between April 2000 and October 2001 that the cases would be reviewed. Further reply has not been received (August 2004).

The cases were reported to the Government (September 2003); their reply has not been received (August 2004).

2.9 Non- levy of additional tax

Under the provisions of the BF Act, 1981, every dealer is required to pay additional tax at the rate of one per cent (except on liquor) on gross turnover.

In Central Circle, Kolkata, in the case of a dealer engaged in the business of petroleum products, additional tax amounting to Rs 15.35 lakh on sale of Aviation Turbine Fuel (ATF) made during 1997-1998 and assessed in January 2001 was not levied treating the goods as being exempt from levy of additional tax.

On this being pointed out in audit the Department stated in April 2002 that ATF including aviation spirit was exempted from levy of additional tax. The reply is not tenable as only aviation spirit was exempted from levy of additional tax. Further reply was awaited (August 2004).

The matter was reported to the Government in September 2003; their reply has not been received (August 2004).

2.10 Short levy of tax due to computation mistake

Under the provisions of the Bihar Finance Act, 1981, every dealer whose gross turnover during a year exceeds rupees ten lakh shall, in addition to the tax payable by him under the Act, pay a surcharge at the rate of ten per cent of tax (including additional tax) payable by him.

In two Commercial Taxes Circles (Central Circle, Kolkata and Patliputra), it was noticed that in the cases of two dealers, assessed in December 1999 and January 2001, tax of Rs 2.98 crore instead of the correct amount of Rs 3.03 crore, was levied for the year 1997-1998 and 1999-2000. The mistake in computation of tax resulted in short levy of tax of Rs 5.91 lakh.

On this being pointed out in audit, the Department in case of Patliputra circle stated in December 2001 that the demand notice was issued after adjusting entry tax. The reply is not tenable as there was mistake in computation of tax. In the other case the Department stated in January 2001 that the case would be reviewed. Further reply was not received (August 2004).

The case was reported to the Government (September 2003); their reply has not been received (August 2004).