

CHAPTER-II: Taxes on Sales, Trade etc.

2.1 Results of Audit

Test check of the records relating to assessments and refunds of sales tax in Commercial Taxes Department, conducted in audit during the year 2004-05, revealed under assessment of tax of Rs 100.37 crore in 701 cases which broadly fall under the following categories: -

(Rupees in crore)			
Sl. No.	Category	No. of cases	Amount
1	Non /short levy of tax	98	6.79
2	Irregular grant of exemption	171	29.25
3	Non levy of penalty	32	2.29
4	Irregular allowance of concessional rate of tax	70	21.00
5	Non/short levy of additional tax/ surcharge	37	1.74
6	Application of incorrect rate of tax	38	2.31
7	Incorrect determination of gross turnover	25	6.87
8	Non levy of penalty for excess collection of tax / mistake in computation	05	0.07
9	Other cases	225	30.05
Total		701	100.37

During the year 2004-05, the concerned Department accepted under assessment, etc. of Rs 49.02 crore involved in 186 cases of which 80 cases involving Rs 29.04 crore have been pointed out in audit during 2004-05 and rest in earlier years. Rs 0.02 crore was recovered at the instance of audit.

A few illustrative cases involving tax effect of Rs 47.34 crore are given in the following paragraphs:

2.2 Irregularities in receipt of goods from outside the State

Under provisions of the Central Sales Tax Act, 1956 (CST Act), read with the Bihar Finance Act, 1981 (BF Act), as adopted by Government of Jharkhand, goods are received by a dealer of Jharkhand from outside the State either on purchase after payment of tax at the rate of four *per cent* by issuing declaration in form 'C' or on stock transfer from any place of his business or his agent or principal or otherwise, without payment of tax by issuing the declaration in form 'F'/sale notes to substantiate the claim. However, on sale of such goods, tax is leviable in State at the rate specified under the State law, unless the goods were specifically exempted from the levy of tax.

Instructions issued in February 1986 and August 1990 by the Commissioner of Commercial Taxes (CCT), provide that the purchasing/transferee dealers shall obtain, from the prescribed authority, declarations in form 'C' or 'F' and issue the same against purchase/receipt of the goods only if the forms are fully filled in and signed by the dealer, the maximum price of goods are filled in red ink duly authenticated by the authorised officer, the details of such authenticated form are recorded in stock register of the prescribed authority showing name, address, name of goods, value of goods etc. in relation to transferor and the goods are sold and information regarding realisation of tax is noted in the register/assessment records. The purchasing/transferee dealer shall retain the counterfoil of such form and furnish the detailed account of receipt of goods against them.

Cross verification of data regarding receipt/purchase of goods collected during the period from April 2005 to June 2005 from Andhra Pradesh, Uttar Pradesh, West Bengal, Delhi, Karnataka, Maharashtra and Tamil Nadu with the records of 65 dealers/manufacturers in 14 commercial taxes circles* (Circles) of Jharkhand revealed suppression of sales/purchases, use of unauthorised form and dealers carrying the businesses without getting themselves registered having a tax effect of Rs 6.77 crore including penalty as discussed in the following paragraphs:

2.2.1 *Suppression of sales turnover*

Under the provisions of BF Act read with CST Act, every registered dealer shall furnish a true and complete return in respect of all transactions, failing which and if the prescribed authority is satisfied that reasonable grounds exist to believe that any turnover of a dealer has escaped assessment, the said authority may, within eight years from the date of the order of the assessment or reassessment, assess or reassess 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 amount equivalent to the amount of tax assessed on the turnover which escaped taxation.

* Adityapur, Chaibasa, Chakradharpur, Deoghar, Giridih, Hazaribag, Jamshedpur, Katras, Palamu, Ranchi South, Ranchi Special, Ranchi West, Singhbhum and Tenughat.

Cross verification of assessment records of 29 dealers in eight circles* with the records of 48 manufacturers/dealers of six States revealed that the dealers purchased goods valued at Rs 32.21 crore during the period 1999-2000 to 2003-04, against declarations in form 'C' or by transfer against declarations in form 'F'/sale notes/invoices from manufacturers/selling dealers but accounted for goods valued at Rs 18.81 crore in their books of account. The assessing authority while finalising the assessments between October 2000 and March 2005, however, failed to detect the suppression of turnover valued at Rs 13.40 crore which resulted in under assessment of tax amounting to Rs 3.70 crore including penalty of Rs 2.71 crore.

After this was pointed out, the Department stated in June 2005 that the cases would be reviewed.

2.2.2 Evasion of tax due to use of unauthorised declaration forms

Cross verification of assessment records in five circles** with the records of seven manufacturers/dealers of three States revealed that the dealers did not account for in their books purchases of industrial gases, lubricants, biscuits, vanaspati and petroleum products amounting to Rs 2.03 crore during the period from 1999-2000 to 2001-02, assessed between January 2002 and August 2004. These purchases were made by them against declaration form 'C' which were, not issued by the concerned authority. This resulted in evasion of tax of Rs 1.05 crore including penalty of Rs 76.49 lakh.

After this was pointed out, the Department stated in June 2005 that the cases would be reviewed.

2.2.3 Non levy of penalty on escaped turnover before assessment

The BF Act read with CST Act provides that if assessing authority has reason to believe that a dealer has wilfully concealed any amount of turnover to deprive Government of tax due, the dealer shall be liable to pay a sum not exceeding three times but not less than the amount of tax leviable or assessed on the escaped turnover. By another instruction issued in November 1998, the department instituted a control measure for monitoring of returns, which *inter alia* includes, initiation of penalty proceedings on concealed turnover before assessment.

- Cross verification of purchase/receipt of goods from eight manufacturers of Andhra Pradesh and West Bengal revealed that in Singhbhum and Jamshedpur circles, four dealers reflected the value of goods received as Rs 23.92 lakh in their books instead of Rs 5.53 crore actually received by them during 2001-02 and 2002-03. However the department failed to detect these cases which resulted in short accounting of goods of Rs 5.29 crore and non levy of penalty of Rs 1.30 crore.

* Adityapur, Chakradharpur, Deoghar, Giridih, Palamu, Ranchi Special, Ranchi West and Singhbhum.

** Adityapur, Chakradharpur, Hazaribag, Jamshedpur and Ranchi South.

- Cross verification of purchase/receipt of goods from four manufacturers of West Bengal and Delhi revealed that in three circles* five dealers had received during 2001-02 and 2002-03 goods valued at Rs 56 lakh against declaration forms 'C' which were not issued to them. However, the department failed to detect these cases which resulted in short accounting of goods of Rs 56 lakh and non levy of penalty of Rs 25.53 lakh before assessment.

After this was pointed out, the Department stated in June 2005 that the cases would be reviewed.

2.2.4 Sale to unregistered dealers/ dealers with fictitious numbers and consequent non levy of tax due to lack of market survey

Under provisions of the BF Act, every dealer, who is an importer, is liable to pay tax irrespective of the quantum of his gross turnover. Further, no dealer, who is liable to pay tax, shall sell or purchase goods, unless he has been granted and is in possession of a valid registration certificate. Failure to apply for registration may render him liable to pay penalty, in addition to levy of tax, at the rate of Rs 50 for each day of default or an amount equivalent to the amount of tax assessed, whichever is less. According to instructions issued in April 1990 and April 1997, market survey should be conducted in every circle during the period from April to June every year to unearth unregistered dealers for registering them under the Act and to ascertain whether any class of dealers has escaped liability for taxation.

Cross verification of data of purchases/receipt of goods from 14 manufacturers/dealers of Andhra Pradesh, Delhi, Uttar Pradesh and West Bengal with the records of five circles** revealed that 22 dealers who had made purchases from outside the State were not registered with the Commercial Taxes Department. This resulted in turnover of Rs 3.45 crore escaping assessment during the period between 1999-2000 and 2002-03 and consequent evasion of tax amounting to Rs 46.35 lakh including penalty of Rs 11.81 lakh.

After this was pointed out, the Department stated in June 2005 that the matter would be examined.

The cases were reported to Government in June 2005 and discussed in October 2005; reply is awaited (January 2006).

* Katras, Palamu and Ranchi South.

** Chaibasa, Chakradharpur, Ranchi Special, Singhbhum and Tenughat.

2.3 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 wilfully the particulars of turnover or has furnished incorrect particulars of such turnover, the said authority shall assess or reassess the amount of tax due from the dealer in respect of such turnover and shall direct the dealer to pay, besides the tax assessed on escaped turnover, penalty not exceeding three times but not less than an amount equivalent to the amount of tax on the escaped turnover.

In seven circles, it was noticed from the assessment records assessed between April 2001 and July 2004 and utilisation certificates of declaration forms*, trading account, annual audited accounts etc. that 24 dealers purchased/sold goods valued at Rs 656.28 crore during the years between 1997-98 and 2001-02. However, the dealers filed their returns for Rs 509.09 crore only which were assessed as such by the assessing authorities. Thus, the dealers concealed turnover of Rs 147.19 crore having a tax effect of Rs 19.07 crore. Failure of the Department to cross examine the documents of the dealers available with the Department with the returns filed by the dealers resulted in short levy of tax of Rs 19.07 crore including penalty as detailed below:

(Rupees in crore)							
Sl. No	Name of circle No of dealers	Period of assessment Month/ Year of assessment	Commodity	Actual sale/ purchase Purchase/ sale accounted for	Amount concealed	Amount of tax Penalty	Total
1	Jamshedpur 4	Between 1999-2000 & 2000-01 Between July 2002 and July 2003	Excavators, spare parts of excavators, scrap, coal tar, anthracine oil, stack coal, software earnings	<u>551.11</u> 429.56	121.55	<u>7.51</u> 6.83	14.34
2	Ranchi West 2	2000-01 and 2001-02 August and September 2003	Hire charges	<u>7.24</u> NIL	7.24	<u>0.72</u> 0.66	1.38
3	Adityapur 10	Between 1999-2000 and 2001-02 Between April 2001 and June 2004	Lubricant, auto parts, motor parts, steel ingots, automobiles, auto rubber parts, aluminum and non ferrous, hardware, empty bottles, paper, plastics, iron, atta, suji maida	<u>51.02</u> 43.29	7.73	<u>0.67</u> 0.63	1.30
4	Bokaro 4	Between 1997-98 & 2000-01 Between June 2001 and March 2004	Detergent cake/ powder, H.P. naphthalene, paper, profit on sale of assets	<u>19.10</u> 14.55	4.55	<u>0.45</u> 0.41	0.86
5	Singhbhum 2	2001-02 Between September 2003 and July 2004	Railway concrete sleeper	<u>14.84</u> 11.61	3.23	<u>0.32</u> 0.32	0.64
6	Jamshedpur Urban 1	2000-01 July 2003	Audio valve, welding rod, spare parts	<u>5.22</u> 3.39	1.83	<u>0.18</u> 0.17	0.35
7	Ranchi Special 1	1999-2000 & 2000-01 September 2002 and December 2003	Home appliance, stationery, ujaala (fabric whitener)	<u>7.75</u> 6.69	1.06	<u>0.10</u> 0.10	0.20
Total				<u>656.28</u> 509.09	147.19	<u>9.95</u> 9.12	19.07

* Form IX, C and road permits

The cases were reported to the Department/Government between June 2004 and January 2005; reply is awaited (January 2006).

2.4 Incorrect allowance of exemption under CST Act

- Under provisions of CST Act, claim on account of transit sale is exempted from levy of tax, when the sale has been effected by transfer of documents of title of goods during the movement of goods and such subsequent sale should also take place during the same movement occasioned by the previous sale subject to furnishing of declarations C and EI. It has also been judicially held* that a transaction between the contractor and contractee is a sale within the State, only if, executed in pursuant to the contract between the two parties within the same State.

In Bokaro circle, it was noticed in August 2004 that in case of two contractors exemption of tax on supply of electrical and unspecified goods valued at Rs 76.99 crore made during the period between 1995-96 and 1997-98, assessed/reassessed between March 2001 and November 2002, was allowed on account of transit sale under CST Act. The transaction between the contractor and the contractee executed in pursuant to a contract between them was a sale within the State in view of the above judicial pronouncement as no transfer of documents of title of goods was effected during the movement of goods. Thus, incorrect grant of exemption resulted in underassessment of tax of Rs 9.41 crore including additional tax and surcharge.

After this was pointed out in June and September 2004, the Department stated in March and June 2005 that exemption was correctly allowed. The reply of the Department is not tenable as there was no proof of transfer of documents of title of goods effected during the movement of goods and in the light of above judicial pronouncement the transaction was liable to tax as intra State sale. Further reply has not been received (January 2006).

The matter was reported to Government in June 2005; reply has not been received (January 2006).

- By a notification issued in May 1996 under provisions of CST Act, Government allowed exemption from levy of CST on sale of finished goods in course of inter State trade or commerce for a specified period provided that such transaction was not contrary to the provision of CST Act. The Act further provides that such sale is required to be supported by declaration forms, otherwise tax is leviable at twice the rate applicable in the State in case of declared goods and in other cases at the rate of 10 *per cent* or at the rate applicable in the State, whichever is higher.

In two circles Adityapur and Deoghar, it was noticed in December 2003 and December 2004 that the dealers were granted exemption from levy of tax on

* Sundaram Industries Vrs State of Tamil Nadu (1992) 86 STC, 554 (Mad).

inter State sale of finished products valued at Rs 13.34 crore made during 1999-2000 to 2001-02 in three cases assessed between November 2000 and March 2003. However, the sale was not supported by the prescribed declaration in Form 'C' which was in contravention of the provisions of the Act. The incorrect allowance of exemption resulted in non levy of tax of Rs 75.56 lakh.

This was pointed out between December 2003 and December 2004; the Department did not furnish any reply (January 2006).

The cases were reported to the Government in June 2005; the Department did not furnish any reply (January 2006).

2.5 Incorrect determination of gross turnover

Under the BF Act, gross turnover (GTO) for the purpose of levy of sales tax, in respect of sale of goods means aggregate of sale price received and receivable by a dealer during any given period. Under the provision of CST Act, for exemption from levy of tax on sale taking place in course of export out of the territory of India, the transaction must be supported by prescribed certificate along with the evidence of export of such goods.

In Jamshedpur urban circle, it was noticed that in case of a dealer GTO was incorrectly determined at Rs 5,538.83 crore as against Rs 5,715.10 crore during 1999-2000, assessed in March 2004. A deduction of Rs 176.27 crore from GTO for sale in Singapore, from stockyards outside the State and from stockyard within the State situated in other circles was allowed. Since the deduction was not covered by export sale claimed by the assessee and sale from stockyard was not supported by documentary evidence, the deduction allowed from turnover was incorrect. This resulted in under assessment of tax of Rs 7.05 crore.

This was pointed out in September 2004 and reminded in March and May 2005, the Department did not furnish any reply (January 2006).

The matter was reported to Government in June 2005; reply has not been received (January 2006).

2.6 Underassessment under CST Act

- Under the CST Act, 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 10 *per cent* or at the rate applicable in the State, whichever is higher. In case of sale 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

held* that additional tax and other taxes leviable under the State Act are also leviable on such inter state sales under the CST Act.

In three circles, though the sale of goods valued at Rs 25.45 crore made by six dealers during the assessment years between 1999-2000 and 2001-02, assessed between May 2001 and June 2004, were not supported by prescribed declaration forms, tax was either not levied or levied at lower rates. This resulted in under assessment of tax amounting to Rs 1.57 crore (including additional tax and surcharge) as detailed below:

(Rupees in lakh)								
Sl. No	Name of circle Number of dealers	Period of assessment Month/ Year of assessment	Commodity	Value of goods	Rate of tax (per cent)	Tax leviable	Tax levied	Tax and additional tax short levied
1	Adityapur 3	Between 1999-2000 & 2001-02 Between April 2003 & June 2004	Body of bus/ truck	271.80	10	27.18	-	27.18
			Rolls special casting ring belts	211.30	8	16.90	8.45	8.45
			Motor vehicles	962.53	12+AT+SC	132.00	38.50	93.50
2	Singhbhum 2	1999-2000 January 2004	Electrical goods	657.66	12+AT+SC	94.91	78.92	15.99
			Paints	426.24		61.52	51.15	10.37
3	Ranchi East 1	1999-2000 May 2001	Battery	15.84	10	1.58	-	1.58
Total				2,545.37		334.09	177.02	157.07

After this was pointed out between March 2003 and December 2004 the Department stated that the cases would be examined. Further reply has not been received (January 2006).

- Under the provisions of CST Act read with the BF Act, 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 the territory of India provided the sales were substantiated by documentary evidence. According to orders issued by Government in March 1986 and August 1991, for exemption from levy of tax on sale taking place in the course of export to Nepal, the transaction must be supported apart from other evidence, by bills of export granted by the customs officials of India.

In Singhbhum circle, it was noticed in September 2004 that in case of a dealer, who was assessed for 2000-2001 in January 2004, out of total claim of export on sale of goods valued at Rs 12.91 crore to Nepal and Bangladesh, exemption from levy of tax on export sale of Rs 6.45 crore was allowed without any documentary evidence such as bill of export issued by Indian Customs Department etc. Incorrect allowance of exemption resulted in underassessment of tax of Rs 85.92 lakh including additional tax and surcharge.

* DCCT Vrs Ayasha Hosiery (1992) 85 STC 196 SC

After this was pointed out in September 2004, the Department stated in September 2004 that the cases would be examined.

The cases were reported to Government in June 2005; reply has not been received (January 2006).

2.7 Incorrect allowance of concessional rate under CST Act

Under the CST Act and the Rules framed thereunder, a dealer claiming exemption from tax in respect of inter State trade or commerce effected by a transfer of documents of title of such goods during their movement from one state to another, shall furnish to the assessing authority prescribed declaration within prescribed time, in support of such subsequent sales. Submission of declaration form 'EI' and 'C' is mandatory in case of any subsequent sale made in course of movement of goods from one state to another and no exemption shall be allowed if the sales are not supported by the prescribed declaration form. It has been judicially held* that subsequent sales made by a dealer in course of movement of goods to registered dealer of the same State were taxable as sale within the State in absence of declaration form EI.

In Bokaro circle, it was noticed in August and September 2004 that the claim made by two dealers of transit sale of goods valued at Rs 12.18 crore was not supported by the declaration form EI for the years from 1996-97 to 1999-2000. The assessing authority finalised the assessments between February and March 2001 and disallowed the claim of the dealers but tax was levied at the rate of four *per cent* on the basis of form C issued by Bokaro circle *i.e.* within the same circle instead of 12 *per cent* considering the sale as intra State sale taking place between dealers of the State. Thus levy of tax at concessional rates resulted in underassessment of tax amounting to Rs 1.04 crore.

After this was pointed out in August and September 2004, the Department stated in September 2004 that the dealer effecting sales who failed to obtain prescribed certificate shall be liable to pay tax under CST. The reply is not tenable as the dealer is liable to pay tax at the rate leviable in the State in view of the above judgment.

The matter was reported to Government in June 2005; reply has not been received (January 2006).

* Ramudu Chettiar *Vrs* State of Madras (1968) 22 STC 283 Madras.

2.8 Incorrect allowance of exemption

Government of Bihar, Finance (Commercial Taxes) Department vide notification on 22 December 1995 under BF Act, (adopted by Jharkhand Government) allowed exemption from levy of sales tax on sale of raw materials to SSI units subject to submission of form 'Gaa'.

In Jamshedpur urban circle, it was noticed in July 2003 that the assessing authority while finalising assessment for the year 1998-99 during March 2003 disallowed the sale of raw materials to SSI unit valued at Rs 6.34 crore out of total exemption of Rs 68.03 crore claimed by the dealer as the same was not supported by prescribed declaration forms and determined turnover of Rs 64.85 crore as tax free sale instead of Rs 61.69 crore. This resulted in incorrect allowance of exemption of turnover of Rs 3.16 crore and underassessment of tax of Rs 12.62 lakh.

After this was pointed out in July 2003, the Department stated in August 2003 that the case would be reviewed. Further reply has not been received (January 2006).

The matter was reported to Government in June 2005; reply has not been received (January 2006).

2.9 Short levy of tax due to misclassification of goods

Under the provisions of the BF Act, sales tax on goods shall be levied as per rates prescribed in the Act. The goods not specified are leviable to tax at the rate of eight *per cent* as unspecified item. It has been judicially held* that 'cast iron casting' does not fall under the definition of term 'iron and steel'.

In Dhanbad urban circle, it was noticed in October 2004 in case of a dealer that on sale of cast iron casting valued at Rs 6.87 crore during 1999-2000, assessed in September 2002, tax was levied at the rate of four *per cent*, treating the goods as iron and steel, instead of at the rate of eight *per cent*. This resulted in short levy of tax amounting to Rs 41.14 lakh due to misclassification of goods.

This was pointed out in October 2004; the Department did not furnish any reply (January 2006).

The matter was reported to Government in June 2005; reply has not been received (January 2006).

* Bengal Iron Corporation *Vrs* CTO (1993) 90STC 47(SC)

2.10 Non/short levy of additional tax

Under the provisions of BF Act, every dealer is required to pay additional tax at the rate of one *per cent* (except on liquor) from November 1981 on his gross turnover. State Government *vide* notification of December 1995 granted exemption from levy of sales tax only on sales of manufactured goods by small scale industries though additional tax was leviable.

In Adityapur circle, it was noticed between October 2003 and December 2004 in case of two dealers that exemption from levy of sales tax on sale of auto parts and cold drinks valued at Rs 17.31 crore during the period 1999-2000 and 2000-01 assessed in January and June 2004 was allowed but no additional tax was levied. Further, in case of another dealer, during 1998-99 (assessed in July 2003) additional tax though leviable on turnover of Rs 8.13 crore was levied on Rs 1.94 crore. This resulted in non/short levy of additional tax amounting to Rs 27.84 lakh.

After these were pointed out between December 2003 and December 2004, the Department stated that the cases would be examined.

The cases were reported to Government in June 2005; reply has not been received (January 2006).