

CHAPTER-II: Taxes on Sales, Trade etc.

2.1 Results of audit

Test check of records relating to assessments and refunds of sales tax in Commercial Taxes Department conducted during 2005-06, revealed under assessment of tax of Rs 608.39 crore in 371 cases which broadly fall under the following categories: -

(Rupees in crore)

Sl. No.	Category	No. of cases	Amount
1	Non /short levy of tax	84	47.29
2	Irregular allowance of exemption from tax	79	16.33
3	Non levy of penalty	08	79.16
4	Irregular allowance of concessional rate of tax	26	3.54
5	Non/short levy of additional tax/ surcharge	26	0.27
6	Application of incorrect rate of tax	22	1.72
7	Short levy due to incorrect determination of turnover	29	5.87
8	Non levy of penalty for excess collection of tax/ mistake in computation	08	1.02
9	Other cases	88	77.69
10	Review on “Working of Commercial Taxes Department in respect of sales tax receipts”	1	375.50
Total		371	608.39

During 2005-06, the concerned department accepted under assessment, etc. of Rs 43.35 crore involved in 115 cases of which 34 cases involving Rs 1.78 crore were pointed out in audit during 2005-06 and rest in earlier years.

A Review on **Working of Commercial Taxes Department in respect of sales tax receipts** involving Rs 375.50 crore is given in the following paragraph:

2.2 Review on Working of Commercial Taxes Department in respect of sales tax receipts

2.2.1 Highlights

- Cross verification of data of sales/purchases reflected in income tax returns of 23 dealers with their sales tax returns revealed suppression of turnover of Rs 38.64 crore and consequent short levy of tax of Rs 22.46 crore including penalty.

[Paragraph 2.2.11.1]

- Cross verification of data of sales/despatch of stone chips, dust and ballasts reflected in returns furnished to Mining Department by eight dealers with their sales tax returns revealed suppression of turnover of Rs 8.65 crore and consequent short levy of tax of Rs 3.58 crore including penalty.

[Paragraph 2.2.11.2]

- Cross verification of data of sale collected from Principal Director of Commercial Audit, Ranchi with the sales tax records of two manufacturing dealers revealed suppression of turnover of Rs 258.43 crore and consequent short levy of tax of Rs 96.21 crore including penalty.

[Paragraph 2.2.11.3]

- Cross verification of data of sales/despatch of iron ore and stone chips reflected in mining returns by seven dealers with their sales tax returns revealed suppression of turnover of Rs 160.64 crore and consequent non levy of penalty of Rs 53.42 crore on estimated tax.

[Paragraph 2.2.12]

- Cross verification of annual audited accounts and declaration forms utilised by 76 dealers of 17 commercial taxes circles with trading accounts/returns of dealers revealed suppression of turnover of Rs 371.92 crore and consequent short levy of tax of Rs 139.54 crore including penalty.

[Paragraph 2.2.13]

- In case of 13 dealers, incorrect allowance of exemption from levy of tax on goods valued at Rs 24.43 crore resulted in non/short levy of tax amounting to Rs 2.05 crore.

[Paragraph 2.2.14.2]

- In case of two dealers, incorrect determination of gross turnover resulted in short levy of tax of Rs 6.30 crore.

[Paragraph 2.2.19.2]

- In case of four dealers dealing in supply of animal fodder and one dealer dealing in iron and steel of two commercial taxes circles, non adherence to the provisions of the Act and departmental instructions resulted in cases becoming barred by limitation of time and loss of Government revenue of Rs 6.71 crore.

[Paragraph 2.2.22.1 and 2.2.22.2]

- 23 dealers in three commercial taxes circles defaulted in payment of assessed tax of Rs 11.73 crore between 1988-89 and 2002-03 but penalty amounting to Rs 19.46 crore though leviable was not levied.

[Paragraph 2.2.25]

- In case of three dealers of two commercial taxes circles, institution of certificate proceedings on incorrect amount resulted in short institution of certificate proceedings of Rs 3.92 crore.

[Paragraph 2.2.27]

2.2.2 Recommendations

Government may consider that:

- provisions of Acts/Rules and instructions of the department should be scrupulously followed while allowing exemption from levy of tax;
- system of cross verification of transactions under various declaration forms and inter departmental transactions needs to be made effective; and
- internal control system for enforcement of norms may be evolved for proper functioning of internal audit, conducting market survey, functioning of IB, vigilance and monitoring wing.

2.2.3 Introduction

The Sales Tax Department, now called the Commercial Taxes Department was established in the erstwhile State of Bihar on 1 July 1944. The present Finance Act, called the Bihar Finance Act (BF Act), came into force from April 1981. The State of Jharkhand, after its creation in November 2000, adopted existing BF Act as on 15 November 2000.

The activities of the department lie in formulating plan and procedures for levy, assessment and collection of sales tax with minimum tax remaining outstanding, widening tax base for augmentation of revenue in grey areas and framing policies and procedures for additional mobilisation of resources. The levy, assessment and collection of sales tax is governed by BF Act, Central Sales Tax Act, 1956 (CST Act) and rules framed thereunder and administrative instructions issued from time to time by the department. On receipt of return from the dealer it is the responsibility of the department to ensure prompt completion of the assessment in accordance with the provisions of the law and executive instructions issued from time to time.

2.2.4 Organisational set up

At the apex level, Commissioner of Commercial Taxes (CCT) is responsible for administration of the Acts and rules in the department. The CCT is assisted by Additional Commissioner (AC) and Joint Commissioner of Commercial Taxes (JCCT), Vigilance and Monitoring alongwith other JCCTs and Deputy/Assistant Commissioners of Commercial Taxes (DCCT/ACCT) at the headquarter level.

The State of Jharkhand is divided into five commercial taxes divisions* consisting of 28 circles[♥], each under the charge of a JCCT (Administration) and DCCT/ACCT respectively. DCCT/ ACCT incharge of the circle is assisted by commercial tax officers (CTO). A JCCT (Appeal) is also posted in each division for disposal of appeal cases.

A Deputy Commissioner of Bureau of Investigation (IB) is posted in each division to assist JCCT (Administration) and a DCCT of Vigilance and Monitoring is posted under the direct charge of CCT. The incharge of the circle as well as divisional IB is responsible for market survey.

2.2.5 Audit objectives

The review was conducted to ascertain whether

- provisions of laws, rules and departmental instructions were enforced to safeguard the revenue of State;
- there exists an internal control mechanism within the department, which is reliable and working efficiently to check evasion of tax.

2.2.6 Scope of audit

A review on the working of Commercial Taxes Department in respect of sales tax receipts was conducted for the period 2000-01 to 2004-05 in 23* out of 28 commercial taxes circles during the period from November 2005 to March 2006 with special emphasis on registration, filing of returns, assessment, exemption and concession of taxes, recovery of arrears and working of IB, vigilance and monitoring wings of Commercial Taxes Department. Besides, information obtained from Principal Director Commercial Audit, Mines and Geology Department and Income Tax Department were also cross verified with the sales tax records maintained in these circles.

* Dhanbad, Dumka, Hazaribag, Jamshedpur and Ranchi.

♥ Adityapur, Bokaro, Chaibasa (Chakradharpur), Chirkunda, Dhanbad, Dhanbad Urban, Deoghar, Dumka, Giridih, Godda, Gumla, Hazaribag, Jamshedpur, Jamshedpur Urban, Jharia (Sindri), Koderma, Katras, Lohardaga, Pakur, Palamu, Ramgarh, Ranchi East, Ranchi South, Ranchi Special, Ranchi West, Sahebganj, Singhbhum and Tenughat.

* Adityapur, Bokaro, Chaibasa, Chirkunda, Deoghar, Dhanbad, Dhanbad Urban, Giridih, Gumla, Hazaribag, Jamshedpur, Jamshedpur Urban, Jharia, Koderma, Pakur, Palamu, Ramgarh, Ranchi East, Ranchi South, Ranchi Special, Ranchi West, Sindri and Tenughat.

2.2.7 Trend of revenue

2.2.7.1 The variation between budget estimates (BE) and actual receipt in respect of sales tax revenues during the period 2001-02 to 2004-05 is as under:

(Rupees in crore)

Year	BE	Actual	Variation	Percentage of variation
2001-02	1,515.00	1,238.70	(-)276.30	(-) 18
2002-03	1,621.54	1,366.14	(-)255.40	(-) 16
2003-04	1,675.65	1,601.02	(-) 74.63	(-) 5
2004-05	1,782.47	1,881.53	(+) 99.06	(+) 6

The percentage of variation between BE and actual receipt ranged between (+) 6 and (-) 18 *per cent*. During 2001-02, 2002-03 and 2003-04 the actual receipt fell short of BE by five to 18 *per cent*.

After this was pointed out in June 2006, the department stated in September 2006 that while finalising BEs the departmental target was not taken into account by the Finance Department. This indicated that there was lack of co-ordination between the Finance and Commercial Taxes Department and failure of internal control in respect of preparation of BEs.

2.2.7.2 As per Bihar Financial Rules (BFR) as applicable to Jharkhand, it is the duty of controlling officer to see that all sums due to Government are regularly and promptly assessed and credited to Government account. In order to ensure that amount credited to Government account has been accounted for, CCT is required to reconcile the departmental figures with the figures booked in the office of the Accountant General (A&E).

From the information made available by Government, it was noticed that there were variations between the departmental figures of revenue and the figures shown in Finance Accounts of Government of Jharkhand for the years 2001-02 to 2004-05 as detailed below:

(Rupees in crore)

Year	Departmental figures	Figures as per Finance Accounts	Difference
2001-02	1,330.12	1,238.70	91.42
2002-03	1,444.53	1,366.14	78.39
2003-04	1,699.45	1,601.02	98.43
2004-05	2,023.77	1,881.53	142.24

This reflects failure of the department to reconcile the figures with the office of the Accountant General (A&E).

2.2.8 Registration

2.2.8.1 Market survey

CCT issued instructions in April 1997 and March 1999 for conducting market survey during the period from April to June every year to unearth unregistered dealers and for registration of eligible dealers to widen the tax base.

Information furnished by 12 commercial taxes circles[♦] relating to market survey revealed as under:

Year	No. of surveys conducted during the year	No. of dealers found due for registration	No. of surveyed dealers who applied for registration	Percentage of column 4 to 3
1	2	3	4	5
2000-01	565	217	151	70
2001-02	660	192	156	81
2002-03	799	330	277	84
2003-04	976	362	328	91
2004-05	776	276	219	79

70 to 91 *per cent* of the dealers who were found due for registration applied for registration. However, no record was available to indicate the percentage of dealers who were actually registered by the department.

No records were maintained in the office of CCT Jharkhand relating to market survey indicating absence of monitoring and analysis of tax base and of initiative for resource mobilisation.

2.2.8.2 Pending application for registration

Under the provisions of the BF Act read with Rules made thereunder, no dealer, who is liable to pay tax, shall sell or purchase goods unless he has a valid registration certificate. For this, a dealer has to apply within seven days from the date of his becoming liable for payment of tax. The authority prescribed shall grant him a registration certificate within a period of 30 days from the date of receipt of the said application.

Information furnished by 12 commercial taxes circles[♦] on registration of dealers revealed as under:

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- ♦ Adityapur, Bokaro, Chaibasa, Deoghar, Hazaribag, Jamshedpur, Jamshedpur Urban, Katras, Ranchi East, Ranchi South, Ranchi West and Singhbhum.
 - ♦ Adityapur, Chaibasa, Deoghar, Gumla, Hazaribag, Jamshedpur, Jamshedpur Urban, Katras, Ranchi East, Ranchi Special, Ranchi West and Singhbhum.

Year	Opening balance	No. of applications received	Total	No. of registration granted	No. of application rejected	Closing balance (pending for more than 1 month)	Pendency in percentage Col. 7 to 4
1	2	3	4	5	6	7	8
2000-01	211	1,911	2,122	1,564	188	370	17
2001-02	370	2,007	2,377	1,686	180	511	21
2002-03	511	2,258	2,769	2,028	285	456	16
2003-04	456	2,499	2,955	2,070	399	486	16
2004-05	486	2,818	3,304	2,523	444	337	10

The circles did not assign any reasons for the delay in granting of registration certificates. This resulted in delayed filing of returns, payment of admitted tax and assessed tax etc.

2.2.9 Internal control and monitoring

2.2.9.1 Monitoring of returns / registers

The BF Act read with CST Act and Rules made thereunder provide for submission of periodical returns (monthly, quarterly), depicting details of turnover, alongwith proof of payment of tax by 15th of the month following the end of the month/quarter. Annual return is to be furnished by 31 July following the close of the financial year. On the basis of the return, the assessing officer is required to complete the assessment within four years after the expiry of the financial year.

CCT vide instructions issued in April 1985 read with instruction of November 1998 prescribed two registers i.e. demand and collection register (Register VI) and daily progressive collection register (Register VIII) to be maintained by the circle to facilitate monitoring of receipt of returns and collection of admitted tax. The prescribed authority is required to review the returns and initiate proceedings within three days against the defaulting dealer for delay in submission of return, belated payment of admitted tax and turnover escaping assessment.

Scrutiny of returns and Register VI in the circles test checked revealed that no information regarding date of submission of return, date of completion of proceedings and date of demand raised was available in most of the cases. The entries of Register VI and Register VIII were also not verified and authenticated by the prescribed authority.

Scrutiny of Register VIII revealed that the entries in the registers were neither reconciled with challans of treasury nor authenticated by the prescribed authority. This reflects that Government instructions issued in April 1985 and November 1998 were not being followed although system of monitoring is laid down indicating failure of internal control mechanism.

2.2.9.2 Internal audit

Internal audit ensures an effective mechanism for evaluating the various internal control systems and identifying weaknesses. The Finance (Audit) Department works as internal auditor for all the departments of Government including Finance (Commercial Taxes) Department. By an order of May 1960, the internal audit parties are required to conduct 100 *per cent* audit of all assessments finalised, examining *inter alia* assessment orders, issue of demand notices, amount of tax collected, verification of amount deposited with treasury records etc.

Information as made available to audit revealed that no internal audit had been conducted in office of the CCT, Jharkhand as well as in circles since creation of State of Jharkhand. This reflects failure of the mechanism to ensure that the objectives behind the setting up of the department are fulfilled.

2.2.9.3 Working of IB

As per CCT order issued in June 1991, IB wing was assigned the work of verification of declaration forms C, F, H, IXC and formulation of procedure for market survey. This wing was to conduct surprise inspection of big business premises as well as to inspect vehicles to prevent tax evasion. The IB wing is to conduct minimum 35 inspections of business premises and 60 inspections of vehicles per month and to send a report to the CCT, Jharkhand by the 10/25th of the following month.

To ascertain the performance of IB, information/data regarding verification of declaration forms, inspection of business premises/vehicles for a period from 2001 to 2005 was called for in November 2005 but was not made available to audit till August 2006.

After this was pointed out in June 2006, the department replied in August 2006 that the IB functioned as per codal provisions. However, non availability of information/data clearly indicated absence of an effective mechanism to monitor the working of the IB.

2.2.9.4 Working of vigilance and monitoring wing

In office of the CCT, Jharkhand there is a vigilance and monitoring wing. The department framed guidelines in February 1986 and March 1997 for working of the wing, which *inter alia*, included checking of 20 assessment records every month. Selection of records was to be made on the basis of gross turnover. Besides, the DCCT (Vigilance and Monitoring) was required to check inspection registers, returns and issue of demand notices etc. and send a report on the compliance of registration, non levy of penalty for belated payment of admitted tax/assessed tax and realisation of assessed tax to JCCT (Administration) and CCT. JCCT (Administration) at the divisional level is required to review the position of compliance of pending monitoring reports on quarterly basis and send a report to the CCT.

To ascertain the performance of the wing, information/data regarding checking of assessment records and returns etc. for a period from 2001 to 2005 was called for in November 2005 but was not made available to audit till August 2006.

After this was pointed out in June 2006, the department replied in August 2006 that DCCT (Vigilance and Monitoring) were not posted in any of the divisions due to shortage of officers. This reflected that work assigned to the wing could not be carried out during this period and an important wing which acts as internal audit wing of the department remained non functional.

2.2.10 Performance of assessing officer against norms prescribed

The CCT fixed in March 1989 following norms for various assessing officers to finalise assessment cases:

DCCT incharge of circle	Minimum 15 cases per month along with registration cases
ACCT incharge of circle	Minimum 25 cases and maximum 35 cases per month along with registration cases
Other ACCT	Minimum 35 cases per month
CTOs incharge of the circle	Minimum 40 cases per month
Other CTOs	Minimum 50 cases per month

Information furnished by 12 commercial taxes circles[⊗] revealed that norms prescribed by CCT were not followed and assessments completed during the last five years were far below the norms as shown under:

Year	Minimum number of assessments to be completed as per norms	Pending assessments	Assessments actually to be completed	Assessments completed	Shortfall (in assessments)	Shortfall (in percentage) (Col.6 to 4)
1	2	3	4	5	6	7
2000-01	37,080	37,033	37,033	17,279	19,754	53
2001-02	38,640	42,467	38,640	23,157	15,483	40
2002-03	41,460	43,876	41,460	26,639	14,821	36
2003-04	41,700	41,773	41,700	27,227	14,473	35
2004-05	39,540	42,251	39,540	24,620	14,920	38

The percentage of shortfall in assessments ranged between 35 and 53 per cent.

This indicates that the instructions were not followed by field officers. Although the system for monitoring is laid down but related records were not found maintained in the office of CCT Jharkhand. This indicates that no follow up action was taken on the norms fixed and there was failure of internal control mechanism at the level of CCT.

[⊗] Adityapur, Chaibasa, Dhanbad, Gumla, Hazaribag, Jamshedpur, Jamshedpur Urban, Katras, Ranchi East, Ranchi Special, Ranchi West and Singhbhum.

2.2.11 Cross verification of data with different departments

Under the BF Act read with 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.

CCT issued instructions in May 1990 for cross verification of data/information collected by the circle offices from the Income Tax Department and departments of the State Government regarding purchase/sale by the business establishments with their returns/records to check evasion of tax. IB of the department was also entrusted with this work in June 1991 to cross verify these data/records available with Income Tax Department and various departments of the Central/State Government.

The department failed to act upon the instructions as shown as under:

2.2.11.1 Cross verification of data collected from the Commissioner of Income Tax with assessment records of 23 dealers of seven commercial taxes circles* revealed that the dealers had shown purchase/sales turnover as Rs 109.64 crore in their sales tax returns during 1999-2000 to 2003-04, assessed between July 2002 and December 2005, against the actual purchase/sales of Rs 148.28 crore as shown by dealers in their income tax returns. This resulted in suppression of taxable turnover of Rs 38.64 crore and consequent short levy of tax of Rs 22.46 crore including penalty of Rs 16.45 crore.

After this was pointed out in January 2006, Hazaribag circle in the case of a dealer raised an additional demand for Rs 33.92 lakh in August 2006. No reply was received from other circles (November 2006).

2.2.11.2 As per records of the Department of Mines and Geology, it was noticed that eight dealers of Pakur commercial tax circle despatched (sold) 100.47 crore cubic feet stone chips during the period between 2000-01 and 2004-05. Cross verification of assessment records revealed that assessing officers while finalising the assessments between May 2003 and December 2005 assessed the value of stone chips/dust /ballasts as Rs 2.32 crore as per sales tax returns. As per the schedule of rates issued by Public Works Department in January 2000 (based on present market rate) the value of stone chips worked out to Rs 10.97 crore which resulted in suppression of sales turnover of Rs 8.65 crore. Thus, the dealers were liable to pay tax of Rs 3.58 crore including penalty of Rs 2.62 crore.

* Bokaro, Chaibasa, Dhanbad, Dhanbad Urban, Hazaribag, Ramgarh and Ranchi West.

2.2.11.3 Cross verification of data collected from Principal Director of Commercial Audit, Ranchi with the records of two manufacturing dealers assessed /reassessed between March 2002 and March 2005 of commercial taxes circles, Bokaro and Ranchi South revealed that between 1995-96 and 2000-01, the dealers returned the sales turnover as Rs 6,414.43 crore in their sales tax returns instead of Rs 6,672.86 crore as shown in their annual audited accounts. This resulted in suppression of turnover of Rs 258.43 crore. Failure of the department to follow instructions to cross verify the information furnished by dealers in their returns resulted in underassessment of tax of Rs 96.21 crore including penalty amounting to Rs 70.40 crore.

After the above findings were pointed out in June 2006, the department stated in August 2006 that no data/information was received from Income Tax Department/departments of State Government. The reply is not tenable as no action was taken by the department/IB in accordance with instructions of CCT issued in May 1990 and June 1991 to cross verify data / information available in different departments with the details shown in sales tax returns by the dealers.

2.2.12 *Non levy of penalty before finalisation of assessment*

Under provisions of BF Act, if a registered dealer has furnished incorrect particulars of the sale/ despatch value of goods in the return, the prescribed authority shall direct the dealer to pay penalty on the basis of provisional tax assessed on such concealed turnover. By issuing instructions in November 1998, the department instituted a control measure for monitoring of return, which *inter alia* includes initiation of penalty proceedings on such concealed turnover before assessment.

Cross verification of data collected from the Department of Mines and Geology with the assessment records of seven dealers of Pakur and Chaibasa commercial taxes circles revealed that between 2000-01 and 2004-05, the dealers had shown sale value of stone chips/dust/ballasts and iron ore at Rs 161.29 crore in their returns furnished to Mining Department whereas as per sales tax returns the value of stone chips sold was shown as Rs 0.65 crore resulting in suppression of sales turnover of Rs 160.64 crore. Thus the dealers were liable to pay penalty amounting to Rs 53.42 crore on estimated tax which was leviable on escaped turnover but was not levied.

After this was pointed out in September 2004, the department in case of a dealer of Chaibasa raised additional demand of penalty for Rs 52.67 crore in November 2004. The position of recovery was awaited (November 2006).

2.2.13 Non verification of utilisation certificate of different declaration forms/annual audited accounts at the time of finalisation of assessment

Under provisions of the BF Act read with CST Act and Rules made thereunder, every registered dealer, who issues declaration forms, is required to issue the portion marked as original and duplicate to the purchasing/selling dealer as the case may be and retain the counterfoil with him and furnish a utilisation certificate of the forms to the issuing circle.

Cross verification of utilisation certificates of declaration forms C, F, green road permit (incoming goods in the state) and blue road permit (outgoing goods out of the state), form IX and annual audited accounts with the trading accounts/returns of 76 dealers of 17 commercial taxes circles[§] revealed that the dealers purchased/sold goods valued at Rs 1,872.18 crore between 1999-2000 and 2003-04 but were assessed to tax between January 2001 and June 2005 on the basis of their trading accounts/ returns for purchase/sale of goods valued at Rs 1,500.26 crore only. Failure of assessing authorities to cross verify the documents furnished by the dealers with their returns resulted in short determination of taxable turnover by Rs 371.92 crore and consequent short levy of tax of Rs 139.54 crore including penalty of Rs 102.39 crore.

The above findings were reported to Government in June 2006. Government stated in July 2006 that respective circles have been directed to review the cases.

2.2.14 Incorrect allowance of exemption from levy of tax

Incorrect concession/exemption on defective/invalid declarations

Under the provisions of the BF Act read with CST Act and Rules made thereunder, the dealers claiming exemption from levy of tax were required to submit before the assessing officer the original copy of cash memo, bill or invoice and file a true and complete declaration form in original for the same amount. Further, declaration forms being declared invalid/defective/incomplete are liable to be rejected.

2.2.14.1 In four commercial taxes circles* in case of six dealers assessed between July 2003 and March 2005, exemption from levy of tax on sales turnover of Rs 379.12 crore was allowed between 1999-2000 and 2003-04 on production of provisional D forms, incomplete and defective/ obsolete declaration forms (form 'C' and 'IX C'). This resulted in short levy of tax amounting to Rs 15.20 crore.

[§] Adityapur, Chaibasa, Chirkunda, Deoghar, Dhanbad, Giridih, Hazaribag, Jamshedpur, Jamshedpur Urban, Jharia, Koderma, Palamu, Ranchi East, Ranchi South, Ranchi Special, Ranchi West and Tenughat.

* Bokaro, Chaibasa, Hazaribag and Jamshedpur.

2.2.14.2 Incorrect allowance of exemption

In five commercial taxes circles^φ, in case of 13 dealers, assessed between June 2001 and March 2005, incorrect exemption of sales turnover of Rs 24.43 crore from levy of tax, resulted in non/short levy of tax amounting to Rs 2.05 crore. A few cases by way of illustrations are shown as under:

(Rupees in lakh)

Sl. No.	Name of circle Number of dealers	Period Date of assessment	Commodity	Amount of irregular exemption	Non/short levy of tax	Nature of irregularity
1	Deoghar 1	1999-2000 to 2002-03 Between June 2001 and May 2004	Cattle feed	294.38	29.40	As per BF Act, cattle feed, as such, is not exempted from levy of tax. Hence, exemption of sales turnover of Rs 2.94 crore from levy of tax allowed was incorrect.
2	Deoghar 1	1998-99 March 2003	Ornamentation of glass	963.46	96.23	Exemption was allowed treating ornamentation of glass as manufacture. As per judicial pronouncement*, any treatment of an ornamental nature applied to such articles does not derogate from their fundamental character as glass articles.
3.	Giridih 3	1999-00 to 2002-03 Between June 2003 and March 2005	Iron scrap	275.68	11.03	Under provisions of BF Act and notification issued thereunder, only sale of finished product is exempted from levy of tax and not the by product. Melting of scrap is a by product. Hence exemption allowed was incorrect.
4.	Hazaribag 1	2003-04 February 2005	Coal	451.81	36.14	Exemption was granted on furnishing of form GAA (State) for interstate sale instead of form C which was irregular.

2.2.14.3 Incorrect allowance of exemption not supported by state declaration forms

BF Act and rules made thereunder provide that where any dealer claims that he is not liable to pay tax in respect of any goods occasioned by reason of transfer of such goods to any other place of his business or to his agent or principal within State, he shall furnish a declaration in form IXD issued by the transferee before the prescribed authority.

In Bokaro and Tenughat commercial taxes circles in case of three dealers assessed between October 2003 and March 2005 exemption of tax was granted on goods valued at Rs 143.29 crore during the period 1999-2000 and 2001-02 transferred from one place to another not supported by declaration form IXD. This resulted in incorrect allowance of exemption of tax of Rs 5.73 crore.

^φ Deoghar, Giridih, Hazaribag, Jamshedpur and Jamshedpur Urban.

* Atul Glasses Industries (P) LTD V/s Collector of Central Excise 63 STC 322 (1986) SC.

2.2.14.4 Non levy of additional tax and surcharge

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

In six commercial taxes circles[∇] in respect of 11 dealers assessed between March 2001 and March 2005, for the period from 1995-1996 to 2003-04, additional tax and surcharge though leviable was not levied amounting to Rs 59.61 lakh.

After this was pointed out in September 2004, DCCT, Bokaro, in case of one dealer, raised in June 2005 an additional demand of Rs 5.69 lakh. No replies have been received from other circles (November 2006).

2.2.14.5 Irregular grant of exemption on account of export sale

Under the provisions of the CST Act, BF Act and Rules framed thereunder, no tax shall be payable on sales or purchases of goods which have taken place in course of export out of territory of India, if the sale or purchase either occasions such export or is effected by transfer of documents provided the sale is 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 course of export to Nepal, the transactions must be supported, apart from other evidences, by bill of export issued by the customs officials of India.

During audit of three commercial taxes circles[⊗], it was noticed in case of six dealers, assessed between August 2003 and December 2004, that goods valued at Rs 3.49 crore exported to Nepal between 1999-2000 and 2002-03, not supported by bills of export, were exempted from levy of tax treating the sale as taking place in course of export. Non observance of instructions by the assessing officers resulted in under assessment of tax amounting to Rs 45.85 lakh including additional tax and surcharge.

2.2.14.6 Irregular grant of exemption not supported by declaration forms

Under the provisions of CST Act, tax is leviable at the rate of four *per cent* on inter State sale of goods (other than declared goods) duly supported by prescribed declaration form. In case, the sale is not supported by the prescribed declaration form, tax is leviable at the rate of 10 *per cent* or at the prescribed rate of tax within the State, whichever is higher. By a notification issued in May 1996, Government exempted sale of finished goods from levy of CST in course of inter State trade or commerce for a period of eight years or 10 years, as the case may be, provided such sale was not contrary to the provisions of CST Act.

[∇] Bokaro, Deoghar, Hazaribag, Jamshedpur, Ranchi South and Sindri.

[⊗] Jamshedpur Urban, Ranchi South and Ranchi West.

In three commercial taxes circles^Ω it was noticed that 15 dealers who were availing exemption of tax on the manufacture of finished goods were allowed exemption of tax on inter state sale of finished goods valued at Rs 45.96 crore, during the period from 2000-01 to 2003-04, assessed between October 2002 and March 2005. Sale of these goods was not supported by declaration in form C. This was contrary to the notification of Government and resulted in non levy of tax amounting to Rs 4.23 crore.

2.2.14.7 Irregular grant of exemption on account of subsequent sale

Under the CST Act and Rules framed thereunder, submission of declaration forms E I, E II and C is mandatory in case of any subsequent sale made in the course of movement of goods from one State to another and no exemption shall be allowed if sales are not supported by required declaration forms.

In commercial taxes circle, Ranchi South, it was noticed that two dealers, assessed in January 2004 and February 2005, were exempted from levy of tax on sale made during movement of goods of Rs 1.79 crore during 1999-2000 and 2001-02 without declaration forms E I and E II. Thus, exemption of tax allowed was incorrect and resulted in under assessment of tax amounting to Rs 18.56 lakh.

After the above findings were pointed out in June 2006, the department replied in August 2006 that concerned circles have been directed to initiate action on these cases. Further replies are awaited from the circles (November 2006).

2.2.15 Non imposition of penalty for belated payment of admitted tax

Under provisions of the BF Act, if a registered dealer fails to make payment of admitted tax on due date, the prescribed authority shall impose a penalty for such delay which may extend to five *per cent* but not less than two and half *per cent* of the amount of tax admitted for each of the first three months following the due date and up to 10 *per cent* but not less than five *per cent* for each subsequent month.

In case of five dealers assessed between January 2003 and March 2005 of five commercial taxes circles[#], minimum penalty amounting to Rs 53.58 lakh, though leviable, was not levied during the period from 1998-99 to 2001-02 for belated payment of admitted tax of Rs 3.27 crore. The delay ranged between two days and 1665 days. This resulted in loss of revenue of Rs 53.58 lakh.

After this was pointed out in July 2005, the DCCT, Koderma raised an additional demand of Rs 1.10 lakh in September 2006.

^Ω Adityapur, Deoghar and Giridih.

[#] Adityapur, Bokaro, Jamshedpur, Koderma and Tenughat.

2.2.16 Inadmissible allowance of concessional rate of tax

Under BF Act, registered dealers are allowed to purchase goods for use in manufacture or processing or for use in mining of goods for sale at concessional rate of tax on furnishing declaration form IX. It was judicially held[~] that the goods, which are not directly consumed/used in the process of manufacture of other goods, cannot be treated as raw material.

In Ranchi South and Sindri commercial taxes circles, four dealers assessed between May 2003 and October 2004 purchased timber/tyres valued at Rs 1.71 crore between 2001-02 and 2003-04 at concessional rate treating the goods as raw materials for mining purposes. These goods were not directly consumed/used in the process of mining and hence cannot be treated as raw material. Failure of the assessing officers to classify the goods correctly resulted in short levy of tax amounting to Rs 15.96 lakh including additional tax and surcharge.

2.2.17 Application of incorrect rate of tax

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

Scrutiny of records of nine commercial taxes circles[@] revealed that the assessing officers while assessing 16 dealers between October 2002 and July 2005 for the period from 1998-99 to 2003-04 levied tax at incorrect rate on sale of goods valued at Rs 31.42 crore. This resulted in short levy of tax of Rs 1.59 crore including additional tax and surcharge as shown in *Appendix I*.

2.2.18 Non levy of penalty for excess collection of tax

Under the provisions of BF Act, no registered dealer shall collect from any person any tax on sale of goods in excess of tax liability under the said Act. In the event of any contravention of the said provision, the prescribed authority shall direct the dealer to pay, by way of penalty, a sum equal to twice the amount of tax so collected.

In five commercial taxes circles^{*}, six dealers collected and deposited tax, in excess of their liability by Rs 24.28 lakh during 2000-01 and 2002-03. However, the assessing authorities while finalising the assessment during February and July 2005 did not levy any penalty. This resulted in non levy of penalty of Rs 48.57 lakh.

[~] Rewa Coal Field Vrs CCT Madhya Pradesh SC 1998.

[@] Adityapur, Bokaro, Chaibasa, Giridih, Hazaribag, Ranchi South, Ranchi West, Sindri and Tenughat.

^{*} Adityapur, Chaibasa, Deoghar, Jamshedpur and Tenughat.

2.2.19 Turnover escaping assessment

Under the BF Act, gross turnover for the purpose of levy of sales tax, in respect of sales of goods means aggregate of sales prices received and receivable.

2.2.19.1 In six commercial taxes circles[⊗], the assessing officers determined gross turnover of eight dealers as Rs 162.59 crore for the assessment year 1999-2000 to 2002-03 but while computing tax between May 2003 and July 2005 the assessing officers incorrectly levied tax on Rs 146.87 crore only. Thus turnover of Rs 15.72 crore escaped assessment, which resulted in under assessment of tax of Rs 2.10 crore including additional tax and surcharge.

2.2.19.2 In commercial taxes circles, Jamshedpur Urban and Tenughat, two dealers sold goods of Rs 6,436.71 crore as per annual audited accounts/returns during the period 2000-01 and 2001-02. The assessing officers incorrectly determined the gross turnover as Rs 6,284.46 crore between January and February 2005. This resulted in short determination of gross turnover by Rs 152.25 crore and consequential short levy of tax of Rs 6.30 crore including additional tax and surcharge.

2.2.20 Mistake in computation of tax

In three commercial taxes circles[⊐] in case of four dealers, assessed between December 2004 and March 2005, for the period 2000-01 and 2003-04, tax was levied as Rs 15.79 lakh instead of Rs 46.39 lakh due to calculation mistake. This resulted in short levy of tax amounting to Rs 30.60 lakh including additional tax and surcharge.

2.2.21 Non realisation of instalments of deferred tax and interest

Under the Bihar Sales Tax Supplementary (Deferment of Tax) Rules, 1990, deferred amount of tax shall be repaid within 10 years from the date of commencement of production. In case of industrial units availing deferment of tax for a period of five years, deferred tax is to be repaid in five instalments and in case of units availing deferments for seven years, deferred tax is to be repaid in three instalments, payable by 31 March every year after the expiry of validity period. In case of default, interest at the rate of two *per cent* per month shall be charged on such amount of tax remaining unpaid till the date of payment.

In Deoghar and Ranchi South commercial tax circles, four manufacturers were allowed deferment of tax between January 1990 and October 1996 for five years, but failed to repay the instalments of deferred tax of Rs 7.52 crore on due dates during the period between March 1996 and March 2005. The dealers were liable to pay interest of Rs 2.39 crore from the due date upto March

[⊗] Adityapur, Hazaribag, Palamu, Ranchi South, Sindri and Tenughat.

[⊐] Hazaribag, Ranchi South and Ranchi West.

2005, alongwith instalment of deferred tax of Rs 7.52 crore payable by them. However, no action was taken by the department to recover the tax alongwith interest.

2.2.22 Loss of revenue due to assessment being barred by limitation

Under provisions of the BF Act, no proceeding for assessment of tax payable by a dealer in respect of any period shall be initiated after the expiry of eight years/four years (with effect from 1993-94) from the expiry of such period. Government instructed the department in March 2000 that all assessment cases involved in fodder scam be completed in time to prevent assessments from becoming time barred.

2.2.22.1 In Ranchi South commercial taxes circle, sale of goods valued at Rs 11.44 crore made between 1992-93 to 1995-96 by four dealers dealing in supply of animal fodder, ground nut cake and medicines were not assessed within the stipulated period despite submission of returns. In cases of fodder scam suppliers, Government had informed the circles concerned the amount of supplies made by these suppliers to Animal Husbandry Department. These cases became barred by limitation of time. This resulted in loss of Government revenue of Rs 85 lakh including additional tax and surcharge.

2.2.22.2 In Chaibasa commercial taxes circle, a dealer despatched iron ore valued at Rs 47.98 crore during the year 2000-01 but was not assessed to tax upto March 2005 i.e. within the period prescribed under the Act and as such, assessment became barred by limitation of time. Failure of the department to assess the case within the stipulated period resulted in loss of revenue in terms of tax, additional tax and surcharge amounting to Rs 5.86 crore.

2.2.23 Misuse of declaration forms

Under the CST Act, if a registered dealer misrepresents, while purchasing any goods, that the said goods are covered by his registration certificate (RC) or utilises such goods for any purpose other than that mentioned in his RC, he is liable to be prosecuted. The authority competent to grant the RC may, in lieu of prosecution, impose penalty for a sum not exceeding one and a half times of the tax leviable that would have been levied had the sale been a sale not supported by the prescribed declaration in form 'C'.

Scrutiny of records of Ranchi West commercial taxes circle revealed that a contractor who was not registered for mining operation under provisions of BF Act purchased high speed diesel valued at Rs 6.72 crore at concessional rate of tax for use in mining against form 'C' from outside the State during 2004-05. Further scrutiny revealed that the contractor was engaged in execution of work in mining operations. Failure of the assessing authority to verify the RC before issuing the declaration form resulted in unauthorised use of declaration form C and consequential loss of tax amounting to Rs 2.71 crore including penalty.

2.2.24 Non levy of purchase tax

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

In Deoghar commercial taxes circle, a dealer used cement valued at Rs 2.61 crore during the period 2000-01, produced in his own cement factory, for manufacture of asbestos sheets valued at Rs 22.24 crore. The goods so manufactured were transferred to the branch office in Kolkata. While finalising the assessment in March 2005 the assessing authority did not levy purchase tax. This resulted in non levy of tax of Rs 34.74 lakh.

2.2.25 Non/short levy of penalty for non payment of assessed tax

Under the provisions of BF Act, if a dealer failed to make payment of any amount of tax by the date specified in the notice or the extended date if any, the prescribed authority may direct that the dealer shall pay penalty which may extend up to five *per cent* of the tax for the first three months and up to 10 *per cent* thereafter.

Test check of assessment records of three commercial taxes circles[©] revealed that 23 dealers did not pay assessed tax of Rs 11.73 crore between 1988-89 and 2002-03. The assessing authorities while assessing/reassessing these dealers between May 2001 and March 2005 either did not levy or levied short penalty of Rs 19.46 crore.

The power conferred to the assessing officers under BF Act is intended to act as a deterrent to expedite realisation of Government revenue. However, the assessing officers failed to exercise the said power in the interest of revenue of the State.

2.2.26 Trend of arrears of revenue

The arrears of revenue pending collection during 2000-01 to 2002-03 as furnished by the department were as under:

[©] Adityapur, Gumla and Ranchi West

(Rupees in crore)

Year	Opening balance	Addition	Total	Amount recovered	Closing balance	Percentage of col. 5 to 4
<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>	<i>6</i>	<i>7</i>
2000-01	1,088.18	163.95	1,252.13	62.86	1,189.27	5.02
2001-02	1,189.27	181.01	1,370.28	62.39	1,307.89	4.55
2002-03	1,307.89	169.60	1,477.49	58.16	1,419.33	3.93
2003-04	NA	NA	NA	NA	1,286.08	NA
2004-05	NA	NA	NA	NA	1,341.02	NA

The above table indicates that while the amount of arrears increased from Rs 1,088.18 crore as on 1 April 2001 to Rs 1,419.33 crore as on 31 March 2003, registering an over all increase of 31 *per cent*, the rate of recovery was low and ranged between 3.93 to 5.02 *per cent*. The percentage of recovery of arrears of revenue decreased during 2001-02 (4.55 *per cent*) and in 2002-03 (3.93 *per cent*) i.e. after bifurcation of State when compared to 2000-01 (5.02 *per cent*). Information relating to 2003-04 and 2004-05 was not provided by the department.

No records were maintained in the office of the CCT, Jharkhand to monitor the arrears of revenue. It indicates absence of internal control mechanism in the department. The figures of arrears as on 31 March 2002 as furnished by the office of CCT, Jharkhand in March 2003 were Rs 1,243.44 crore, while in December 2004, it furnished figures of Rs 1,307.89 crore, resulting in a discrepancy of Rs 64.45 crore.

After this was pointed out in June 2006, the department replied in August 2006 that the discrepancy in figures was being reconciled by the different divisions/circles.

2.2.27 Short institution of certificate proceedings

Under provisions of the BF Act, amount of tax together with penalty, if any, which remains unpaid after the date as specified in the notice shall, without prejudice to any other mode of recovery, be recoverable as arrears of land revenue. Before initiation of a certificate case against a dealer penalty at the rates prescribed is also leviable on the unpaid amount of assessed tax.

In Jamsheedpur Urban and Ranchi South commercial taxes circles, in case of three dealers, certificate proceedings were instituted during November 2003 and February 2004 for non payment of assessed tax of Rs 83.87 lakh. The assessing officer failed to invoke the provisions of levy of penalty of Rs 3.92 crore under the provisions of BF Act, before instituting the certificate cases. This resulted in short institution of certificate proceedings of Rs 3.92 crore.

After these were pointed out between November 2005 and May 2006, the department stated that the cases would be reviewed. Further progress was awaited (November 2006).

The above findings were reported to Government in June 2006. Government stated in July 2006 that respective circles have been directed to review the cases. Final reply is awaited (November 2006).

2.2.28 Conclusion

The department failed to take effective and meaningful action in either prescribing internal control procedures/measures or in effectively enforcing existing control procedures leading to large scale leakage of revenue. The review revealed that the deficiencies, mistakes, omissions which appeared in the report of Comptroller and Auditor General of India in earlier years still persisted in the working of the Commercial Taxes Department in respect of sales tax receipts.

2.2.29 Acknowledgement

Audit findings as a result of test check of records were reported to Government in June 2006 with a specific request to attend the meeting of the Audit Review Committee for State revenue receipts. A meeting of the committee was held on 17 August 2006. The Secretary cum Commissioner Commercial Taxes, Jharkhand attended the meeting. Their views have been incorporated in the review.