

CHAPTER-II: TAXES ON SALES, TRADE ETC.

2.1 Results of Audit

Test check of the records relating to assessments and refund of Sales Tax in various Commercial taxes circles, conducted in audit during the year 2003-2004, revealed under assessment of tax of Rs 371.27 crore in 298 cases which broadly fall under the following categories:

(Rupees in crore)

Sl. No.	Categories	No. of cases	Amount
1	Non-levy or short levy of tax	14	0.31
2	Irregular allowance of exemption from tax	90	68.74
3	Non-levy of penalty	18	2.42
4	Irregular allowance of concessional rate of tax	17	9.14
5	Non-levy or short levy of additional tax & surcharge	14	1.26
6	Application of incorrect of rates of tax	11	0.11
7	Short levy due to incorrect determination of turnover	27	2.52
8	Non-levy of penalty for excess collection of tax/ mistake in computation	12	0.42
9	Other cases	94	8.77
10	Review on arrears in Sales Tax	1	277.58
	Total	298	371.27

During the year 2003-2004 the Department concerned accepted underassessment etc. of Rs 0.85 crore involved in 20 cases which had been pointed out in audit during earlier years.

A few illustrative cases including a Review on **Arrears of revenue in Sales Tax** involving tax effect of Rs 291.30 crore are discussed in the following paragraphs:

2.2 Review : Arrears of Revenue in Sales Tax

Highlights

- The amount of arrears increased from Rs 692 crore to Rs 1,145 crore (65 *per cent*) over the period from 2000-2001 to 2002-2003 whereas amount of certified arrears increased by 29 *per cent* only. The pace of recovery process was slow against the mounting arrears.

(Paragraph 2.2.5)

- Cross verification of Dues statement with Register VI maintained in 15 circles revealed incorrect exhibition of dues of Rs 38.51 crore, short exhibition of dues of Rs 2.45 crore, excess exhibition of dues of Rs 0.61 crore.

(Paragraph 2.2.6)

- The Revenue authorities failed to reconcile discrepancy of Rs.2.76 crore between Register IX and Register X. Besides, in case of two dealers of a circle, institution of certificate was short by Rs.17.83 lakh.

(Paragraph 2.2.7)

- In two circles, five certificate cases for recovery of dues of Rs 92.54 lakh remained pending till 2002-2003 as distress warrants/body warrants during 1994-1995 and 2002-2003 could not be executed.

(Paragraph 2.2.7)

- In the case of 10 dealers of a circle registration certificate was granted to *Benami* (non-existent) dealers though certificate cases were instituted for non payment of tax amounting to Rs 13.19 crore. The defaulters were not traceable.

(Paragraph 2.2.10)

Introduction

2.2.1 The Bihar Finance Act, 1981 and Rules framed thereunder govern the laws relating to the levy and collection of sales tax in the State. Every registered dealer liable to pay tax is required to file monthly/quarterly/annual returns alongwith proof of payment of tax due from him. Final assessment for the previous year of an assessee is to be initiated and completed before the expiry of four years (introduced with effect from 15 June 1993). Prior to this, the time limit for initiation and completion of assessment was eight years.

The tax assessed shall be paid by the assessee in a manner and within the time specified in the notice of demand. Where tax remains unpaid, the assessing officer may impose penalty. Any tax or penalty which remains unpaid constitutes arrears of sales tax and shall be recoverable as if it were arrears of land revenue. The Act further provides that no proceedings for recovery of arrears of revenue shall be initiated except before the expiry of twelve years from the date of assessment. The proceedings under this Act shall be deemed to be the proceedings for recovery of the public demands under the Bihar and Orissa Public Demands and Recovery (BOPDR) Act, 1914 and all provisions of the said Act for recovery, attachment, sale and arrest shall apply *mutatis mutandis*.

Any dealer objecting to an order of assessment or penalty or both or an order for recovery of arrears passed by prescribed authority could prefer an appeal within specified period after fulfillment of conditions.

Organisational set up

2.2.2 At the apex level, Commissioner of Commercial Taxes (CCT) is responsible for the administration of the Acts and Rules, monitoring of internal control measures through reports and returns received by different divisions/circles in the Commercial Taxes Department. The dues and collection of divisions/circles are watched and monitored through the reports and returns furnished by the divisions/circles. He is assisted by a Senior Joint Commissioner (Taxation), Deputy Commissioner (DC) and Assistant Commissioner of Commercial Taxes (ACCT) at the Headquarters (Secretariat level).

The State is divided into seven Commercial Taxes Divisions, each of which is under the charge of a Joint Commissioner (JC). Divisions are further divided into circles under the charge of DC who is assisted by ACCT and Commercial Tax Officer (CTO) respectively for administration of sales tax laws including the assessment and collection of Sales tax dues. There are in all 47 circles in the State. For effecting recovery of dues under BOPDR Act, the Requiring officer (RO) is primarily responsible for systematic application for certificates and the Certificate Officer (CO) is responsible for prompt disposal of the case.

Scope of Audit

2.2.3 The review covered the period from 1998-1999 to 2002-2003¹ and was conducted from January to June 2004 with reference to the records available in the offices of the CCT. Fifteen² out of 47 circles including two (Muzaffarpur and Patna) out of seven divisions were also test checked. The results of the review are given in the succeeding paragraphs.

Audit Objectives

2.2.4 The review was conducted with a view to:

- ascertain the extent of arrears;
- ascertain the effectiveness of the internal control system; and
- examine effectiveness of the Department in raising demands and collection of arrears.

Trend of revenue and arrears

¹ Cases of arrears relating to the period prior to 1998-1999 were also test checked in view of the provisions of the Bihar Finance Act, 1981 as mentioned in para 2.2.2 of this Report.

² Arrah, Begusarai, Buxar, Danapur, Gaya, Hajipur, Muzaffarpur, Patliputra, Patna Special, Patna North, Patna South, Patna West, Patna City East, Patna City West and Sasaram.

2.2.5 The revenue raised during 1998-1999 to 2002-2003 and arrears outstanding are detailed below:

(Rupees in crore)

Year Upto	Budget Estimates	Actual receipts	Arrears	Percentage of arrears to actual receipts
1998-1999	2,042.00	1,821.85	1,173.57	64.42
1999-2000	2,280.00	2,067.79	1,377.74	66.63
2000-2001	1,950.88	1,821.47	691.79	37.98
2001-2002	1,450.00	1,412.96	905.06	64.05
2002-2003	1,627.01	1,647.62	1,144.99	69.49

The arrears at the close of each year ranged between 37.98 to 69.49 *per cent* of the actual collection during the above period.

According to the Department, the arrears were under the following stages of recovery:

(Rupees in crore)

Year Upto	Amount of arrears	Certified arrears	Recovery stayed by Court/ Government	Other arrears	Percentage of column 3 to 2	Percentage of column 4 to 2
1	2	3	4	5	6	7
1998-1999	1,173.57	68.60	639.79	465.18	5.85	54.52
1999-2000	1,377.74	158.54	647.04	572.16	11.51	46.96
2000-2001 ³	691.79	172.76	361.89	157.14	24.97	52.31
2001-2002	905.06	249.93	464.60	190.53	27.61	51.33
2002-2003	1,144.99	222.73	400.73	521.53	19.45	35.00

Specific action in respect of other arrears was not furnished, though called for.

The above table revealed the following:

- Amount of arrears increased from Rs 692 crore in 2000-2001 to Rs 1,145 crore in 2002-2003 (65 *per cent*).
- Amount of certified arrears increased from Rs 173 crore in 2000-2001 to Rs 223 crore in 2002-2003 (29 *Per cent*) in comparison to 65 *per cent* increase of total arrears
- The pace of recovery process was slow in comparison to the mounting arrears.

Incorrect reporting of arrears

2.2.6 Under the provisions of Bihar Finance Act and executive instructions issued thereunder, Dues and Collection Register (Register VI) is required to be maintained by the circle which would give a complete record of the events occurring in the assessment record and vital information in respect of assessees.

³ Arrears decreased due to bifurcation of State

Further, by an executive instruction of September 1998, the circles/monitoring wing were instructed to update Register VI to watch deposit of admitted/assessed tax in time and compliance was to be sent to the headquarters.

It was noticed in all test checked circles that Register VI was neither maintained properly nor reviewed/cross checked by any superior authority after completion of the assessment.

Cross verification of Dues statement furnished by the Department with Register VI maintained in 15⁴ circles for the period between 1998-1999 to 2002-2003 revealed non-exhibition (Rs 38.51 crore), short exhibition (Rs 2.45 crore), over exhibition (Rs 0.61 crore) of arrears and exhibition of different figures under assessee-wise (Rs 62.04 crore) and year wise (57.50 crore).

Failure of follow-up action for recovery of arrears

2.2.7 Under the provisions of Bihar Finance Act, the amount of tax together with penalty if any, which remains unpaid after the date specified in the notice shall without prejudice to any other mode of recovery be recovered as arrear of land revenue. Under the BOPDR, any money which is declared by any law for the time being in force as arrears is recoverable as arrears of land revenue.

Variation between figures of Register IX and X

- Under the provisions of BOPDR Act, certificate proceedings are initiated for realisation of arrears for which the RO sends the proposal to the CO and makes entries of the details of such cases in Register IX and the CO after being satisfied that any public demand payable to the Collector is due, signs a certificate in the prescribed form, stating that the demand is due and shall cause the certificate to be filed in his offices. Further, the CO enters the details in Register X. The Register IX and Register X are to be reconciled at regular intervals. The CO is responsible for ensuring that no delay occurs in the certificate office and certificates are made as soon as applied for.

Cross-verification of entries appearing in Register IX in respect of three⁵ circles for the years 1997-1998 to 2000-2001 and those appearing in Register X (maintained in the certificate office) revealed variations. While Register IX contained 10 certified cases involving Rs 8.43 crore, Register X disclosed only one certified case involving Rs 5.67 crore. Non-reconciliation of Register IX and Register X and lack of co-ordination between RO and CO resulted discrepancy of Rs 2.76 crore.

Non-initiation/ short institution of certificate proceedings

⁴ Arrah, Begusarai, Buxar, Danapur, Gaya, Hajipur, Muzaffarpur, Patliputra, Patna Special, Patna North, Patna South, Patna West, Patna City West, Patna City East and Sasaram

⁵ Patna South, Patna city West and Patna North

- In six circles⁶ test checked, it was noticed from Register VI / Registration certificate that 17 dealers had either closed down their business or had surrendered registration certificates during 1991-1992 to 2002-2003. They had stopped filing of returns and had not paid the tax due amounting to Rs 64.52 lakh but no certificate proceedings were initiated against them. Further short certificate case for Rs 17.83 lakh was instituted between 2000-2001 and 2001-2002 against two dealers for recovery of arrears. Reasons for short institution of certificate cases were not furnished.

Non levy of penalty before institution of certificate case

- The Bihar Finance Act, provides for levy of penalty on the unpaid amount of assessed tax before institution of certificate case which may extend to five *per cent* of the amount of tax, for each of first three months following the expiry of such date and to 10 *per cent* for each subsequent month or part thereof.

Test check of Certificate Registers (Register IX) and certificate case records of 11 circles⁷, revealed that certificate cases were instituted between 1998-1999 and 2002-2003 against 21 dealers on the unpaid amount of tax for Rs 13.51 crore without imposing penalty of Rs 30.98 crore.

Non-return of certificate requisitions to certificate office

- Under the BOPDR Act, the certificate debtor may, within 30 days from the service of notice file a petition, denying the liability, in whole or in part. The CO may call for para-wise comments on the petition and additional information relevant for the disposal of the certificate cases from the RO.

Test check of Register IX of Patna North Circle disclosed that one case involving Rs 17.59 lakh which was requisitioned for institution of certificate case against the dealer in 2002-2003 was returned to the RO for making compliance of certain comments. However, the same was not returned back to the CO as of June 2004 resulting in delay in institution of certificate case and recovery.

Certificate cases dropped for want of correct address

- No provision exists in the BOPDR Act to drop certificate proceedings once initiated. Further, the BOPDR Act and Board's Instructions issued thereunder from time to time, *interalia*, provide for furnishing of the correct address(es) of the defaulter against whom certificates are to be enforced by the RO. The RO is required to send a report on any case called for by the CO.

Test check of Register IX of four circles⁸ disclosed that while 33 certificate cases involving Rs 62.64 lakh instituted against the dealers between 1992-1993 and

⁶ Gaya, Hajipur, Muzaffarpur, Patna North, Patna South and Sasaram.

⁷ Begusarai, Danapur, Gaya, Hazipur, Muzaffarpur, Patna Special, Patna City East, Patna City West, Patna South, Patna North and Patna West.

⁸ Muzaffarpur, Patliputra, Patna South and Patna West

1997-1998 were dropped for want of correct address of the defaulters. This resulted in loss of revenue of Rs 62.64 lakh.

Distress Warrant/Body Warrant issued but not executed

- Under the BOPDR Act, CO may order execution of a certificate by attachment and auction of any property or by arresting the certificate debtor and detaining him in civil prison or by both the methods.

Test check of certificate case records and Register X in two circles revealed that in case of five certificate proceedings, distress warrants/ body warrants issued between October 1994 and December 2002 for recovery of dues of Rs 92.54 lakh, were not executed. The details are as under:

(Rupees in lakh)				
Name of the circle	Certificate case No.	Distress warrant issued on	Body warrant issued on	Amount
Sasaram	17/1983-1984	6.10.1994	-	85.28
	939/1992-1993	-do-	-	2.77
	152/1992-1993	6.10.1994	-	2.39
Muzaffarpur	7/2001-2002	-	11.12.2002	1.05
	10/2001-2002	-	20.11.2002	1.05
Total				92.54

The concerned ROs did not pursue the cases for execution of warrants in time.

Avoidable creation of arrears due to missing challans

2.2.8 Under the provisions of the Bihar Finance Act, and Rules framed thereunder, every dealer is required to pay tax or penalty or both under the Act in Government treasury by challan. The Treasury Officer is required to send portion of the challan marked 'original' to the in-charge of the circle. A portion of the challan marked 'duplicate' is retained by the treasury and the portion marked 'triplicate' and 'quadruplicate' is returned to the dealer/ payee after being duly received.

Perusal of uncertified dues statement furnished by two circles (Patliputra and Patna City West) revealed that an amount of Rs 2.98 crore was outstanding against 17 dealers for the assessment periods 1991-1992 to 2002-2003 due to non-availability of challans in token of proof of payment. However, there was nothing on record to indicate that the Department had initiated any action either to ascertain the facts from the treasury or the assessee. Cross verification of records of Patna Treasury in respect of three cases revealed that as against the uncertified dues of Rs 8.65 lakh, the assessee had deposited an amount of Rs 4.34 lakh for the period from 1998-1999 to 2000-2001. Failure on the part of departmental authorities (DCCT/ACCT) to ascertain the facts and initiate recovery proceedings against the defaulters resulted in non-realisation of dues of Rs 2.94 crore.

Amounts locked in appeal

2.2.9 Under the Bihar Finance Act, any dealer objecting to an order of assessment or penalty or both passed by an assessing authority, may appeal to the JC or the DC specially authorised in this behalf who on hearing can confirm,

annul, reduce, enhance or otherwise modify the assessment order or remand the case passed by an assessing authority for re-assessment. In December, 1988 the CCT fixed the minimum number to be disposed per month by JCCT (Appeal) as 60 which was again reiterated by the instructions of August 1989.

- **Pending appeal cases**

Test check of records in two divisions revealed that as against the prescribed norms of finalisation of 7,200 cases during the years 1998-1999 to 2002-2003, the appellate authorities could finalised only 4,906 cases as detailed below :

Name of division	Year	Opening balance	Addition	Total	Disposal required as per norms	Disposal (Actual)	Balance	Percentage of short fall in disposal as per norms	percentage of shortfall against total no. of pending cases
Muzaffarpur	1998-1999	1,760	325	2,085	720	1,414	671	-	32.18
	1999-2000	671	350	1,021	720	698	323	3.05	31.64
	2000-2001	323	284	607	720	467	140	35.13	23.06
	2001-2002	140	242	382	720	273	109	62.08	28.53
	2002-2003	109	412	521	720	315	206	56.25	39.53
Patna	1998-1999	167	408	575	720	218	357	69.72	62.09
	1999-2000	357	431	788	720	571	217	20.69	27.54
	2000-2001	217	342	559	720	333	226	53.75	40.43
	2001-2002	226	380	606	720	357	249	50.42	41.09
	2002-2003	249	754	1,003	720	260	743	63.89	74.08
Total					7,200	4,906			

Thus, except for two years in Muzaffarpur division, the disposals were substantially below the minimum target of 720 cases per annum and shortfall ranged between 20.69 and 69.72 *per cent* during 1998-1999 to 2002-2003.

- **Stay order**

The Supreme Court⁹ has held that the court should refrain from passing any interim orders staying the realisation of indirect taxes or passing such orders which may have the effect of non-realisation of indirect taxes.

Statement furnished by four circles revealed that 162 appeal cases involving Rs 151.59 crore were under stay, granted by various appellate authorities/tribunal up to 2002-2003 as detailed below:

Name of the Circle	(Rupees in crore)							
	Stayed by							
	Tribunal		Commissioner		Joint Commissioner		Total	
No. of cases	Amount	No. of cases	Amount	No. of cases	Amount	No. of cases	Amount	
Patna Special	1	0.17	-	-	82	142.60	83	142.77
Patna city West	-	-	-	-	1	0.07	1	0.07
Sasaram	1	0.02	1	0.01	10	0.16	12	0.19

⁹ *Empire Industries Ltd. and others vrs. Union of India and others 1985 (20) ELT 17(a)(SC).*

Patna South	22	1.43	11	1.04	33	6.09	66	8.56
Total	24	1.62	12	1.05	126	148.92	162	151.59

Non-recovery of arrears due to grant of registration certificate to *Benami* dealers

2.2.10 Under the provisions of Bihar Finance Act, and Rules framed thereunder, every dealer who requires a registration certificate shall apply for the same in the prescribed manner to the prescribed authority and the said authority after having been satisfied about the contents and particulars of the application, shall grant a registration certificate to the dealer after furnishing of security for proper payment of tax payable by the dealer and the dealer shall comply with such requirement.

The Collector, Gaya reported (February/May 2002) to the CCT Bihar, that due to delayed initiation of certificate proceedings in case of 10 dealers, the Government had foregone substantial revenue. In addition, the dealers were either *benami* dealers or had given wrong address and as such the recovery proceedings against them were deferred. The Collector had also desired that departmental or vigilance inquiry may be conducted. However, there was nothing on record to indicate that the Department had initiated any action. This has resulted in loss of Government revenue of Rs 13.19 crore.

Non-revision of security

2.2.11 Under the provisions of Bihar Finance Act, and rules made thereunder, the prescribed authority may require any registered dealer to furnish security for proper payment of tax payable by him. If at any time, the said authority finds that the tax payable by the dealer for one year exceeds the amount of security furnished by him, the said authority may direct the dealer to furnish security equivalent to the tax payable by the dealer for one year.

In eight circles¹⁰ in the case of 28 dealers, the assessing officers did not revise the amount of security though the tax payable by these dealers increased substantially in comparison to the amount of security. In absence of proper/equivalent security the assessing officers were not in a position to realise the arrears of Rs 27.39 crore relating to the assessment years 1988-1989 to 1998-1999. Thus non- revision of security in the interest of revenue, led to accumulation of avoidable arrears of to Rs 27.39 crore.

Arrears due to undue delay in issue of demand notice

2.2.12 Under the provisions of Bihar Finance Act, the tax and penalty payable by a dealer shall be paid into Government treasury or in such other manner, as may be prescribed by such date as may be specified in the notice of demand issued by the prescribed authority for this purpose. The prescribed authority may also extend the date of payment and allow him to pay the tax and penalty in instalments. Further, he may require any dealer to make payment forthwith.

¹⁰ Danapur, Gaya, Hajipur, Patna City East, Patna City West,, Patna North, Patna South and Patna West.

In Hajipur Circle, in case of a dealer, assessment order for the assessment period 1988-1989 to 1990-1991 was passed in March 1997 for Rs 6.95 lakh and the demand notice was issued in March 1998 after a lapse of one year. The arrears were, however, not recovered as of June 2004. After this was pointed out in June 2004, the ACCT stated in August 2004 that the dealer has become non-existent. Thus undue delay in issue of demand notice had resulted in avoidable accumulation of arrear.

Conclusion

2.2.13 Sales tax is the major source of revenue in the State. Though, an increasing trend in the arrear position has been noticed during the last two years (2001-2002 and 2002-2003), yet the correctness of dues remained doubtful in view of the fact that Register VI prescribed under executive instructions, was not maintained properly. The exact amount outstanding against the assesseees and the stages of action for recovery was unascertainable. Proper follow-up action was not taken to effect recovery of arrears.

Incorrect raising of demand, time barred assessment or no assessment and delay in issue of demand notice were some of the factors which not only lead to non-recovery of arrears but also brought out shortcomings in the system for realisation of dues.

Recommendations

2.2.14 Government may examine and consider:

- creation of a mechanism for constant watch over the dues and collection;
- taking effective measures for recovery of pending certified dues;
- regular review of security deposit/bank guarantee;
- setting up of a legal directorate or effectively empowered mechanism for fixation of time limit for disposal of appeal cases; and
- making the internal control system more effective.

2.3 Suppression of turnover

Under the provisions of Bihar Finance Act, read with Central Sales Tax (CST) Act, 1956, 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 reassess the amount of tax due from the dealer in respect of such turnover and shall direct the dealer to pay, besides the tax assessed on escaped turnover, penalty not exceeding three times but not less than an amount equivalent to the amount of tax on the escaped turnover. The CST Act also provides that no tax shall be payable on sale of goods which have taken place in the course of export sale. Further, the CCT, Bihar

issued instructions in May 1990 and June 1991 that all the Assessing Officer in-charge should cross verify the records with the Custom Department.

Audit scrutiny revealed the following:-

- Cross verification of assessment records of 21 dealers of various commodities¹¹ registered with four commercial taxes circles¹² with the records maintained in Custom Department revealed that the assessee had disclosed turnover on account of export sale of goods to Nepal amounting to Rs 47.77 crore in their returns during the period 1997-1998 to 2001-2002 and were allowed between December 1999 and January 2004 the exemption accordingly, against the actual export value of goods of Rs 30.50 crore as shown in the records of Custom Department. The assessing authorities failed to cross verify the records with the Custom Department which resulted in allowing incorrect exemption on excess taxable turnover of Rs 17.27 crore and consequent short levy of tax amounting to Rs 6.35 crore including additional tax, surcharge and penalty.

After this was pointed out, the Department stated between November 2003 and March 2004 that the cases would be examined. Further reply has not been received (September 2004).

- In seven circles, it was noticed from the assessment records assessed between January 2001 and March 2003, utilisation certificates of declaration forms, Road Permits, and Trading Account etc. that 14 dealers had suppressed purchase/sale turnover of Rs 8.95 crore bought/sold on declaration forms during the years 1997-1998 to 2001-2002 which remained undetected by the Department. Thus, failure of the Department to check the suppression of purchase/sales resulted in short levy of tax amounting to Rs 1.70 crore 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/ Accounted for	Actual sale/ Accounted for	Amount concealed	Amount of tax/ penalty	Total
1	Patna Special 1	2000-2001 & 2001-2002 01/2003	Audio and Video Cassettes	-	305.85 NIL	305.85	44.14 40.13	84.27
2	Patna Special 1	2000-2001 02/2003	Sewing machine, Electric fans	841.36 704.15	-	137.21	13.70 12.46	26.16
3	Patna Special 2	1999-2000 2001/2003	Moulded Luggage	1,072.72 961.92	-	110.80	13.53 12.29	25.82
4	Gaya 3	1997-1998, 1999-2002 07/2001, 03/2002, 06/2002, 12/2002 & 03/2003	Motor cycle, Horlicks, H.T.S wire, ERC clip	2,677.93 2,411.36	-	266.57	8.72 8.28	17.00
5	Forbesganj 2	1998-2000 06/2002	Plywood, Chemical	43.74 26.02	-	17.72	2.36 2.16	4.52
6	Muzaffarpur 2	1998-2001 01/2003, 02/2003	Cement and sanitary fittings	52.30 35.93	-	16.37	2.04 1.88	3.92
7	Patliputra 1	1998-2000 01/2001, 11/2002	Medicine	-	452.70 429.64	23.06	1.78 1.61	3.39
8	Patna City West 1	2000-2001 01/2003	Rubber goods	44.61 33.38	-	11.23	1.62 1.47	3.09

¹¹ Medicine, electric fan, sewing machine, powdered milk, ghee-butter, cheese, edible oil, cycle and cycle part, soap, detergent, soda ash, raw jute and consumer products etc.

¹² Forbesganj, Katihar, Patna Special and Raxaul.

9	Samastipur 1	1999-2000 08/2001	Motor cycle & parts	16.42 10.67	-	5.75	0.70 0.64	1.34
	14	Total		4,749.08 4,183.43	758.55 429.64	894.56	88.59 80.92	169.51

After this was pointed out, the Department stated between November 2003 and March 2004 that the cases would be reviewed. Further reply has not been received (September 2004).

- In Gaya Circle, the assessment records revealed that the assessing officer while completing the assessment between September 2002 and November 2002 of a dealer found suppression of sales turnover of Rs 8.34 crore which was not shown in the return furnished by the dealer during the period 1998-1999 and 1999-2000. The assessing officer levied the tax on concealed value but did not levy the penalty of Rs 79.32 lakh.

After this was pointed out (December 2003), the department stated in December 2003 that the case would be examined. Further reply has not been received (September 2004).

- In Patna City East Circle, it was noticed in February 2004 that the assessing officer had revised the assessment in August 2003 for the years 1999-2000 and 2000-2001 after information received from CCT Bihar on suppressed purchase of Rs 1.85 crore. The assessing officer levied the tax but did not impose penalty in contravention of the provisions of the Act *ibid*. This resulted in non-levy of penalty of Rs 19.98 lakh.

After this was pointed out in February 2004, the Department stated that penalty would be levied. Further reply has not been received (September 2004).

The above cases were reported to the Government between January 2004 to May 2004; their reply has not been received (September 2004).

2.4 Incorrect determination of taxable turnover

Under the provisions of Bihar Finance Act, taxable turnover of a dealer, shall be that part of his gross turnover which remains after deducting therefrom the amount of sales tax actually collected as such, if any, along with the sale prices received or receivable in respect of sale of goods.

- In Patna Special Circle, it was noticed that a dealer engaged in business of petroleum products had actually collected tax amounting to Rs 90.12 crore (Rs 90.02 crore under Bihar Finance Act and Rs 0.10 crore under CST Act) during the year 2000-2001, whereas a sum of Rs 98.70 crore was incorrectly deducted from his gross turnover on account of tax collected. This resulted in incorrect determination of taxable turnover and consequent short levy of tax of Rs 1.42 crore including surcharge on differential amount of Rs 8.58 crore.

After this was pointed out in March 2004, the Department stated (March 2004) that the case would be examined. Further reply has not been received (September 2004).

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

- In Patna Special Circle, it was noticed that the assessing officer while completing assessment in March 2003 for the year 2000-2001 of a dealer, erroneously levied tax on turnover of sale of lubricants at Rs 1.03 crore instead of actual turnover of Rs 3.18 crore. Thus, turnover of Rs 2.15 crore escaped assessment. This resulted in under assessment of tax of Rs 40.67 lakh including additional tax and surcharge.

After this was pointed out in March 2004, the Department stated that the case would be examined. Further reply has not been received (September 2004).

The case was reported to the Government in May 2004, their reply has not been received (September 2004).

2.5 Short levy of additional tax

Under the Bihar Finance Act, and notification issued thereunder, every dealer is required to pay additional tax at the rate of one *per cent* (except on liquor) on his gross turnover unless specifically exempted from levy of additional tax.

In Patna Special Circle, in case of two dealers dealing in petroleum products assessed in January and February 2003, additional tax was erroneously levied at Rs 861.60 crore instead of the correct amount of Rs 942.05 crore for the assessment year 2000-2001. This resulted in short levy of additional tax of Rs 88.49 lakh including surcharge.

After this was pointed out in February 2004, the department stated (March 2004) that the case would be examined. Further reply has not been received (September 2004).

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

2.6 Under assessment of Central Sales Tax

Under the CST Act, the State Government by issuing a notification in May 1996, granted exemption to industrial units from levy of sales tax on inter-State sale of manufactured goods. In case of inter-State sale of goods which are not supported by prescribed declaration forms, in the case of declared goods tax is leviable at twice the rate applicable in the State and for other goods at the rate of 10 *per cent* or at the rate applicable in the State whichever is higher. It has also been judicially held¹³ that while granting exemption, there is an obligation to produce the 'C' form.

- In Patna South Circle, a manufacturing dealer was granted certificate for availing the benefit of tax exemption on inter-State sale of manufactured goods. The assessing officer allowed the benefit of exemption on inter-State sale of

¹³ *State of Rajasthan Vs. Sarvottam Vegetables Products (S.C) 1996, 547*

ingots valued at Rs 3.18 crore made during the period 2000-2001 though the sale was not supported by declaration form 'C'. This resulted in under assessment of tax of Rs 25.45 lakh.

After this was pointed out in November 2003, the department stated that the case would be reviewed. Further reply has not been received (September 2004).

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

- In three circles, in case of six dealers for the years between 1997-1998 and 2000-2001 assessed between August 2000 and September 2003 though the sale of goods valued at Rs 14.18 crore was not supported by prescribed declaration forms, tax was levied at lower rate. This resulted in under assessment of tax of Rs 56.27 lakh as detailed below:

(Rupees in lakh)

Sl. No.	Name of circle/No. of dealers	Period of assessment/ Month/Year of assessment	Commodity	Sale not supported by declaration form	Rate leviable Rate levied (Per cent)	Tax short levied
1.	Forbesganj 4	Between 1997-1998 & 2000-2001 Between 8/2000 & 2/2003	Jute	961.16	$\frac{6}{3}$	28.83
2.	Patliputra 1	1999-2000 12/2002	Tractor parts	71.44	$\frac{10}{4}$	4.29
3.	Gaya 1	1998-99, 1999-2000 09/2002, 11/2002	Concrete Sleeper and clip	385.83	$\frac{10}{4}$	23.15
	Total			1,418.43		56.27

After this was pointed out between November and December 2003, the Department stated between November and December 2003 that cases would be reviewed. Further reply has not been received (September 2004).

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

2.7 Non- levy of penalty

Under the provisions of Bihar Finance Act, if any registered dealer fails to make payment of the admitted tax within the due date or the extended date, the prescribed authority shall impose a penalty which may extend to five *per cent* but not less than two and half *per cent* of the amount of tax for each of the first three months or part thereof following the due date or the extended date and to 10 *per cent* but not less than five *per cent* for each subsequent month or part thereof.

In two circles, (Gaya and Patna Special) it was noticed between December 2003 and March 2004 that four dealers deposited the admitted tax with delay. The delay ranged from four days to 43 months pertaining to the years 1999-2000 to 2001-2002. However, the assessing officers while finalising the assessments between November 2002 and February 2003 did not levy penalty of Rs 86.53 lakh.

After this was pointed out between December 2003 and March 2004, the DCCT, Gaya Circle stated that case would be examined while DCCT, Patna Special Circle, stated that no proceedings under Section 16(9) can be initiated once the dealer had been assessed to tax. Non levy of penalty at the time of assessment resulted in loss of Rs 86.53 lakh.

The cases were reported to the Government between March 2004 and May 2004; their reply has not been received (September 2004).

2.8 Incorrect grant of exemption

Under the provisions of Bihar Finance Act, read with Bihar Sales Tax (BST) Rules, 1983, a dealer who claims that any amount of his turnover should be exempted from sales tax shall substantiate such claim before the prescribed authority by producing the purchase order, if any, the cash memo or bills in original issued by him and a true declaration in writing from the selling dealer in form IXC obtained from the prescribed authority that the goods in question have already been subjected to sales tax in the state.

In Forbesganj Circle, it was noticed in November 2003 that a dealer, assessed in December 2002, was granted exemption on the strength of form IXC, on the purchase of petrol and diesel for Rs 1.75 crore during the period between 15 November 2000 and 31 March 2001 from Jharkhand. The grant of exemption was irregular as the purchase was made from outside the State. Incorrect grant of exemption resulted in short levy of tax amounting to Rs 28.46 lakh.

After this was pointed out, the department stated in November 2003 that the case would be reviewed. Further reply has not been received (September 2004).

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